INDIRECT TAX
Weekly Digest

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GOODS & SERVICES TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Input tax credit eligible for Solar Plants set up for captive consumption

Facts of the Case

- M/s. Prestine Industries Limited ("Taxpayer") is the manufacturer of PP/HDPE woven sacks and has initiated the process of installation of solar power generating plant ("Solar Plant") for captive consumption of power in the manufacturing process;
- The taxpayer intends to know whether the said plant falls under the definition of 'Plant and Machinery' as defined in section 17 of the Central Goods and Services Tax Act 2017 ("CGST Act").

Questions Before the AAR

- Whether the taxpayer is eligible to take Input Tax Credit ("ITC") as 'inputs/capital goods' or 'input services' of the items used in the installation of solar plant as per section 16 and 17 of CGST Act?
- Whether the said plant falls under the definition of 'Plant and Machinery' as per section 17 of CGST Act?

Contention of the Taxpayer

- The taxpayer has contended that it has complied with all conditions to avail ITC as envisaged in section 16 of CGST Act;
- Further, taxpayer stated that as per section 17(5) of CGST Act, said goods are covered under the definition of 'Plant and Machinery' as equipment, apparatus and machinery used in the course or furtherance of business. Hence, ITC will not be restricted under section 17(5) of CGST Act.

Submissions by the tax authority

The tax authority agreed with the submissions of taxpayer and stated that all the conditions of section 16 and 17 of CGST Act are complied with. Also, the said goods are capitalised in the books of accounts and is intended to be used in the course or furtherance of business. Hence, the taxpayer is eligible for the availment of ITC.

Observations and ruling by the AAR

The AAR stated that the solar plant is construction of immovable property as it is fastened to the roof top of the building which is an immovable property. However, it falls under the definition of plant and machinery. Accordingly, in view of specific exclusion regarding plant and machinery from section 17(5) of CGST Act, taxpayer is eligible to avail ITC.

[AAR-Rajasthan, M/s. Prestine Industries Limited, Advance Ruling no:RAJ/AAR/2021-22/16 dated 13 September 2021]

Pharmaceutical pellets and granules except 'Orlistat' pellet manufactured by the taxpayer can be classified as medicaments

Facts of the case

- M/s. Spansules Formulations ('Taxpayer') is manufacturer of pharmaceutical pellets and granules for treatment of various ailments. The pellets and granules are at pre-stage and ready to be filled into capsules;

- Presently, taxpayer is discharging tax liability at the rate of 18% on supply of such goods under Chapter 2933(HSN).

Question before the AAR

Whether the pharmaceutical pellets and granules manufactured by the taxpayer can be classified as medicaments under entry no:62 of schedule II of the notification no:1/2017-CT(R) dated 28 June 2017 and subject to GST at the rate of 12%?

Contention of the Taxpayer

- The taxpayer submitted that it is engaged in manufacturing of pharmaceuticals granules from Active Pharmaceutical Ingredients (API) which are in the form of pellets and granules, and these are not put in measured doses which can be used in retail sale;
- The taxpayer further submitted the list of products manufactured by them along with their constituents, these pharmaceutical products contain one active ingredient and more than one excipient;
- Taxpayer contended that various products manufactured by taxpayer are having more than one constituent and are not readily usable for retail sale. Therefore, pharmaceutical pellets and granules is eligible to be classified under the entry in entry no:62 of the schedule II to the notification no:01/2017 dated 28 June 2017.

Observations and Ruling by the AAR

- To qualify under entry no 62 of the schedule II to the notification no:01/2017 dated 28 June 2017, the following conditions have to be satisfied:
  - It shall be a medicament not falling under customs tariff head 3002, 3005 or 3006.
  - Such medicament should consist of two or more constituents.
  - Such constituents should be mixed together for therapeutic or prophylactic uses.
  - Such medicament should not be put in measured doses or in forms or packages for retail sale.
- From the submission made by taxpayer, it was observed by the AAR that the products have a therapeutic or prophylactic uses such as treatment of fungal infection, muscle relaxing for prostane, treatment of nausea, parkinsons, depression, gastro esophageal reflex disease, hay fever, pain and fever, strokes, joint stiffness, inflammation, headache and high blood sugar;
- To analyze the meaning of words "therapeutic or prophylactic", the AAR has referred to the Hon'ble Supreme Court of India in the case of Commissioner of Central Excise Vs Wockhardt Life Sciences Ltd 2012 (277) ELT 299 (SC) wherein it was held that these words would apply to substance used:

  "To prevent, to guard against it, before, in medicine, preventive protecting against disease", "Guarding against disease, a preventive of disease; a condom; preventive treatment against disease" and "Serving to cure or heal, Curative concerned in discovering and applying remedies for disease".
- Further, based on submission made by the taxpayer, AAR observed that products are made up of two or more constituents i.e., one active ingredient and one or more excipient;
- However, product named 'Orlistat' is used for weight loss and not treatment of any disease. It was observed that obesity is not a disease and hence reduction of weight cannot be seen as a treatment against a disease;
- Based on the above submissions, the AAR concluded that the pharmaceutical pellets and granules except 'Orlistat' pellet manufactured by the taxpayer can be classified as medicaments under entry no:62 of schedule II of the notification no:1/2017-CT(R) dated 28 June 2017 and subject to GST at the rate of 12%.

  [AAR-Telangana, M/s. Spansules Formulations, Ruling no:09/2022, A.R.Com/15/2020, dated 23 February 2022]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

Toys containing electronic components shall be treated as electronic toys irrespective of the usage and be liable to GST at 18%

Facts of the case

- M/s. Navbharat Imports ('Taxpayer'), imports and trades in children's toys from various countries and is engaged in selling these goods in India, in retail as well as through E-commerce platforms;
- The imported toys include manually operated toys, in which electronic parts are fitted for providing light, music and horn etc. and are ancillary to the primary use being to enhance the motor skills of children by means of using force for pedaling and pushing etc.;
- These toys move only based on the physical force exerted by the child and the batteries are provided for lights and sounds and not for mobility; and
- The aforesaid toys may be classified under the following tariff schedules:

Sr. No./ Schedule	HSN	Description	GST rate
228/II	9503	Toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof) [other than electronic toys]	12%
440/III	9503	Electronic Toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof)	18%

Questions before the AAR

Whether the toys that require physical force as the primary action and have electronic circuits for providing light, music, and horn etc., would be classified as "electronic toys" or "other than electronic toys"?

Ruling by the AAR

AAR Tamil Nadu held that the children's toys such as children scooter, activity ride-on, smart tricycle and kick scooter etc. in which physical force is the primary action and contains an in-built electronic circuit, are "electronic toys" and would attract GST Rate of 18%.

Contention of the Taxpayer

- The taxpayer contended that the toys are bought only for enriching the main 'motor activity' of cycling and pedaling,

etc. The presence of visual/sound effect are add-on features which do not make them electronic toys;

- The taxpayer explained that the music and lights powered by a small pencil cell are solely provided for attracting the children towards the toys. Such music or light are not the primary purposes of these toys;
- The taxpayer also submitted that the toys are functioning independent of the electronic circuit provided therein;
- The taxpayer further contended that in absence of statutory definition of the term in the statue, words, entries, and items in taxing statue must be construed in terms of their commercial or trading understanding or according to their popular meaning;
- The taxpayer has relied on various judicial precedents of the Apex Court wherein it was held that the common parlance test should be taken into consideration while classifying a product under the indirect tax laws; and
- The taxpayer concluded that the ruling of AAR is not in accordance with the trade and common man's understanding of such products as clearly expounded by the Apex Court and it is liable to be set aside.

Observations and Ruling by the AAAR

- The AAAR observed that the toys are equipped with built-in electronic circuit even though such toys are functioning independent of the electronic circuit provided therein for other secondary functions;
- The AAAR noted that the AAR has relied on the various standards applicable for these toys and referred to GB standard 19865-2005 which deals with the safety of toys that have at least one function dependent on electricity. Toys using electricity for secondary functions are within the scope of this standard;
- The AAAR has also relied on the judgement of Hon'ble High Court of Madras in the case of Southern Refractories & Minerals Vs. State of Tamil Nadu reported in 81 STC 387 (1991); wherein it was held that the popular meaning should be given to such terms and the classifications made by the Indian Standard Institution;
- The AAAR stated that the reference of standard applicable to the toys relied on by the AAR is a part of common parlance to ascertain the term of "electronic toys";
- Further, the AAAR highlighted that both entries are same except for the term "electronic". Hence, the AAAR concluded that any component of electronic added to the toys like tricycles, scooters, pedal cars etc. irrespective of its usage would disentitle them to fall under serial number 228 of schedule II to the notification no:1/2017-CT(R) dated 28 June 2017; and
- The AAAR confirms the Advance Ruling of the AAR and concluded that the goods of the taxpayer are classifiable under entry no:440 of schedule III to the notification no:1/2017-CT(R) dated 28 June 2017.

[AAAR-Tamil Nadu, M/s. Navbharat Imports, order-in-Appeal no:AAAR/22/2021 (AR), dated 13 January 2022]

FOREIGN TRADE POLICY (FTP)

TRADE NOTICE

Implementation of notification on import policy of moong

Reference is invited to the Government of India's notification no:S.O. 624 (E) dated 11 February 2022 amending the import policy of moong (HS Code 07133190) of ITC (HS), 2022, schedule-I (Import Policy) from "free" to "restricted".

In this regard, representations have been received from various entities indicating that certain firms have entered into purchase contract prior to 11 February 2022 for import of moong (ITC) (HS) code 07133190) with either (i) advance payment, or (ii) partial advance payment and remaining amount payable against documents (CAD).

The said matter has been considered and the DGFT, in exercise of powers under para 2.58 of the FTP(2015-2020), has decided to relax the provisions of para 1.05 (b) of FTP by allowing such importers to import moong (HS Code 07133190) for contracts for the fiscal year 2021-22 subject to the condition that:

- Quantity eligible for import would be proportionate to the amount paid prior to 11 February 2022 as advance. If advance payment has been made in full for the entire contracted quantity, then eligibility would be for the entire contracted quantity. If there is partial payment, quantity admissible for import shall be limited to the quantity in proportion to the advance payment(s) made;
- Documentary evidence indicating payments made for such a contract should include the sales contract, invoice, and proof of payment (SWIFT transaction receipt) certified by the recipient bank and any other supporting documents;
- Contract for import should have been entered into prior to the date of the said notification. Further the payments should also have been made prior to 11 February 2022;
- Undertaking should be provided by the applicant that imports of the proportionate quantity being claimed has not be effected prior to the date of notification/till date;
- The imports should be only for FY 2021-22 such that the bill of lading is issued on or before 31 March 2022. No requests for extensions shall be considered;
- Further, such contracts must be registered with the jurisdictional regional offices of the additional DGFT(s) only i.e., at Delhi, Mumbai, Kolkata, Chennai, Bengaluru, Hyderabad, Ahmedabad, Ludhiana latest by 15 March 2022. Applicants seeking relaxation in para 1.05 of FTP (2015-2020) may submit their application to the jurisdictional RAs mentioned, for registration of their contracts, by making an online payment of INR. 2000/- as application fee (for relaxation in policy/ procedure as per appendix 2K). The given payments may be made online on the DGFT Website under services -> eMisc payments;
- It is further informed that such applications for 'registration certificate for imports' may be submitted online as well w.e.f. 07 March 2022. Any given application being submitted after 07 March 2022 must be submitted online only through the DGFT Website → Services →

Import Management System → Apply for Registration Certificate for Imports. Manual submissions to the jurisdictional RA are however allowed till 07 March 2022;

- Such contracts shall be registered by the jurisdictional RAs only after due verification of the documents submitted by the applicant(s). The registration shall be permitted only with the approval of the head of office. RAs are requested to dispose all such cases within 3 days of the receipt of complete applications.

[Trade notice no:37/2021-22 dated 28 February 2022]

NEWS FLASH

1. "Govt collects Rs 1.33 lakh crore GST in February, cess collection crosses Rs 10,000 Cr for first time"
https://economictimes.indiatimes.com/news/economy/finance/govt-collects-rs-1-33-lakh-crore-gst-in-february-cess-collection-crosses-rs-10000-crore-for-first-time/articleshow/89918495.cms
[Source: Economic Times, 01 March 2022]

2. "GST is not so simple as claimed"
http://www.millenniumpost.in/kolkata/gst-is-not-so-simple-as-claimed-470091
[Source: Millennium post, 04 March 2022]

3. "GST to be applicable on partner's property rented out to partnership firm for business: AAR"
https://www.thehindubusinessline.com/news/real-estate/gst-to-be-applicable-on-partners-property-rented-out-to-partnership-firm-for-business-aar/article65183335.ece
[Source: The Hindu, 02 March 2022]

4. "GST evasion: CBIC cautions against sharing Aadhaar, PAN details without valid reasons"
https://economictimes.indiatimes.com/news/economy/policy/gst-evasion-cbic-cautions-against-sharing-aadhaar-pan-details-without-valid-reasons/articleshow/89968057.cms
[Source: Economic Times, 03 March 2022]

5. "GST dept. switches over to common back-office system from Tuesday"
https://www.thehindu.com/news/national/kerala/gst-dept-switches-over-to-common-back-office-system-from-tuesday/article65092987.ece
[Source: The Hindu, 28 February 2022]

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