

# INDIRECT TAX

## Weekly Digest

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## GOODS & SERVICES TAX

### JUDICIAL UPDATES

#### ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

**Receipt of amount due to termination of a contract qualifies as 'Supply' by way of tolerating an act and is exigible to GST**

#### Facts of the Case

- M/s. GSPC (JPDA) Limited ("Taxpayer") (India) along with other concessionaries / entities have entered into a Production Sharing Contract ("PSC") with Timor Sea Designated Authority ("TSDA") (Timor-Leste) for undertaking exploration activities in a block in Joint Petroleum Development Area ("JPDA") (Australia);
- Autoridade Nacional do Petroleo E Minerals ("ANP") (Timor-Leste) regulates administrative and financial control over TSDA;
- Further, the taxpayer as well as other concessionaries mutually agreed to terminate the PSC and thereby submitted request for such termination with ANP. In order to terminate the same, ANP demanded an amount aggregating to estimated cost of exploration not carried-out and damages for breach of its local content obligations; and
- In this regard, the taxpayer intends to know the taxability on the share of settlement sum paid by it.

#### Questions before the AAR

Whether payment of settlement qualifies as 'Supply' and is leviable to GST?

#### Contention of the Taxpayer

The taxpayer contended that the subject transaction does not attract levy of GST basis following grounds:

- PSC is not equivalent to a service contract and thereby does not get covered under the meaning of tolerating breach of an agreement. Thus, receipt of settlement payment can neither be treated as 'Supply' by way of tolerating an act or agreeing to refrain from an act prescribed under Schedule II to the CGST Act, 2017 nor it becomes 'Supply' in any other manner;
- Vide circular no:32/06/2018-GST dated 12 February 2018, CBIC clarified that portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called 'cost Petroleum'. The cost petroleum is not a consideration for service to Government (Government of Timor-Leste and Government of Australia) and thus not taxable under GST regulations;
- The operation of the contract, operator of the contract as well as block in which exploration activities are to be undertaken, are located in non-taxable territory;
- Amount payable to ANP pertains to pre-GST regime. Also, time of supply of letter dated 15 July 2015 issued by ANP demanding cost of exploration not performed, falls in the period prior to implementation of GST; and
- Various judicial precedents were relied upon wherein it was held that amount received due to termination of an agreement does not correspond to consideration received for any identifiable service.

### Observations and Ruling by the AAR

- The AAR denied above contentions of the taxpayer that settlement payment gets covered under the meaning of 'cost petroleum' in view of aforesaid circular and the same is being made due to breach of PSC; Rather, the AAR pointed out that subject payment is in pursuance to another agreement executed between the taxpayer and ANP namely 'deed of settlement and release' dated 15 July 2020;
- The AAR also held that the judicial pronouncements which the taxpayer referred are not relevant in the subject matter;
- The AAR concluded that receipt of settlement amount falls within the scope of 'Supply' as the agreement against which settlement amount is paid was executed in GST regime. Therefore, the attracts levy of GST; and
- Further, since ANP is located outside India, supply in given case comes under the purview of import of service. Thus, GST is required to be discharged by the taxpayer under reverse charge mechanism.

*[AAR-Gujarat, M/s. GSPC(JPDA) Ltd., Advance Ruling no:GUJ/GAAR/R/50/2021 dated 06 September 2021]*

### Services provided qualify as 'job work' even if the new product emerged does not have a distinct name, character and use

#### Facts of the case

- Garware Industries Limited ('Taxpayer' or 'GIL') is engaged in processing and conversion of plain polyester film into processed, all types of polyester films (i.e., dyed film, laminated films, TS films, PPF films). GIL is an associate company of Garware Polyester Limited ('GPL');
- GPL sends plain polyester films along with all other required input (collectively referred to as 'inputs') to taxpayer for manufacturing /converting of plain polyester films into dyed/laminated/TS films on job-work basis;
- In terms of the proposed arrangement, GPL supplies the inputs to the taxpayer. On receipt of the same, Taxpayer undertakes processes to convert mainly:
  - Polyester films and chemicals for manufacturing of dyed film which is intermediate product of GPL to manufacture laminated film/sun control film;
  - Polyester films and chemicals for manufacturing of Thermostatic films (TS films) which is intermediate product to manufacture laminated film/sun control film; and
  - Polyester film, TPU and protection film for manufacture of PPF film.
- In accordance with the job work agreement, the title to the plain polyester film or any other inputs will vest with GPL. During the treatment/work on the plain polyester films provided by GPL, the basic characteristics of the product are not lost. It is just a different commercial product;
- Job work model involves following:

- Job work will be carried-out by Taxpayer;
- Raw materials (such as plain films, chemicals, dyes and solvents, and TPU etc.) will be supplied by GPL for manufacturing dyed film, laminated films, TS films and PPF Films;
- GPL also provide utility such as electricity, furnace oil required for job work;
- Freight terms: freight, unloading and loading charges, if any, will be borne by GPL;
- Credit terms: GPL will pay all the dues to taxpayer within 30 days from the invoice date;
- GPL will depute its technical representatives at Taxpayer's plant to provide support of technical supervision during the manufacturing process to ensure quality output.

#### Questions before the AAR

Whether the activity carried-out by the taxpayer as per the agreement with GPL amounts to job work? and if yes, whether the said activity falls under clause (id) Heading 9988 of notification no:20/2019 dated 30 September 2019?

#### Observations and Ruling by the AAR

- The AAR observed that the Job work is just a process undertaken by a job worker on goods belonging to a principal and Job work may or may not amount to manufacture. Further it observed that, a job worker may or may not use some portion of his material;
- On reference to the definition 'Job work' under section 2(68) of the CGST Act, 2017 and 'manufacture' under section 2(72) of the GST Act, 2017, AAR observed that, after they have undertaken the process on the raw materials supplied by their principal which is a GST registered entity, the new product that emerges does not appear to have a distinct name, character, and use and therefore the taxpayer cannot be considered as a manufacturer of the impugned products;
- Further the AAR observed that the title to the raw materials including plain polyester films and well as the dyed/laminated/TS films are with GPL and not the taxpayer;
- From the submissions of the taxpayer the AAR noted the following:
  - The process is undertaken by a person i.e., the taxpayer;
  - The process is undertaken on goods belonging to another person who is registered under the CGST Act, 2017;
  - Only job charges in the form of processing charges, are received by the taxpayer;
  - The goods after processing are returned back within one year;
  - No new product emerges after the process is carried-out by the taxpayer on the goods which belong to GPL;
  - The taxpayer receives only job charges from GPL for the services rendered.

- Since no new product comes into existence after the process conducted by the taxpayer on the raw materials supplied by GPL, the process undertaken will come under the purview of job work as defined under section 2(68) of the CGST Act, 2017. Thus, in view of the above, the taxpayer is only a job worker to GPL and as a job worker, carries-out processes on goods i.e., polyester films supplied by GPL;
- As per notification no:20/2019-CT(R) dated 30 September 2019 the principal notification was amended to prescribe 12% GST on manufacturing services on physical inputs (goods) owned by others as covered under (id) of the specific entry;
- In view of the above, the impugned services supplied by the taxpayer to GPL are in the nature of job work services, classifiable under entry at item (id) under heading 9988 of notification no:11/2017-CT(R) dated 28 June 2017 as amended.  
[AAR-Maharashtra, Garware Industries Limited Advance Ruling no:GST-ARA- 107/2019-20/B-73, dated 11 October 2021]

### Reimbursement of salary, ESI, PF etc received by house keeping service providers forms part of their value of supply

#### Facts of the case

- Smt. Bhagyalakshmi Devamma Vangimallu ('Taxpayer') whose trade name is "M/s. Versatile Resource Solutions" having a registration under GST, has entered into a contract with M/s. Asian Institute of Gastroenterology Private Limited, Somajiguda, Hyderabad for providing housekeeping services;
- The taxpayer provides housekeepers and supervisor to maintain and assist the medical team of the hospital, covering 24 hours service on shift basis;
- It is of the opinion that as the salary/wages are fixed by the hospital management and as EPF, ESI are statutory payments, these amounts are reimbursed by the hospital management cannot form value of supply and therefore it is not liable to pay tax on these amounts.

#### Questions before the AAR

Whether the taxpayer is liable to pay tax on the amount of wages/salaries, EPF/ ESI etc., reimbursed by the client?

#### Contention of the taxpayer

- Taxpayer submitted that they are passing on the salary, ESI, PF etc., received from the contractee to the persons employed. However, the taxpayer is charging commission/charges against each such bill and hence they are pure agents of the contractee, as such the amounts received by them are passed on to the employees does not form turnover at their hands;
- In order to support the above contention, the taxpayer relied on the decision of Delhi High Court in the case of M/s. Intercontinental Consultants (2012) 12TMI150 and other Tribunal Judgments relating to the erstwhile service tax valuation rules, wherein it was held that reimbursable expenses have been held not to form gross value of service provided by the service provider and hence not assessable to tax.

#### Observations and Ruling by the AAR

- The AAR observed that the case law relied by the taxpayer relates to interpretation of service tax valuation rules, enumerated in the Finance Act. Hon'ble High Court of Delhi and later the Hon'ble Supreme Court of India discussed the applicability of rule 5 of Service Tax Rules and sections 66 and 67 of Finance Act of India. No general principles have been laid down for determination of value of supply on service in these judgments which travel beyond the interpretation of these rule and related section pertaining to the erstwhile Service tax;
- The AAR further observed that the taxpayer is not a pure agent under GST law. Also, the deductions available under section 15 of the CGST Act, 2017 do not include the amounts pertaining to EPF, ESI, salary, or wages. Therefore, entire amount received from the hospital are eligible to CGST / SGST Act 2017.

[AAR-Telangana, M/s. Versatile Resource Solutions, Advance Ruling no:14/2021, A.R.Com/03/2019, dated 08 October 2021]

## CUSTOMS

### NOTIFICATION

#### Inclusion in the list of countries eligible for concessional rate of duty

'Sierra Leone' has been included in the list of countries, from where the imports are eligible for concessional rate of Customs Duty and Agriculture Infrastructure and Development Cess (AIDC).

[Notification no:50/2021-Customs dated 22 October 2021]

#### Amendment in tariff quota quantity under India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA)

Amendment in tariff quota quantity under CECPA. Exemption is given on Customs duty and AIDC for the prescribed quantity of goods as specified in the notification.

[Notification no:51/2021-Customs dated 22 October 2021]

## FOREIGN TRADE POLICY (FTP)

### PUBLIC NOTICE

#### Enlistment under Appendix 2E to issue Certificate of Origin (Non-Preferential) for All India

All agencies enlisted under appendix 2E of FTP-2015-20, who have on-boarded on common digital platform for electronic certificate of origin (Non-Preferential) (CoO (NP)), can issue CoO (NP) on all India basis w.e.f. 01 November 2021. The following three new agencies are enlisted under appendix 2E of FTP, 2015-2020 for issuing Certificate of Origin (Non-Preferential).

- Export Promotion Council for EOUs & SEZs
- Urban Exim Care Association
- Federation of Industries & Association

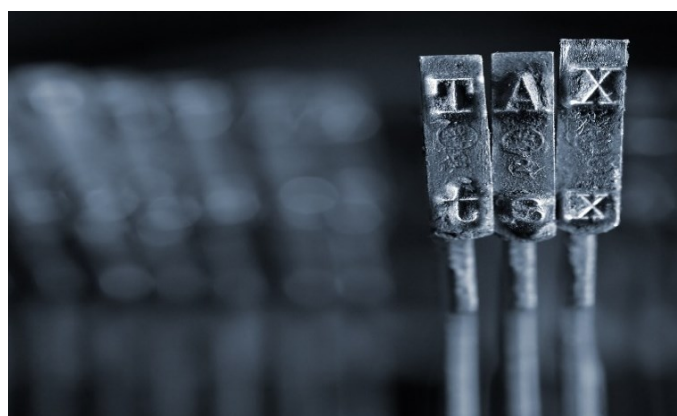
[Public notice no:29 & 30/2015-2020 dated 18 October 2021]

## TRADE NOTICE

### Extension of date for mandatory electronic filing of non-preferential Certificate of Origin (CoO) through the common digital platform

- The electronic platform for Certificate of Origin (CoO) (URL: <https://coo.dgft.gov.in> ) which was made live for issuing preferential certificates under different FTAs, has now been expanded to facilitate electronic application for issuance of non-preferential certificates of origin as well;
- On the request of certain chambers/associations notified under appendix-2E, the existing system of manual/paper-based submission and processing of non-preferential CoO applications is being extended further upto 31 October 2021 only and the online system is not being made mandatory;
- All Agencies, as notified under appendix-2E, are required to ensure that the on-boarding exercise is completed latest by 31 October 2021 failing which the agencies shall be de-notified from appendix 2E;
- The revised appendix 2E, containing the list of only those agencies which have been on-boarded, shall be notified post the said timelines.

*[Trade notice no:21/2021-2022 dated 18 October 2021]*



## NEWS FLASH

1. “GST law should not treat defaulting suppliers and innocent purchasers at par”  
<https://www.financialexpress.com/economy/gst-law-should-not-treat-defaulting-suppliers-and-innocent-purchasers-at-par/2354998/>  
[Source: Financial Express, 23 October 2021]
2. “GST revamp: Group of state finance ministers for steps to eliminate fake input tax credit claims”  
<https://www.financialexpress.com/economy/gst-revamp-group-of-state-finance-ministers-for-steps-to-eliminate-fake-input-tax-credit-claims/2355136/>  
[Source: Financial Express, 23 October 2021]
3. “Pen makers ask Finance Ministry to reduce GST rate”  
<https://economictimes.indiatimes.com/news/economy/policy/pen-makers-ask-finance-ministry-to-reduce-gst-rate/articleshow/87229301.cms>  
[Source: The Economic Times, 23 October 2021]
4. “GST on Land after developing by erecting Civil Structure or Building or Complex: AAR”  
<https://www.taxscan.in/gst-on-land-after-developing-by-erecting-civil-structure-or-building-or-complex-aar/137460/>  
[Source: Taxscan, 24 October 2021]
5. “Only a goods supplier can apply for GST advance ruling”  
<https://economictimes.indiatimes.com/news/economy/finance/only-a-goods-supplier-can-apply-for-gst-advance-ruling/articleshow/87219512.cms>  
[Source: The Economic Times, 23 October 2021]

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