

INDIRECT TAX

Weekly Digest

15 June 2022
www.bdo.in



GOODS & SERVICES TAX

LEGISLATIVE UPDATES

NOTIFICATION

Waiver of interest for specified E-commerce operators for specified tax periods

CBIC has waived interest for certain E-Commerce operators for tax periods specified in the notification, who failed to furnish the statement in FORM GSTR-8 for TCS under section 52(1) of the CGST Act, 2017. Nil rate of interest shall be levied on the delayed GSTR-8 for those E-Commerce Operators who had deposited the taxes in the electronic cash ledger but failed to file return within due date due to technical glitches in the portal. No levy of interest from the date of depositing the tax collected in the electronic cash ledger till the date of filing of GSTR-8.

[Notification no:08/2022 dated 07 June 2022]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Photo-Voltaic DC cables used in Solar Power Generating Systems (SPGS) are taxable at 18% GST

Facts of the case

- M/s. Leoni Cable Solutions India Private Ltd ('Taxpayer'), manufactures and supplies solar cables commonly known as photo-voltaic DC cables ('PVDC cables') under various brand names;
- The said cables are made from copper conductor with Cross-linked Polyolefin (XLPO) insulation and are solely used between solar modules and inverters in a photovoltaic system;

- In normal cases, cables are taxed at 18% GST under HSN Code 8544 corresponding to entry no:395 of schedule III of notification no:1/2017-CGST(R) dated 28 June 2017, with the following description; 'Insulated (including enamelled or anodised) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connector 8544 49 99 - other electric conductors for a voltage not exceeding 1000V; 8544 60 90 - other (other electric conductors for a voltage exceeding 1000V)'
- The taxpayer is of the opinion that as per description of entry no:234 of schedule-I, PVDC cables supplied would be treated as parts for manufacture of SPGS/EPC Company setting-up a solar power plant, liable to GST at 5%.

Question before the AAR

PVDC Cables manufactured and supplied by the taxpayer to its customers, who are into business of manufacturer of solar power generating system or EPC company setting-up a solar power plant would be classified under:

- Entry no:234 of schedule I of notification no:1/2017-CT(R) (as amended) dated 28 June 2017 liable to GST at 5%? or
- Entry no:395 of schedule III of notification no:1/2017-CT(R) (as amended) dated 28 June 2017 liable to GST at 18%?

Contention of the taxpayer

- The taxpayer supplies cables to its customers, for commissioning of SPGS. The cables connect solar panel/array with inverters, only for carrying electricity between solar panels and inverters and are exclusively

used by manufacturers of SPGS/EPC company, which sets-up a solar power plant as inputs for transmitting Direct Current (DC) from PV module in SPGS. These cables are specifically designed, and tailor made for solar power projects and thus have restricted application and are used in a photovoltaic system only for generation and transmission of solar energy;

- To get classified under description of clause (c) of entry no:234, the goods must be covered by chapter 84, 85 or 94; and secondly, the goods should satisfy the description "renewable energy devices" and parts for its manufacture. In the instant case it is a part for manufacture of SPGS;
- As per the Electricity Act, 2003, transmission lines i.e. the impugned cables, are an integral part of the power generation system, which includes the generation and transmission of Solar Power;
- The taxpayer submitted that the said solar cables are covered under chapter 85 and since it is an integral part of the SPGS, it can be considered as a renewable energy device
- The taxpayer also submitted the purchase order and user certificate from its customer which indicates its sole application is in SPGS only. Further, order confirmation copy issued by company and the invoices for supply of said solar cables also provides similar description
- However, the taxpayer submitted that, there are two competing entries as per notification no:1/2017-CT(R) dated 28 June 2017 (as amended) i.e. entry no:234 (schedule I) and entry no:395 (schedule III), relevant for classification (8544) of insulated solar cables. But the taxpayer is of the opinion that, it is settled principle that in case of two independent tariff entries, the taxpayer can adopt beneficial interpretation unless proved otherwise.

Observations & ruling by the AAR

- The AAR noted that the impugned cables are used between solar modules and inverters in a photovoltaic system and are required to connect solar panel/array and inverters to carry electricity between solar panels and inverters;
- In this regard, SPGS are renewable energy systems and are covered under entry no:234, but the impugned cables just carry electricity to the inverters and the subject cables cannot be considered as a part of the SGPS and therefore cannot be covered under entry no:234 mentioned above;
- Another fact to understand is that the said entry no:234 has been totally omitted from schedule I of notification no:01/2017 dated 28 June 2017, vide notification no:08/2021-CT(R) dated 30 September 2021;
- Hence the impugned cables are covered under entry no:395 of schedule-III to notification no:01/2017-CT(R) dated 28 June 2017. Further entry no:395 which is taxable @ 18% GST, has been amended by notification no:41/2017-CT(R) dated 14 November 2017. Therefore, entry no:395 mentioned above is applicable in the instant case only with effect from 14 November 2017;
- The PV DC cables manufactured and supplied by taxpayer to its customers would be classified under entry no:395 of schedule-III of notification no:1/2017-CT(R) (as amended) dated 28 June 2017, hence liable to a GST rate of 18%.

[AAR-Maharashtra, M/s. Leoni Cable Solutions (India) Private Limited, Ruling no:GST-ARA-110/2019-20/B-80, dated 08 June 2022]

GST payable under RCM on Forest permit fee payable under State Forest produce Transit rules

Facts of the case

M/s. The Singareni Collieries Company Limited ('Taxpayer') entered into contracts with a host of vendors/suppliers for extraction of coal. Under rule (3) of state Forest Produce Transit Rules, they are liable to pay a certain amount to move the mined coal through the forest area as permit fee at the rate of INR 10 per ton of coal transported;

Question before the AAR

- Whether the taxpayer is obliged to pay GST on the forest permit fee paid by it under reverse charge mechanism(RCM) ?
- Alternatively, if GST is payable on forest permit fee paid by the taxpayer, can services received by the taxpayer be classifiable under heading 9973 of notification no:11/2017-CT(R) dated 28 June 2017 and thus be exigible to a lower rate of tax for the period prior to 01 January 2019?

Observations & ruling by the AAR

- The coal mines operated by the taxpayer are situated in the forest area and under rule 3 of the State Forest Produce Transit Rules, no forest produce shall be moved into or from within the state by land or water. Such movement is permitted only when the person moving the produce obtains a forest permit by paying a fee which in the instant case is INR 10 per ton of coal transported.
- The Hon'ble Supreme Court of India in the case of P. Kannadsan, etc. vs. State of Tamilnadu & other etc. (1996) 5 SCC 670 has observed that "in the matter of fees, it is not necessary that element of quid pro quo should be established in each and every case, for it is well settled that fees can be both regulatory and compensatory and that in the case of regulatory fees, the element of quid pro quo is totally irrelevant.
- Further the contravention or violation of State Forest produce Transit Rules will attract penalty under sections 20 and 29 of A.P. Forest Act, 1967. Thus, transporting coal through forest area without obtaining a forest transit permit and paying the transit fee is punishable under section 20 (4) of the Forest Act. Penalties are fixed for breach of the provisions of the rules. The transit fee is the amount of consideration for tolerating an act or a situation arising out of the legal obligation during the transport of the mineral through a forest area;
- The facts of the present case clearly reveal that the forest department is collecting transit fee to allow the transit of vehicles carrying coal through the forest area, thus this is covered under entry 5(e) of the schedule-II to the CGST Act, 2017 wherein 'to do an act' is deemed to be a service. Forest department's act of allowing such vehicles through forest area is therefore covered under this head. Further these services are not classifiable under heading '9973' of notification no:11/2017-CT(R) dated 28 June 2017 as the same relate to 'leasing or rental services without an operator' whereas the present service relates to entry 5(e) of the Schedule II to the CGST Act, 2017;
- Hence GST is payable on permit fee under RCM as the supply qualifies as tolerating to do an act as discussed above and is to be treated as service as per entry 5(e) of the schedule II to the CGST Act, 2017.

[AAR-Telangana, M/s. The Singareni Collieries Company Limited, Ruling no:30/2022, A.R.Com/02/2020, dated 07 June 2022]

CENTRAL EXCISE

INSTRUCTIONS

SOP for NCLT cases in respect of the Insolvency and Bankruptcy Code (“IBC”)

Due to inordinate delay in filing claims by Customs and GST authorities against Corporate Debtors when Corporate Insolvency and Resolution Process (“CIRP”) is initiated, the CBIC, on request of the Insolvency and Bankruptcy Board of India (“IBBI”), has issued SOP for NCLT cases in respect of IBC.

A summary of the SOP is as follows:

- The Additional Director General, Directorate General of Export Promotion (DGPM) shall be nominated as the Nodal Officer, for receipt and dissemination of information regarding initiation of the insolvency resolution process;
- The information shall be disseminated amongst the Zonal Pr./Chief Commissioners and the concerned Pr. Commissioner/Commissioner;
- Once a claim is filed, the concerned office shall inform the Nodal Officer through the ADC/JC in the Chief Commissioner's Office;
- Further, a monthly report of work done in the format attached in the SOP shall also be provided by the ADC/JC in the Chief Commissioner's Office to the Nodal Officer;
- The Nodal Officer shall in turn submit a consolidated monthly report to the CBIC for review of progress and action taken.

[Instruction no:1083/04/2022-CX9 dated 23 May 2022]

CUSTOMS

NOTIFICATION

Extension of time period for furnishing of certificate and validity of security with respect to Mega Power Projects

The Government had extended the time limit for submission of compliance document in respect of goods imported for setting up/expansion of any mega power projects, subject to conditions.

CBIC has extended the time period for furnishing the final mega power project certificate from 120 months to 156 months and extended the period of validity of security in the form of fixed deposit receipt or bank guarantee from 126 months to 162 months, in case of provisional mega power projects.

[Notification no:31/2022 dated 07 June 2022]

INSTRUCTIONS

Instructions to authorized officers of the Food Safety and Standards Authority of India (FSSAI) & Customs regarding testing of Ultra Heat Treated (UHT) whipping cream

Reference is invited to FSSAI letter no:1828/Misc. Matters/FSSAI/Imports-2021 dated June 01, 2022.

Vide the above-mentioned letter, FSSAI has stated that commercial sterility test as prescribed in Table-2B: microbiological standards for milk and milk products-food safety criteria, under FSS (Food Products Standards and Food Additives) Regulation, 2011, is not feasible for UHT whipping cream, given the nature of the product and its storage conditions that are conducive to give a negative test result, on evaluation.

In view of above, it is requested that all authorized officers under your jurisdiction may be directed to ensure that imported consignment of UHT whipping cream does not undergo commercial sterility test.

[Instruction no:08/2022 dated 03 June 2022]

FOREIGN TRADE POLICY (FTP)

POLICY CIRCULAR

Relaxation in submission of 'Bill of Export' as an evidence of export obligation discharge in respect of supplies to SEZ units under Advance Authorization

As per, chapter 4 of FTP 2015-20 revised, Advance Authorisation holder needs to file Bill of Export (BoE) for export to SEZ unit/developer/co-developer in accordance with the procedures given in SEZ Rules, 2006.

Relaxation has been provided for submission of BoE in case of exports to SEZ units under Advance Authorisation, for supplies made prior to 01 April 2015.

For discharge of export obligation under Advance Authorisation, in place of 'BoE' any of the following may be submitted:

- ARE-1 duly attested by jurisdictional Central Excise/GST authorities of AA Holder
- Evidence of receipt of supplies by recipient in SEZ
- Evidence of payment made by SEZ unit to the AA holder

[Policy Circular no:39/2015-20 dated 07 June 2022]

PUBLIC NOTICE

Amendment in guidelines of ANF-4F under FTP to simplify the procedure and reduce the compliance burden

Para 2 (b)(i) of the 'Guidelines for applicants' under ANF-4F of Handbook of Procedures 2015-2020 has been amended to simplify the procedure and reduce the compliance burden for applying Export Obligation Discharge Certificate (EODC) in case of deemed exports.

[Public notice no:11/2015-20 dated 07 June 2022]

Agencies for Pre-Shipment Inspection Certificates (PSIC) under appendix 2G of FTP 2015-20 has been notified

DGFT has notified agencies for issuing PSICs under appendix 2G of FTP 2015-20. 2 agencies (DD International Global & Baltic Testing India Private Limited) are notified as PSIAs along with their approved equipment's. Additional areas of operation in respect of agency at entry no:3 (M/s. Cayley Aerospace) is notified for a period upto 27 December 2023 only.

[Public notice no:12/2015-20 dated 09 June 2022]

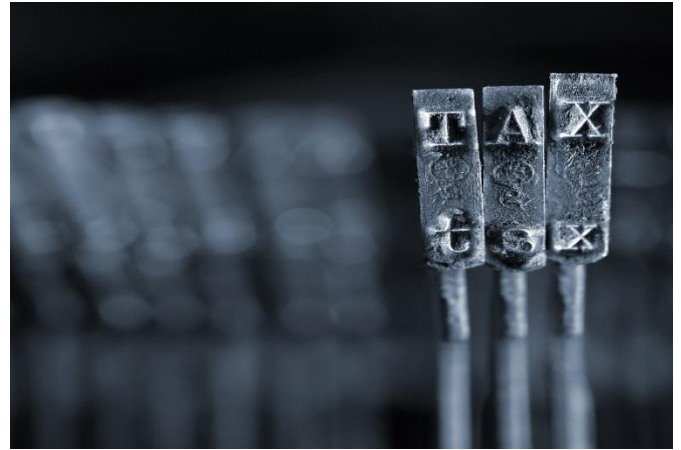
Extension of the last date for filing of annual report under EPCG scheme for the year 2022-23 till 30 September 2022

Government has extended the last date for filing of annual returns under para 5.15 of HBP 2015-20 till 30 September 2022 along with a clarification that imposition of penalty of INR 5000 for late filing of annual returns is applicable from 2022-23.

[Public notice no:13/2015-20 dated 09 June 2022]

NEWS FLASH

1. “Centre working on GST dispute resolution system”
<https://economictimes.indiatimes.com/news/economy/finance/centre-working-on-gst-dispute-resolution-system/articleshow/92047666.cms>
[Source: Economic Times, 07 June 2022]
2. “Lease income from ‘residential’ property is exempt from GST”
<https://timesofindia.indiatimes.com/city/mumbai/lease-income-from-residential-property-is-exempt-from-gst/articleshow/92049263.cms>
[Source: Times of India, 07 June 2022]
3. “GST to help revenue boost beyond budget estimates: Revenue Secretary Bajaj”
<https://economictimes.indiatimes.com/news/economy/finance/gst-to-help-revenue-boost-beyond-budget-estimates-revenue-secretary-bajaj/articleshow/92113574.cms>
[Source: Economic Times, 10 June 2022]
4. “Maharashtra: Voluntary payment by outgoing society member subject to GST, says AAR”
<https://timesofindia.indiatimes.com/city/mumbai/voluntary-payment-by-outgoing-soc-member-subject-to-gst-aar/articleshow/92070898.cms>
[Source: Times of India, 08 June 2022]
5. “Electric vehicles: India may slash GST on lithium-ion batteries to 5%”
https://www.business-standard.com/article/economy-policy/gst-council-may-bring-rate-on-lithium-batteries-on-par-with-AeVs-report-122060900371_1.html
[Source: Business Standard, 09 June 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, Patta
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

Note: This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact BDO India LLP to discuss these matters in the context of your particular circumstances. BDO India LLP and each BDO member firm in India, their partners and/or directors, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

BDO India LLP, a limited liability partnership, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the international BDO network and for each of the BDO Member Firms.
Copyright ©2022 BDO India LLP. All rights reserved.

Visit us at www.bdo.in

