

# INDIRECT TAX

## Weekly Digest

11 May 2022  
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## GOODS & SERVICES TAX

### JUDICIAL UPDATES

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

**Body building of vehicles on chassis owned by customer/recipient is supply of service and taxable at the rate of 18%**

#### Facts of the case

- M/s. Vasant Fabricators Private Limited ('Taxpayer') engaged in building bodies of various vehicles on chassis provided by the owner;
- The taxpayer physically receives chassis owned by their customer and then all the required inputs for such activity of body building of vehicles are independently fabricated and then assembled to obtain required outputs.

#### Questions before the AAR

- Whether the activity of fabricating and mounting tankers, tippers, etc. on the chassis provided by the owner of such chassis i.e., bus body building would be covered under the category of supply of services?
- If yes, what is the applicable accounting code of such services as per the scheme of classification of services and the applicable rate of GST thereon?

#### Contention of the Taxpayer

- The taxpayer has submitted that the activity undertaken by them is services which are provided on the goods received by the taxpayer;
- The taxpayer has further submitted that supply would fall under SAC 998882 which is for other transport equipment manufacturing services;
- As per the taxpayer, the supply of services would be taxable at the rate of 18% in terms of below:

- In case chassis is provided by registered person, based on the definition of job work as per section 2(68) of the CGST Act, 2017 and explanation of bus body building provided in notification no:26/2019-CT(R) dated 22 November 2019, the taxpayer submitted that any treatment or processing undertaken on chassis belonging to another person who is registered would be covered under the definition of job-work and GST would be levied at the rate of 18%;

- In case chassis is provided by unregistered person, the activity would be covered under the description "Manufacturing services on physical inputs (goods) owned by others" and GST would be levied at the rate of 18%.

- To substantiate the above position, the taxpayer has submitted various circulars, FAQs and advance rulings.

#### Observations and Ruling by the AAR

- The AAR observed that as per schedule II (3) of the CGST Act, 2017, any treatment or process applied on another person's goods is a supply of service. Accordingly, bus body building on customer owned chassis is supply of service;
- The AAR also observed that as per section 2(68) of CGST Act, 2017, job work is defined as any treatment or process undertaken by person on goods belonging to another registered person. Based on the same, service would fall under the definition of Job work;
- The AAR further observed that any body building of vehicle on chassis owned by unregistered person is manufacturing services on physical inputs(goods) owned by others who are not registered under GST;

- AAR found that as per scheme of classification of services, body building of vehicles on the chassis owned by customer is covered under SAC 998882;
- Based on the above observations, AAR held as follows:
  - Supply of body building of vehicles on chassis owned by customer is supply of service;
  - Service Accounting Code (SAC) for such service is 998882 and applicable rate of GST is 18%.

*[AAR-Gujarat, M/s. Vasant Fabricators Private Limited, Ruling no: GUJ/GAAR/R/2022/23, dated 12 April 2022]*

### Incentives received for completion of targets are not trade discounts

#### Facts of the case

- M/s. MEK Peripherals India Private Limited (“Taxpayer”) is a reseller of various products. The products are sold by the foreign entity to various Indian distributors and taxpayer procures the products from such distributors and markets them to various retailers;
- The taxpayer has entered into a contract with the foreign entity wherein the taxpayer would receive certain incentive based on completion of defined targets.

#### Questions before the AAR

- Whether the incentive received from the foreign entity could be considered as a trade discount?
- If answer to above is no, whether incentive would be considered as consideration for supply? and
- If the transaction is considered as supply whether it will qualify as export?

#### Contention of the Taxpayer

- The taxpayer submitted that the incentive received from the foreign entity can be considered as a trade discount in terms of section 15(3) of CGST Act;
- Further the taxpayer relied on certain judicial pronouncements in the pre-GST regime and stated that the incentive should be considered as a trade discount;
- The taxpayer also submitted that even if the incentive is not considered as a trade discount, said transaction can be considered as supply of service as there is no involvement of goods;
- Further, the supply would be classified as export of services in terms of section 2(6) of IGST Act, 2017.

#### Observations and Ruling by the AAR

- The AAR observed that the facts of the current scenario and the facts of the judicial pronouncement relied upon by the taxpayer are not similar. Accordingly, the rationale given by taxpayer for considering the incentive as trade discount does not hold good;
- Further the AAR observed that since certain amount, in form of incentives, is flowing from foreign entity to taxpayer, in the absence of supply of goods, it appears that taxpayer is receiving consideration on account of rendition of marketing services. Therefore, the said amounts received by the taxpayer cannot be considered as trade discounts;

- Regarding considering the supply as export, the AAR observed that all conditions stipulated under section 2(6) of IGST Act, 2017 are satisfied except for the fact that place of supply for the service does not fall outside India;
- The AAR observed that the services supplied by the taxpayer are in respect of goods which are required to be made physically available by the taxpayer i.e., supply of goods through distributors, place of supply for the said services would fall under section 13(3)(a) of IGST Act, 2017 wherein the place of supply is the location of service provider i.e., location of taxpayer. Accordingly, the transaction would not qualify as export.

*[AAR-Maharashtra, M/s. MEK Peripherals India Pvt Ltd., Advance Ruling No: GST-ARA-59/2020-21/B-56, Dated 27 April 2022]*

### Transaction of transfer of business by merger of two GST registrations/ distinct persons constitutes as 'supply of goods' under the GST law

#### Facts of the case

- M/s. Crystal Crop Protection Ltd. ('Taxpayer' or 'Crystal') is a trader & manufacturer of agrochemical products with two registrations in Akola & Nagpur in Maharashtra. The registrations were obtained to avail benefit of a state government incentive scheme, but it was later found that separate registration was not a pre-requisite and thus the company wants to merge its registrations for ease of compliance;
- The proposed merger will be implemented by entering an internal Memorandum of Understanding (MoU) between the two registrations transferring all assets and related liabilities essential to carry on the business on as-is basis by which, the transferee (Akola registration) would undertake all future liabilities of transferor (Nagpur registration).

#### Questions before the AAR

- Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply' under the GST law?
- Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply of goods' under the GST law?
- Whether merger between distinct persons would qualify as 'transfer of business as going concern' under the purview of GST Law?
- Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply of services' under the GST law?
- If the transaction qualifies as 'supply of services', whether the said transaction would get covered under entry no:2 of notification no:12/2017-CT(R) dated 28 June 2017, and therefore not liable to GST?
- Whether Nagpur registration can file Form GST ITC-02 and transfer unutilized credit balance to Akola registration?
- In case the taxpayer merges the business of Akola registration, can the taxpayer claim credit balance appearing in Akola registration via Form GST ITC 02A in Nagpur registration?

### Contention of the taxpayer

- Taxpayer will transfer the business from Nagpur registration to Akola registration on as-is basis. If a transfer of business happens on a going concern basis, then it does not constitute as "supply of goods" as per Schedule II. Further, Schedule II does not prescribe whether transfer of business on a going concern basis would constitute as "supply of services". Hence, taxpayer refers to definition of the term "services" under section 2(102) of CGST Act, 2017 and submitted that, since proposed transaction does not constitute supply of 'goods', the said transaction would constitute "supply of services";
- Section 18(3) of CGST Act, 2017 enables a registered person to transfer ITC, on transfer of business. From a perusal of the said section 18(3), it is seen that firstly, change in the constitution of registered persons denotes a bi-lateral transactions, involving two entities and secondly, the provision used the expressions sale, merger, de-merger, amalgamation, etc., as forms of change in constitution;
- Further, rule 41 of CGST Rules, 2017 prescribes the process to transfer of ITC from electronic credit ledger of the transferor to the transferee via form ITC-02. Since there are two separate registrations of the transferor (i.e., Nagpur registration) and transferee (i.e., Akola registration) in the present case, respectively, the taxpayer should be eligible to transfer ITC in form ITC-02;
- As per section 25(2) of CGST Act, 2017 a person seeking registration shall be granted a single registration in a state or union territory. The proviso to section 25(2) of CGST Act, 2017 allows that registered person to have two separate registrations, but it does not suggest that he cannot opt-out and have a composite registration.

### Contention of the tax authority

- Supply of goods or services or both between related persons or between distinct persons as specified in section 25(4) of CGST Act, 2017, when made in the course or furtherance of business shall be treated as supply even if made without consideration. As per section 7(1A) of amended CGST Act 2017, and part 4(c) of Schedule II, it is understood that if a business is transferred as a going concern, it does not amount to supply of goods;
- Merger of GST registrations by way of business transfer from Nagpur registration to Akola registration gets covered u/s 18(3) of the CGST Act, 2017 which enables registered person to transfer ITC, on transfer of business.

### Observations and Ruling by the AAR

- As per entry no:1 of Schedule I to the CGST Act, 2017 'Permanent transfer or disposal of business assets where ITC has been availed on such assets will be treated as supply even if made without consideration. Thus, the transaction of merger is a supply;
- Section 18(3) of the CGST Act, 2017 relates to transfer of unutilized ITC remaining in the electronic credit ledger, but it applies only when there is:
  - Change in the constitution of such registered person and

- Such change is on account of sale, merger, demerger, amalgamation, lease or transfer of the business and
- In the manner prescribed
- Thus, change in constitution of the business is essential, otherwise it cannot be said that there is transfer of business as a going concern;
- The case at hand does not qualify to be a "transfer of business as a going concern to another person" as units are holders of the same PAN and are merely distinct persons. Change in constitution of the business is essential otherwise, it cannot be said that there is transfer of business as a going concern. Therefore, the impugned supply will be treated only as supply of goods;
- As there was no supply of service but a supply of goods (assets of the Akola unit to Nagpur unit), the question of transfer of ITC would not arise;
- The transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute as supply of goods under the GST law. Nagpur registration cannot file Form GST ITC-02 and transfer unutilized credit balance to Akola registration. Question 3,5 & 7 not answered.

*[AAR- Andhra Pradesh, M/s. Crystal Crop Protection Ltd. Order no:GST-ARA-31/2021-22/B-50 dated 21 April 2022]*

## CUSTOMS

### NOTIFICATION

#### Duty exemption on goods imported to give effect to first tranche of India-UAE CEPA

Central Board of Indirect Taxes and Customs (CBIC) has exempted certain goods from customs duty on import the from the United Arab Emirates.

The exemption shall be available only if importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of The United Arab Emirates, in terms of rules as may be notified in this regard by the Central Government by publication in the Official Gazette of India read with Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020.

This notification shall come into force from 01 May 2022.

*[Notification no:22/2022 dated 30 April 2022]*

#### Amendments in various customs notifications to align the HS codes with the Finance Act, 2022

CBIC has amended the following notifications, in order to align the HS Codes with the Finance Act, 2022, w.e.f. 01 May 2022.

- Notification no:26/2000-customs dated 01 March 2000;
- Notification no:25/2005-customs dated 01 March 2005;
- Notification no:73/2005-customs dated 22 July 2005;
- Notification no:74/2005-customs dated 22 July 2005;
- Notification no:75/2005-customs dated the 22 July 2005;
- Notification no:101/2007-customs dated 11 September 2007;

- Notification no:10/2008-customs dated 15 January 2008;
  - Notification no:96/2008-customs dated 13 August 2008;
  - Notification no:57/2009-customs dated 30 May 2009;
  - Notification no:152/2009-customs dated 31 December 2009
  - Notification no:46/2011-customs dated 1 June 2011;
  - Notification no:53/2011-customs dated 01 July 2011;
  - Notification no:69/2011-customs dated 29 July 2011;
  - Notification no:68/2012-customs dated 31 December 2012;
  - Notification no:50/2017-customs dated 30 June 2017;
  - Notification no:50/2018-customs dated 30 June 2018;
  - Notification no:25/2021-customs dated 31 March 2021;
- [Notification no:23/2022 dated 30 April 2022]*

#### Amendments in HS codes w.r.t. exemption of Social Welfare Surcharge

CBIC vide notification no:11/2018-customs dated 02 February 2018, notified exemption on certain specified goods from the whole of levy of Social Welfare Surcharge. CBIC has amended the said notification, in order to align the HS Codes with the Finance Act, 2022, w.e.f. 01 May 2022.

*[Notification no:24/2022 dated 30 April 2022]*

#### Notified Customs Tariff (Origin of Goods under CEPA between India and UAE) Rules, 2022

CBIC has notified Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and the United Arab Emirates) Rules, 2022. These rules shall come into force from 01 May 2022.

*[Notification no:25/2022 dated 30 April 2022]*

## FOREIGN TRADE POLICY (FTP)

### NOTIFICATION

#### DGFT amends import policy of ITC (HS) codes under chapter 7112 (waste and scrap of precious metal or of metal clad with precious metal)

Import policy of ITC (HS) Codes 7112 30 00, 7112 91 00, 7112 92 00, 7112 99 10, 7112 99 20 and 7112 99 90 has been revised from 'Free' to 'Restricted' with immediate effect.

*[Notification no:1/2015-20 dated 29 April 2022]*

#### Extension of relaxation of the provisions under notification no:20/2015-20

Relaxation of import provisions under notification no:20/2015-20 dated 24 August 2021 to allow import of the remaining quantity of 5.50 Lakh MT up to 30 September 2022 or until further orders, whichever is earlier. Bill of lading of such import consignments to be on or before 30 September 2022 and "out of charge" of such consignments to be authorised by customs on or before 31 December 2022.

*[Notification no:64/2015-20 dated 31 March 2022]*

### PUBLIC NOTICE

#### Amendment in the list of agencies authorised to issue Certificate of Origin (Preferential)]

List of authorised agencies allowed to issue Certificate of Origin (Preferential) for India-UAE CEPA is notified.

*[Public notice no:05/2015-20 dated 29 April 2022]*

#### Prescribed Tariff Rate Quotas (TRQ) under India-UAE CEPA and procedure for allocation

The TRQ as mentioned in notification no:22/2022-Customs dated 30 April 2022 under India-UAE CEPA and procedure for allocation and imports under given TRQs is notified.

*[Public notice no:06/2015-20 dated 1 May 2022]*

#### Additional quantity of 2051 MT of raw sugar, for export to USA notified

- Additional quantity of 2051 MT of raw sugar, for export to USA, under TRQ, up to 30 September 2022, has been notified;
  - Export of sugar (HS Code 17010000) to USA under TRQ is 'free' subject to the conditions notified in the 'nature of restrictions' in notification no:3/2015-20 dated 20 April 2015. The reporting requirement as per public notice no:28/2015-20 dated 14 October 2020 would continue to be followed;
  - Certificate of Origin, if required, for export of preferential sugar to USA, shall be issued by Additional Director General of Foreign Trade, Mumbai. Other certification requirement, if any, prescribed specifically for export of sugar to USA would continue to be followed.
- [Public notice no:07/2015-20 dated 6 May 2022]*

## NEWS FLASH

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1. “GST collections in April touch all-time high of Rs 1.68 lakh crore”  
<https://economictimes.indiatimes.com/news/economy/finance/gst-revenue-collection-hits-record-rs-1-68-lakh-crore-in-april/articleshow/91230829.cms>  
[Source: Economic Times, 02 May 2022]
2. “Cryptocurrencies may soon attract 28% GST like betting and casinos in India”  
<https://www.cnbc18.com/cryptocurrency/cryptocurrencies-may-soon-attract-28-gst-like-betting-and-casinos-in-india-13418192.htm>  
[Source: CNBC News 18, 09 May 2022]
3. “GST 2.0: Ideas to improve indirect taxation”  
<https://economictimes.indiatimes.com/small-biz/gst/gst-2-0-progressive-ideas-for-improving-gst-efficiency/articleshow/91366351.cms>  
[Source: Economic Times, 06 May 2022]
4. “With GST grant set to end, Punjab’s AAP regime stares at tough times ahead”  
<https://indianexpress.com/article/cities/chandigarh/with-gst-grant-set-to-end-punjabs-aap-regime-stares-at-tough-times-ahead-7903499/>  
[Source: The Indian Express, 06 May 2022]
5. “Fair GST implementation on skill-based online games could reshape the Indian online gaming sector”  
<https://www.financialexpress.com/brandwagon/fair-gst-implementation-on-skill-based-online-games-could-reshape-the-indian-online-gaming-sector/2509819/>  
[Source: Financial Express, 02 May 2022]



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