

INDIRECT TAX

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GOODS & SERVICES TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Benefit of exemption only available when all stipulated conditions are satisfied

Facts of the case

- M/s. Vodafone Idea Limited (“Taxpayer”) is engaged in providing telecommunication services to Greater Hyderabad Municipal Corporation (“GHMC”);
- The services provided to GHMC are used by its employees for general office and administrative purposes.

Questions before the AAR

Whether supply of ‘telecommunication services’ to GHMC is exempt as per notification no:12/2017-CT(R) dated 28 June 2017 (“exemption notification”).

Contention by the Taxpayer

Taxpayer submitted that since these services qualify to be pure services and are rendered in relation to functions discharged by GHMC, such services should be exempt from levy of GST.

Observations and Ruling by the AAR

- The AAR observed that only services provided in relation to functions entrusted to Municipal authorities are eligible for exemption notification i.e. only those services which have a direct relation to the output services will be exempt from payment of GST;

- Since there is no direct relation between the services provided by the taxpayer and the functions discharged by GHMC, these services do not qualify for exemption.

[AAR-Telangana, M/s. Vodafone Idea Limited, Ruling no:AAR No A.R.Com/02/2022, Order no:36/2022, Dated 11 July 2022]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

DC cables used in the manufacture of renewable energy devices such as solar power generating system liable to be taxed at 12% GST w.e.f. 01 October 2021

Facts of the case

- M/s. Apar Industries Limited (“Taxpayer”) is engaged in the business of manufacturing and supplying of various goods such as power/electric cables, house wire cables, that are used in the manufacture of renewable energy devices such as solar power generating system;
- The question before AAR raised by the taxpayer “whether supply of “Solar DC Cables” for use as parts in the manufacture of Solar Power Generating System attracts GST @ 5%?”;
- In this regard, the AAR Gujarat, vide advance ruling no:GUJ/GAAR/R/02/2021 dated 20 January 2021, observed that Solar DC cables form an integral part of the Solar Power Generating System;
- However, with respect to the DC cables manufactured and supplied by the taxpayer will be used in Solar Power Generating System, AAR observed that on perusal of the purchase orders, there is a likelihood that the supply of DC cables would be accompanied by services. Accordingly,

the AAR ruled that it would not be possible to give a decision in the matter as there is no clarity on the subject;

- Aggrieved by the aforesaid advance ruling, the taxpayer had filed the present appeal to AAAR.

Questions raised before AAAR

Whether supply of "Solar DC Cables" for use as parts in the manufacture of solar power generating system attracts GST @ 5% ?

Submission by the Taxpayer

- The AAR observed that to avail the benefit of entry no:234 of notification no:01/2017-IGST(R), the taxpayer has to satisfy two conditions, namely:
 - The goods must be covered under heading 84, 85 or 94; and
 - The goods shall satisfy the description 'renewable energy devices and parts for their manufacture' i.e., solar power generating system.
- The taxpayer relied upon the Indian Contract Act, 1872 and submitted that, the purchase order is placed by the purchaser, with free consent, by both parties to contract, for lawful consideration with a lawful object and expressly accepted by mail confirmation which proves that the purchase order is the legal document enforceable by law;
- The taxpayer further submitted that the "undertaking/indemnity/end use certificate" were placed on record before AAR, which was also confirmed by the project authority stipulating that DC cables will be purchased from taxpayer on outright purchase basis where no element of works contract service is provided by the taxpayer;
- The taxpayer also submitted an affidavit dated 06 February 2021 and 25 February 2021 issued by Mundra Solar PV Limited and Adani Green Energy Limited respectively, confirming that the taxpayer, had only supplied the goods on an outright sale basis and had not supplied any service to the project authority.

Observations & Ruling by the AAAR

To decide on the above submitted issue, AAAR made reference to the entry no:234 appearing under schedule-I to the notification no:01/2017-IGST(R) dated 28 June 2017, which provides applicable rate of GST @5% which broadly covers the solar power-based devices and solar power generating system:

- Going through the above criteria, the AAAR observed that the taxpayer has satisfied the two conditions laid down by the AAR;
- The AAAR observed that the purchase orders submitted by taxpayer has the capacity of being treated as contract if they follow conditions prescribed under Indian Contract Act, 1872 i.e., they are made for lawful consideration and with a lawful object and made by the free consent of both parties;
- The AAAR further observed that in view of the aforementioned legal position it is evident that a purchase order that contains all the essential ingredients of a valid contract must be treated as one under the Indian Contract Act, 1872;

- Further, with regards to AAR's observation that the clause of scope of work/facilities of purchase order contained hidden meaning within and there is also likelihood of supply of DC cables accompanied by services, the AAAR found that every sale/purchase contract etc. are involved before goods are supplied either at ex-works basis or for destination basis;
- The taxpayer did not provide any after sale services viz. erection, installation, construction etc. in respect of solar power generating system. Therefore, the above referred services are inbuilt and naturally bundled with principal supply of goods and not provided beyond the sale of goods;
- Therefore, the AAAR concluded that Solar DC cables supplied for solar power generating system is classifiable under chapter 85 and forms integral part of solar power generating system. Consequently, the same is eligible for benefit of entry at no:234 appearing under schedule-I to notification no:01/2017-IGST(R) dated 28 June 2017, and liable to be taxed at the rate of 5% GST up to 30 September 2021;
- Effective 1 October 2021, the same will be covered under entry no:201A appearing under schedule-II to the notification no:01/2017-IGST(R) dated 28 June 2017 amended vide notification no:08/2021-IGST(R) dated 30 September 2021, and liable to be taxed @ 12% GST;
- In view of the foregoing, AAAR modified the Advance Ruling no:GUJ/GAAR/R/02/2021 dated 20 January 2021, of the AAR Gujarat and held that the product solar DC cables to be used in the manufacture of solar power generating system/solar power generator is eligible for benefit of entry at no:234 under schedule-I of notification no:01/2017-IGST(R) dated 28 June 2017, and liable to be taxed at 5% GST up to 30 September 2021, and thereafter under Entry no:201A of schedule-II of notification no:01/2017-IGST(R) dated 28 June 2017, amended vide notification no:08/2021-IGST(R) dated 30 September 2021 and liable to be taxed at 12% GST w.e.f. 01 October 2021. *[AAAR-Gujarat, M/s. Apar Industries Limited, Ruling no:GUJ/GAAAR/APPEAL/2022/14, dated 12 July 2022]*

Supply of food and/or drinks in trains or at platforms (static units), will be taxable at 5% without ITC and the supply of newspapers are exempted

Facts of the case

- M/s Deepak & Co has entered into an agreement with IRCTC/Indian railways, for supply of food and beverages (packed/MRP/ cooked) to the passengers on Rajdhani trains and also to mail/express trains vide the menu approved by the Indian railways/IRCTC. Likewise, the taxpayer is also engaged in supply of food items to passengers/public through food plaza/food stalls on the railway station;
- Categories of food offerings
 - Supply of food through the food plaza on the railway platform (with a/c) /food stalls on the railway platform (without a/c) where food can be consumed or taken as parcel;
 - Supply of food on board the Rajdhani trains as per the menu fixed by IRCTC along with newspaper;
 - Supply of food on board the mail/express trains through the team of waiters which keeps moving in the train and takes orders and supplies the food.

Questions before the AAAR

- What is the applicable rate of tax on the activity of taxpayer of supplying food/ beverages, in each of the cases mentioned above in light of the amendment made in notification no:11/2017-CT(R) dated 28 June 2017 vide notification no:46/2017-CT(R) dated 14 November 2017?
- What is the applicable rate of tax on supply of newspaper as elaborated in the cases mentioned above?

Ruling by the AAR

- In the case of supply of food and beverages (cooked/ MRP/ packed), at defined menu and tariff by the taxpayer to IRCTC/passengers on behalf of IRCTC, on board the Rajdhani/ Durgam express trains, catering services provided on-board a train are not covered under entry no:7(i) of the said notifications as claimed by the taxpayer. The supply of goods i.e. food, bottled water etc. shall be charged to GST on value of goods (excluding the service charges) at applicable rates as pure supply of goods, as the same have no element of service. The supply of newspaper is separately invoiced and hence it shall be at 'nil' GST under entry no:120 of notification no:2/2017-CT(R) dated 28 June 2017;
- In the case of supply of food and beverages (cooked/ MRP/ packed) on board the Mail/ express trains by the taxpayer directly to the passengers as per the menu/ rates fixed by IRCTC/ Railways does not have any element of service, and hence, the same shall be considered as pure supply of goods and GST shall be charged on individual items at their respective applicable rates;
- The supply of food and beverages (cooked/MRP/packed) by the taxpayer to the passengers/general public at the rates fixed by the Indian railways/IRCTC at food stalls at railway platforms does not have any element of service and hence the same shall be considered as pure supply of goods and GST shall be charged on individual items at their respective applicable rates;
- For the supply of food (Cooked/ MRP/ Packed) in food plaza, the relevant document pertaining to details of items supplied, pricing details, extent of services provided are not submitted. Hence, no ruling given in respect of supply from food plaza.

Observations & ruling by the AAAR

- "Supply of goods, being food or any other article for human consumption or any drink, by the Indian railways or Indian railways catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms" attracts GST @ 5% subject to the condition that input tax credit on goods and services used for supplying the said services has not been taken (Entry no.7(ia) of notification no.11/2017-CT(R) dated 28 June 2017).
- CBIC vide letter F.No.354/03/2018-TRU dated 23 March 2018 has clarified that the applicable rate of GST for all kinds of supply of food and drinks by the Indian railways or IRCTC or their licensees, whether in trains or at platforms (static units), will be 5% without ITC;
- As regards the applicable rate of GST on newspaper, AAAR held that supply of newspaper is exempt vide entry no:120 of notification no:2/2017-CT(R) dated 28 June 2017. Hence, no tax is payable on the supply of newspapers to the passengers travelling in train;

- In view of the above, the AAAR held as follows:

- The GST rate on supply of food and/or drinks by the taxpayer whether in trains or at platforms (static units), will be 5% without ITC.
- In respect of supply of newspapers, the same are exempted under relevant notification.

[AAAR-Delhi, M/s. Deepak & Co, order

no:02/DAAAR/2022-23/2005-2010/ dated 23 May 2022]

CUSTOMS

NOTIFICATION

Passenger Name Record Information Regulations, 2022

CBIC has notified the Passengers Name Record Information Regulations, 2022 for collecting the passengers information of international travels to prevent, detect, investigate, and prosecute the offences under the Customs Act, and to share information to law enforcement agencies.

The salient key points of the Regulations are as under:

- Every aircraft operator shall register with the proper officer in the form as prescribed in annexure-I of the notification to these regulations;
- Every aircraft operator shall transfer the passenger's name record information to the designated Customs systems by push method using PNRGOV EDIFACT message format;
- Passengers are not required to individually submit any information to Customs, neither need to furnish any additional information to the airlines on account of these regulations;
- Every aircraft operator shall transfer passenger name record information not later than 24 hours before the departure time; or at the departure time wheels off;
- Every aircraft operator or its authorised agent who becomes aware, before or at the time of departure, that any information provided by them under these regulations is incomplete or inaccurate, shall immediately provide such complete or accurate information in the manner as specified in regulation 5;
- The passenger's name record information received by customs designated system shall be subject to the strict information privacy and protection in accordance with the provisions of any law for the time being in force;
- Processing of a passenger name record information revealing a person's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life, or sexual orientation, shall not be permitted;
- The passenger's name record information shall be received, stored, processed, and disseminated in a secure system accessible only to the duly authorized officers by establishing robust procedure to protect the privacy of passengers and crew members by the National Customs Targeting Centre-Passenger;
- The passenger's name record information received in Customs designated system shall be retained for a maximum period of five years from the date of such

receipt; provided that the provisions concerning the maximum period of retention of data shall not apply if such information is required in the course of an investigation, prosecution, or any court proceeding;

- In normal course, the data collected is stored only for five years after which it is disposed of by depersonalisation or anonymisation. The Regulations provide for an extensive and independent system audit and security audit to prevent misuse of the information;
- There shall be an extensive independent system audit and security audit on an annual basis, to prevent any misuse of the passenger's name record information by an officer of the rank of Principal Additional Director General or Additional Director General of the National Customs Targeting Centre-Passenger appointed by the Director General of Analytics and Risk Management, provided that the said officer shall not carry-out both the system audit and security audit;
- When passenger name record information relates to any offence, under any law for the time being in force, at national or international level, the National Customs Targeting Centre-Passenger, may share the relevant information on a case-to-case basis with other law enforcement agencies or government departments of India or any other country; provided that sharing of such relevant passenger name record information with other law enforcement agencies or government departments of India or any other country shall be subject to maintenance of same level of information privacy and protection of information and safeguards. However, such other law enforcement agencies or government departments of India or other countries shall, while seeking information, specify the purpose for which such information is being sought;
- Without prejudice to any other action that may be taken against an aircraft operator or his authorised agent under the provisions of the Act, or any other law for the time being in force, the Principal Additional Director General or Additional Director General of the National Customs Targeting Centre-Passenger, may impose a penalty which shall not be less than twenty five thousand rupees but not more fifty thousand rupees, for each act of non-compliance, on an aircraft operator or his authorised agent who contravenes or fail to comply with any provisions of these regulations.

[Notification no:67/2022 dated 08 August 2022]

INSTRUCTIONS

Amendment in export policy of Items under HS code 1101 (Wheat)

- Reference is made to notification no:25/2015-2020 dated 08 August 2022, wherein the Central Government has amended the export policy of items under HS code 1101, stipulating that exports of all items would be subject to recommendation of Inter-Ministerial Committee (IMC) constituted for allowing export of wheat, with effect from 14 August 2022. Export of shipments approved by IMC shall be allowed subject to issuance of quality certificate by Export Inspection Council (EIC) or its Export Inspection Agencies (EIAs) at Delhi, Mumbai, Chennai, and Kolkata;
- Vide para 2 of the above stated notification, it has been informed that during the period from 8 August 2022 till 14

August 2022 certain consignments of wheat flour, as specified therein, will be allowed to be exported;

- It has further been informed that the provisions as under para 1.05 of the Foreign Trade Policy, 2015-2020 regarding transitional arrangement shall not be applicable under the above said notification and that necessary modalities with regard to quality of wheat flour will be notified separately.

[Instruction no:17/2022 dated 11 August 2022]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Amendment in export policy of wheat flour, maida, samolina (rava / sirgi)

Export policy of items [wheat flour (atta), maida, samolina (rava/sirgi), wholemeal atta and resultant atta] under HS code 1101 remains 'free', but export shall be subject to the recommendation of IMC constituted for allowing export of wheat. The provisions as under para 1.05 of the Foreign Trade Policy, 2015-2020 regarding transitional arrangement shall not be applicable under this notification. Necessary modalities with regard to the quality of these items will be notified separately.

The notification will come into effect from the 14 August 2022. During the period from 08 August 2022 till 14 August 2022 the following consignments of maida, samolina (rava/sirgi), will be allowed to be exported:

- Where loading of above-mentioned items on the ship has commenced before this notification; and
- where above-mentioned consignment has been handed over to the Customs before this notification and is registered in their system.

[Notification no:25/2015-20 dated 08 August 2022]

Amendment in minimum registration time period of Non-Ferrous Metal Import Monitoring System (NFMIMS)

The requirement of advance registration of minimum 5 days from the expected date of arrival of import consignment under NFMIMS has been abolished/made zero.

[Notification no:26/2015-20 dated 10 August 2022]

NEWS FLASH

1. “CAG asks CBIC to complete verification of GST transitional credit claims”
<https://economictimes.indiatimes.com/news/economy/policy/cag-asks-cbic-to-complete-verification-of-gst-transitional-credit-claims/articleshow/93432123.cms>
[Source: Economic Times, 08 August 2022]
2. “GoM on online gaming, casinos: No consensus yet on 28% GST on gross revenue”
https://www.business-standard.com/article/economy-policy/gom-on-online-gaming-casinos-no-consensus-yet-on-28-gst-on-gross-revenue-122081001392_1.html
[Source: Business Standard, 10 August 2022]
3. “GST will apply to FPIs: Sebi”
<https://www.financialexpress.com/market/gst-will-apply-to-fpis-sebi/2625272/>
[Source: Financial Express, 11 August 2022]
4. “Do you need to pay 18% GST on rent?”
https://www.business-standard.com/podcast/economy-policy/do-you-need-to-pay-18-gst-on-rent-122081100073_1.html
[Source: Business Standard, 11 August 2022]
5. “CAG plans to fix GST holes and loopholes”
<https://economictimes.indiatimes.com/opinion/et-editorial/cag-plans-to-fix-gst-holes-and-loopholes/articleshow/93486478.cms>
[Source: Economic Times, 10 August 2022]



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