



NITYA | Indirect Tax Bulletin

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LEGAL PRECEDENTS

PART A: ADVANCE RULINGS

Issue 1: Classification of roof mounted Air Conditioning Unit used in railway coaches

Ruling: The AAAR held that roof mounted Air Conditioning Unit is classifiable under Heading 8415 instead of Heading 8607 basis Section Note 2(e) to Section XVII and Explanatory Notes to Chapter 84.

Ess Ess Kay Engineering Company Private Limited, 2023-VIL-14-AAAR

NITYA Comments: This ruling has correctly distinguished Supreme Court's decision in **Westinghouse Saxby Farmer Limited v. CCE, 2021-VIL-33-SC-CE** and relied on **Instruction No. 01/2022-Customs** dated **January 5, 2022** clarifying that relevant facts including Explanatory Notes need to be considered for classification of goods. In this case, taxpayer was contending classification under Heading 8607 (due to rate arbitrage). Notably, several advance rulings are contrary and have held that goods meant for Railways are classifiable under Heading 8607 (for goods like roof mounted AC Unit, driver cab AC Unit, switch board cabinet, etc.) basis specifically designed for Railways.

Pertinently, taxpayers dealing in automobile goods can rely on this ruling in disputes being raised by Customs or GST authorities.

Issue 2: ITC eligibility if preceding seller did not discharge tax liability

Ruling: The AAR held that under Section 16(2)(c) of the CGST Act, recipient is not eligible to claim ITC if supplier preceding immediate supplier did not deposit tax.

Vimal Alloys Private Limited, 2023-VIL-42-AAR

NITYA Comments: This ruling is incorrect. Section 16(2)(c) of the CGST Act provides that tax should be paid to Government and deploys expression 'in respect of said supply'. Also, Section 16(2)(c) is subject to Section 41 of the CGST Act which requires reversal if tax is not paid by 'supplier'. Hence, under Section 16(2)(c) read with Section 41, taxpayer needs to ensure this compliance by 'supplier' supplying goods & services and not for other preceding suppliers in supply chain. This will also result in illogical results since revenue will recover amount from all taxpayers in supply chain for default at any preceding stage leading to multiplicity of demand.

OTHER UPDATES

1. Facility to transfer amount in Electronic Cash Ledger between different GSTINs implemented

NITYA Comments: Vide the Finance Act, 2022, Section 49(10) of the CGST Act was substituted and brought in force on **July 5, 2022** to allow transfer of amount in Electronic Cash Ledger from one GSTIN to another GSTIN of same PAN. However, GST Portal was not updated in this regard. To give effect to Section 49(10), this functionality has now been implemented.

2. E-invoice Portal has implemented functionality for mentioning 6-digit HSN code for taxpayers having aggregate turnover of more than Rs. 5 crores in preceding financial year

NITYA Comments: GST law mandates specified taxpayers to mention 6-digit HSN on invoice. E-invoice portal will now be in line with this requirement and will not allow taxpayers to generate e-invoices with 4-digit HSN.

E-invoice Portal Update dated March 09, 2023

3. DIGIT – India's National Customs Offense Database

- DIGIT is official customs repository for all cases *inter-alia* involving violation of Customs Act.
- CBIC has issued instructions specifying criteria for information to be entered on DIGIT with applicable timelines.
- All offence cases involving arrest, search, summons, seizure regarding smuggling or violation of the Customs Act need to be entered in DIGIT except for cases booked during course of normal executive work.
- Officers need to enter data in DIGIT at each of the following stages:

Particulars	Timeline
Detection	five days of detection
Arrest	three days of arrest
Seizure	five days of seizure
SCN	fifth of following month
Conclusion of investigation	fifth of following month (from date of approval)
Adjudication	fifth of following month (from date of issue of OIO)
Prosecution	fifth of following month (from date of approval of launch of prosecution)

Instruction No. 07/2023-Customs dated February 28, 2023

RECENT NEWS

1. EV companies may challenge move to hold back subsidies

<https://economictimes.indiatimes.com/epaper/delhicapital/2023/mar/13/et-comms/-may-challenge-move-to-hold-back-subsidies/articleshow/98589018.cms>

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NITYA
tax associates



CALL US

+91 11 4109 1200
+91 11 4109 1202



MAIL US

updates@nityatax.com
info@nityatax.com



REACH US

www.nityatax.com

Delhi:
B-3/58, Third Floor,
Safdarjung Enclave,
New Delhi – 110029

Mumbai:
91 Springboard Business Hub Private Limited
Plot No. D - 5, Road No. 20, Marol MIDC
Andheri East, Mumbai – 400093

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