

INDIRECT TAX

Weekly Digest

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GOODS & SERVICES TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Liquidated damages / penalties received is a 'Supply' under GST and taxable at the rate of 18%

Facts of the case

- M/s. Singareni Collieries Company Limited ('Taxpayer') is entering into contracts with various vendors/suppliers for extraction of coal;
- In case of any lapses on the part of suppliers, the taxpayer recovers liquidated damages/penalties.

Questions before the AAR

Whether liquidated damages/penalties received by the taxpayer can be said as 'Supply' under the CGST Act, 2017, thereby attracting the levy of 'GST' or should be treated as price adjustment to the main supply?

Contention of the Taxpayer

The taxpayer has submitted that similar and identical question was raised before Hon'ble Tribunals and High Courts of India. Basis the said decisions, taxpayer submitted that collection of penalty or liquidated damages for breach of contract including missing of milestones will not amount to tolerating to an act as per entry no 5(e) of schedule II to CGST Act, 2017 and it will be treated as price adjustment to main supply.

Observations and Ruling by the AAR

- The AAR observed that as per provisions (1) & (3) of section 55 of Indian Contract Act, 1872, a failure to perform the contract at the agreed time renders it voidable at the option of the opposite party and alternatively such party can recover compensation for such loss occasioned by non-performance;

- Further, as per section 73 & 74 of the Indian Contract Act, 1872, recipient of supplies under a contract is required to be compensated with damages for breach of any provision of the contract;
- In the present scenario, penalties and liquidated damages are demanded by the taxpayer from their contractors on lapses in performance of the contract including delays, under performance with respect to targeted extraction and breach of terms of the contract;
- The AAR observed that the above recoveries are consideration for tolerating an act or a situation arising out of the contractual obligation, and it falls under entry in 5(e) of schedule II to the CGST Act, 2017;
- In addition to above, as per section 2(31)(b) of the CGST Act, 2017, the consideration in relation to the supply of goods or services or both includes the monetary value of an act of forbearance;
- Based on above observations, the AAR concluded that liquidated damages/penalties received by the taxpayer due to breach of conditions of the contract from the contractor are liable to tax.

[AAR-Telangana, M/s. The Singareni Collieries Company Limited, Ruling TSAAR Order no:20/2022, A.R. Com/08/2019, dated 08 April 2022]

Valuation of supply for the purpose of levy of GST to include interest on delayed payments

Facts of the case

M/s. Hyderabad Metropolitan Water Supply and Sewerage Board ("Taxpayer") has entered into contracts with various contractors for which payment is being made by taxpayer in monthly instalments comprising of principal and interest component.

Questions Before the AAR

- Whether interest component would be liable for payment of GST or not? if yes, classification of service and applicable rate of GST payable? and
- Whether entry no:3 of the notification no:12/2017-CT(R) dated 28 June 2017 would be applicable for payment of interest under annuities model, being payment of interest is a pure service?

Observations & Ruling by the AAR

- The AAR observed and opined that as per section 15 of CGST Act, 2017, value of supply shall include interest for delayed payment as consideration for such supply;
- Accordingly, interest shall form part of value of supply liable to levy of GST.

[AAR-Telangana, M/s. Hyderabad Metropolitan Water Supply and Sewerage Board, Advance Ruling no: A.R. Com/19/2021 TSAAR Order No.18/2022 dated 29 March 2022]

Existing GST registration in the State of Telangana which will cover all taxable transactions is enough to make taxable supplies directly from Customs port and entitled to avail Input Tax Credit

Facts of the case

M/s. Euroflex Transmissions (India) Private Limited, ('Taxpayer') wishes to supply imported goods directly from the port of importation to customer located across India without bringing these goods to the taxpayer's registered premises in state of Telangana by raising tax Invoice from Telangana location.

Questions raised before AAR

- Requirement to obtain registration in the state in which goods are imported and
- Eligibility to avail ITC of IGST paid on import of goods if the said goods are sold directly from the port of importation.

Observations & Ruling by the AAR

- The liability for registration arises under Section 22 of the CGST Act, 2017 if the supplier makes taxable supplies the aggregate turnover of which exceeds Rs. 20 Lakhs in a financial year. Such registration is to be obtained in the State from which the taxable supply is made.
- Further, in the case of supply of goods made from a customs warehouse, such supply is not treated as supply of goods under Entry 8 of the Schedule III to the CGST Act, 2017 if it is:
 - Supply of warehoused goods to any person before clearance for home consumption.
 - Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.
- As seen from the material papers submitted by the taxpayer, it is observed that they are not seeking clarification on supplies which are in nature described in Entry 8 of Schedule III to the CGST Act, 2017. Evidently, after clearing the goods by paying customs duty and IGST the taxpayer is making inter-state supply of the same from

the customs warehouse without taking such goods to their own business premises.

- The transactions made by the taxpayer after clearing them from customs in their own account are considered as subsequent sales and not sales in course of import, where the customs clearance will be made by the purchaser. The said transactions will be covered under entry 8 of Schedule III to the CGST Act, 2017;
- Therefore, this subsequent sale when made to a customer within the State of Telangana will be an intra-state sale liable to CGST & SGST. However, when such sale is made to a customer in other states of the country it will be an inter-state sale liable to IGST;
- The person making such taxable sales is liable to take registration under CGST Act, 2017;
- It is seen that the taxpayer has already obtained a registration with GSTIN: 36AAACE5313K1ZS. Therefore, this registration is sufficient to cover the transactions or supplies in nature described by the taxpayer. Under section 16 of the CGST Act, 2017 read with section 20 of IGST Act, IGST paid on imports is eligible to be availed as ITC both on intra-state and inter-state sales.

[AAR-Telangana, M/s. Euroflex Transmissions (India) Private Limited, Ruling no: TSAAR Order No.22/2022, A.R. Com/02/2021, dated 08 April 2022]

FOREIGN TRADE POLICY (FTP)

PUBLIC NOTICE

Applications for allocation of Tariff Rate Quota (TRQ) under India-Mauritius CECPA for financial year 2022-23

The online applications for allocation of Tariff Rate Quota (TRQ) under India-Mauritius CECPA for the current financial year 2022-23 will be considered by the Directorate General of Foreign Trade (DGFT) on 'First Come, First Served basis', with no end date and other modalities remaining the same.

[Public notice no:04/2015-20 dated 20 April 2022]

NEWS FLASH

1. “GST Council may do away with 5% rate; move items to 3% and 8% slabs”
<https://economictimes.indiatimes.com/news/economy/policy/gst-council-may-do-away-with-5-rate-move-items-to-3-8-slabs/articleshow/90890399.cms>
[Source: Economic Times, 18 April 2022]
2. “Industry wants government to fix small etail’s GST compliance problem”
<https://economictimes.indiatimes.com/tech/technology/industry-wants-government-to-fix-small-etails-gst-compliance-problem/articleshow/90942097.cms>
[Source: Economic Times, 20 April 2022]
3. “Niti Aayog draft proposes GST cut on EV batteries”
<https://www.newindianexpress.com/business/2022/apr/22/niti-aayog-draft-proposes-gst-cut-on-ev-batteries-2445011.html>
[Source: Indian Express, 22 April 2022]
4. “Jet fuel should be under GST; states should cut VAT: Scindia”
<https://timesofindia.indiatimes.com/business/india-business/jet-fuel-should-be-under-gst-states-should-cut-vat-scindia/articleshow/90991387.cms>
[Source: Times Of India, 22 April 2022]
5. “Tax Department to pay 6 per cent for a 94-290-day delay in processing GST refund”
<https://www.thehindubusinessline.com/news/6-interest-payable-in-case-delay-in-granting-gst-refund-is-not-inordinate-sc/article65341585.ece>
[Source: The Hindu Business Line, 22 April 2022]



Contact Us

For any content related queries, you may please write to the service line experts at:

taxadvisory@bdo.in

For any other queries, kindly write to:

marketing@bdo.in

BDO Offices

Ahmedabad
The First, Block C - 907
Behind ITC Narmada, Keshavbaug
Vastrapur, Ahmedabad 380015, INDIA

Bengaluru
SV Tower, No. 27, Floor 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA

Chennai
No. 443 & 445, Floor 5, Main Building
Guna Complex, Anna Salai, Teynampet
Chennai 600018, INDIA

Delhi NCR - Office 1
The Palm Springs Plaza
Office No. 1501-10, Sector-54
Golf Course Road
Gurugram 122001, INDIA

Delhi NCR - Office 2
Windsor IT Park
Plot No: A-1, Floor 2
Tower-B, Sector-125
Noida 201301, INDIA

Goa
701, Kamat Towers
9, EDC Complex, Patto
Panaji, Goa 403001, INDIA

Hyderabad
1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA

Kochi
XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA

Kolkata
Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA

Mumbai - Office 1
The Ruby, Level 9, North West Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA

Mumbai - Office 2
601, Floor 6, Raheja Titanium
Western Express Highway
Geetanjali Railway Colony, Ram Nagar
Goregaon (E), Mumbai 400063, INDIA

Pune - Office 1
Floor 6, Building # 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

Pune - Office 2
Floor 2 & 4, Mantri Sterling, Deep
Bungalow Chowk, Model Colony,
Shivaji Nagar, Pune 411016, INDIA

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