

INDIRECT TAX

Weekly Digest

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

NOTIFICATION

Extension of due date of filing FORM GSTR-3B & FORM GST PMT-06 for the month of April 2022

The due date for filing FORM GSTR-3B for the month of April 2022 has been extended till 24 May 2022, and the due date for payment of tax by a taxpayer opted for Quarterly Return Filing and Monthly Payment of Taxes (QRMP) scheme in Form PMT-06 has been extended to 27 May 2022.

[Notification no:05&06/2022 dated 17 May 2022]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Transformers are not part of Wind Operated Electricity Generators (WOG) and hence taxable at 18%

Facts of the case

- M/s. Suzlon Energy Ltd. (“the Company” or “taxpayer”) is engaged in the supply of goods required for setting up of power projects, enabling generation of power through renewable sources of energy on its own and through its subsidiary companies;
- The company manufactures WOG, Nacelle, Blades and towers and transformers specifically meant to be used with WOGs;
- The transformer supplied by the company is specifically designed for WOG application and is installed on the ground adjoining to each WOG. It is different from other general use transformers like used by the state electricity board, which have a single function of either stepping down or stepping up the voltage and does not perform both the functions simultaneously;

- The transformer is specially designed to withstand intermittent and variable generation loading pattern.

Questions before the AAR

Whether specially designed transformers for WOG which are meant to perform dual function which is supplied as a part of WOG be treated as part of WOG and falls under entry no:234 in schedule-I to notification no:01/2017-CT(R) dated 28 June 2017 and liable to GST at the rate of 5% and 12% GST with effect from 01 October 2021?

Contention of the Taxpayer

- The taxpayer submitted that the supply of specially designed transformers is a part of WOG which was liable to GST at the rate of 5% each falling under entry no:234 to schedule-I to said notification and thereafter with effect from 1 October 21, 12% by virtue of entry no:201A inserted to Schedule-II;
- In order to support the above Submissions, the taxpayer relied on the following decisions:
 - M/s. Elecon Engineering Co. Ltd., Vs Commissioner of Customs [1998 (103) ELT 395 (Tri)]=1998 (3) TMI359-CEGAT, MUMBAI]
 - M/s. SKF India Ltd, M/s. Chandramowli Srinivasan vs. CCE Ahmedabad-II (2020) [] TaxCorp(IDT) 124987 (CESTAT-AHMEDABAD)]
 - Hon'ble Supreme Court in the case of CCE Vs. Insulation Electrical (P) Ltd. [2008 (224) ELT 512 (SC)]
 - Enercon (India) Ltd. vs. State of Karnataka (ILR) [2004 KAR 4020]

Observations & ruling by the AAR

- As per entry no:234(c) of the said notification, the device was solar power generating system whereas in entry no:201A(c), the device is not solar power generating system but 'solar power generator'. Few case laws submitted by the taxpayer for the purpose of employer-employee relationship does not apply in the present case;
- Thus, WOEg is a generator and different from wind power project/ wind turbine system. If the wording used in said notification was wind power system/wind power project/wind turbine system, the scope of inclusion of transformer in the said project/ system arises;
- Dual function of the transformer does not equate itself to be treated as a part and parcel of WOEg. WOEg, which is the generator functions complete with itself and the use of transformer is to link the WOEg's electricity generated to the distribution grid;
- Also, Ministry of New and Renewable Energy clarification, reported in Government circular no:1008/15/2015-CX dated 20 October 2015 wherein it was stated that transformer is not mentioned as a part of WOEg;
- Hence, it was ruled that transformers are not part of WOEg and are leviable to CGST @ 18% vide entry no:375 of schedule-III of notification no:1/2017-CT (R) dated 28 June 2017.

[AAR-Gujarat, M/s. Suzlon Energy Limited, Ruling no:GUJ/GAAR/R/2022/16, dated 12 April 2022]

Rule 32(5) of CGST Rules, 2017 shall be applied to determine the GST liability in case of sale of second hand or used 'paintings'

Facts of the case

- M/s. Saffron Art Private Limited ('Taxpayer'), is engaged in procurement of 'paintings' on approval basis from unregistered and registered persons and sells the same by auction to the highest bidder;
- The taxpayer displays the 'paintings' on its website and conducts a sale thereof by way of online auction, to highest bidder. Assumption of the taxpayer is that its suppliers have brought the 'paintings' second hand or used, and then offered for sale to taxpayer;
- Presently, the taxpayer is charging GST at 12% on the entire price for which the second hand or used 'painting' is sold.

Questions raised before the AAR

- What is the classification of second hand or used 'paintings'?
- Whether for determination of the liability to pay tax on the sale of second hand or used 'paintings', the taxpayer can apply rule 32(5) of CGST Rules, 2017?

Contention of the Taxpayer

- The taxpayer purchases and sells second hand or used 'painting'. No ITC is being availed on the purchase of such 'paintings'. Therefore rule 32(5) of CGST Rules, 2017 is applicable to sale of such 'paintings' and tax shall be paid by the taxpayer on the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored;

- According to the taxpayer, schedule-II entry no:236 of notification no:1/2017-CGST(R), dated 28 June 2017, chapter heading 9701 covers "paintings' drawings and pastels, executed entirely by hand, other than drawings of heading 4906 and other than hand-painted or hand-decorated manufactured articles, collages and similar decorative plaques". Therefore, the second hand or used 'paintings' sold by the taxpayer will attract tax at the rate specified by schedule II-entry no:236 of notification no:1/2017-CGST(R) dated 28 June 2017.

Observations & ruling by the AAR

- The AAR noted that the taxpayer has submitted that they purchase and sell second hand or used 'painting' and do not avail ITC on the purchases of such 'paintings'. Therefore, the provisions of rule 32(5) of CGST Rules, 2017 are applicable to sale of such 'paintings' and tax shall be paid on the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored;
- In an earlier case decided by the AAR Maharashtra on an application filed by M/s. Astaguru Auction House private limited, vide order no:GST-ARA-40/2020-21/B-27 dated 08 March 2022 has held that paintings classifiable under heading 9701 and the taxpayer was liable to pay GST of 12% and it was also held that the provisions of rule 32(5) of the CGST Rules, 2017 are applicable to the taxpayer respect of second hand goods;
- The AAR held that the second hand or used 'paintings' are classifiable under HSN 9701 and the taxpayer can apply rule 32(5) of CGST Rules, 2017 to determine the liability to pay tax.

[AAR-Maharashtra, M/s. Saffron Art Private Limited, Ruling no:GST-ARA-51/2020-21/B-62, dated 20 May 2022]

CUSTOMS

CIRCULARS

Central Board of Indirect Taxes and Customs (CBIC) enabled the export of goods from Bangladesh to India by rail in returning empty containers

- A request has also been received from the High Commissioner of Bangladesh in New Delhi in which it has been informed that containers going from India to Bangladesh by rail are returning empty after delivering India's export goods there and that Bangladesh companies have expressed interest to use such empty containers to export their products to India;
- The above request from Bangladesh entails using empty containers returning from Bangladesh after delivering Indian export goods. The carrier will be trains of Indian Railways plying between India and Bangladesh carrying India's containerized export goods to Bangladesh (forward journey) and returning with Bangladesh export goods in the same containers to India (return journey). In both forward and return journeys, the trains will cross the international border through one of the specified Land Customs Stations(LCS) with rail route, namely, Petrapole-Benapole and Gede-Darshana;

- In respect of the forward journey, attention is invited to circular no:52/2017-Customs dated 22 December 2017, as amended, in which movement of India's export goods in containers by rail has been allowed from any Inland Container Depot (ICD) of India to Bangladesh through Gede or Petrapole LCS. The said circular provides for completion of necessary export formalities at the ICD, movement from ICD to LCS under Electronic Cargo Tracking System (ECTS) seals, and removal of seals at the LCS;
- In the same way, it has been decided that the empty containers returning from Bangladesh to India on a train may be utilized to carry export goods of Bangladesh to India. This shall apply to closed containers moved by Container Corporation of India (CONCOR) carried on trains operated by Indian Railways. While the train will enter into India through the LCS of Petrapole or Gede, the train will be allowed to transit to any ICD of India for customs clearance of goods. The movement shall be monitored through ECTS from LCS of entry to ICD of destination;
- The movement through gateway LCS to an ICD, as above, is covered under section 53 of the Customs Act, 1962. For allowing such movement, the said section requires that the goods are not prohibited for import in terms of section 11 of the Act and the goods are meant for transit on the same conveyance. Further, section 55 of the Act provides that import clearance of the goods so transited shall take place at the destination customs station;
- In view of above, the following procedure is prescribed for movement and clearance of goods imported in containers on trains returning from Bangladesh:
 - CONCOR shall execute a running bond with the Commissioner of Custom (Preventive), West Bengal undertaking that:
 - The goods are for transit to an ICD in India and will move on the same train to the said ICD without any unloading or transhipment on the way;
 - The goods are not prohibited for import in terms of section 11 of the Customs Act, 1962; and
 - The goods shall be properly transported to the destination ICD. The bond shall be for an amount and in the form as prescribed by the said Commissioner.
 - As required under section 53, CONCOR shall file an import report on ICEGATE when the train arrives at the LCS. Import report shall capture inter-alia details of the destination ICD, serial number of each container carrying export goods of Bangladesh and serial number of the ECTS seals which shall be put on such containers, in the manner prescribed by the said Commissioner;
 - At the LCS, the containers shall be sealed with ECTS seals under Customs supervision. CONCOR shall be responsible for obtaining ECTS seals from the managed service provider. After containers are sealed and import report is filed, Customs shall check ECTS seal number with the number recorded in import report, and ECTS seal integrity. Customs officer at the LCS shall make an entry in the ICES System acknowledging arrival of the train, upon which the bond shall be debited for an amount determined on the basis of the details available in the import report. Customs shall perform random checks and intelligence based preventive action, and then allow the train with duly sealed containerized cargo to move to the destination ICD;
- While the goods are in transit between LCS and ICD, the Customs officer at the LCS shall regularly monitor the movement on ECTS web portal. The ECTS seals generate alerts if there is any activity of unauthorized un-sealing, tampering etc. These alerts are transmitted to the Customs officer through SMS on mobile phone and also on email. If the Customs officer at LCS receives any such alert, he shall immediately inform the destination ICD in respect of the affected containers. Where appropriate, he shall also inform the Customs formation nearest to the container location for any possible preventive action;
- At the destination ICD, containers shall be unloaded by the custodian of the ICD. The custodian shall check seal integrity and electronically file the Cargo Arrival Report in ICEGATE. In respect of those containers where seals are not found intact, the custodian shall without fail, immediately bring the matter to the notice of Customs officer at the destination ICD for further necessary action;
- The containers shall be un-sealed by the Customs officer at the destination ICD. He shall also check seal integrity, and where the seal is found intact and there is no alert of unauthorized un-sealing, he shall remove the seals from the containers, upon which trip report will be generated through the ECTS web application. Simultaneously, the Customs officer at gateway LCS shall view the same trip report on the ECTS web application;
- Where any alert of unauthorized un-sealing is noticed or seal is found tampered, the Customs officer at the ICD shall initiate necessary action to safeguard revenue, in addition to any other action required to be taken under the extant law;
- Based on the cargo arrival report filed by the custodian of ICD in ICEGATE, and the trip report generated on the ECTS web application, the bond shall be credited by the officer of the concerned LCS;
- In terms of section 55 of the Act, the importer(s) shall file Bill(s) of Entry at the destination ICD, where the imported goods will be assessed to duty and cleared as usual.

[Circular no:08/2022 dated 17 May 2022]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Amendment in export policy of onion seeds

The export policy of onion seeds has been changed to 'restricted' category from 'prohibited' category, with immediate effect.

[Notification no:05/2015-20 dated 13 May 2022]

Amendment in export policy of wheat

The export policy of wheat against the HS codes 1001, 10011900, 100199, 10019910, 10019920 is prohibited with immediate effect except for shipments fulfilling the conditions mentioned below which will be allowed as per the procedure outlined in para 1.05 (b) of the FTP, 2015-2020.

Condition for export of wheat for above mentioned products

- As a transitional arrangement, export will be allowed in case of shipments where Irrevocable Commercial Letter of Credit (ICLC) has been issued on or before the date of this notification, subject to submission of documentary evidence as prescribed; or
- Export will also be allowed on the basis of permission granted by the Government of India to other countries to meet their food security needs and based on the request of their governments.

DGFT has amended the export policy of wheat under entry no:59 of chapter 10 of Schedule-2 of the ITC (HS) and placed their exports in the 'Prohibited' category from 'Free' earlier with immediate effect.

It is further clarified that wherever wheat consignments have been handed over to customs for examination and have been registered into their systems on or prior to 13 May 2022, such consignments shall also be allowed to be exported, as provided in para 9.12 (B) of the Handbook of Procedure, 2015-2020.

Export of all wheat, including high-protein durum and normal soft bread varieties, has been moved from 'free' to 'prohibited' category with effect from 13 May 2022.

Importance announcement for Regional Authorities

DGFT has directed its regional authorities to issue registration of contracts to the wheat exporters who have irrevocable letters of credit to honor their contracts. The direction came after the government banned wheat exports but allowed the overseas shipments for which ICLC have been issued on or before 13 May 2022.

All regional authorities under the DGFT are hereby directed to issue Registration of Contracts (RC) to the exporters of wheat, preferably within a prescribed time limit of 24 hours, on submission of application, complete in all respects, by the exporters.

[Notification no:06/2015-20 dated 13 May 2022, Trade notice no:06/2022-23 dated 14 May 2022, Trade notice no:07/2022-23 dated 17 May 2022, Trade notice no:08/2022-23 dated 17 May 2022, Instruction no:05/2022-customs dated 16 May 2022, Instruction no:06/2022-customs dated 17 May 2022]

Amendment in import policy condition of fresh ginger

Import of fresh ginger, wholly produced in Bhutan is free subject to Article-I of Agreement on Trade, Commerce and Transit between India and Bhutan.

[Notification no:07/2015-20 dated 19 May 2022]

Amendment in export policy of bamboo charcoal

The export of bamboo charcoal made from bamboo obtained from legal source is allowed freely subject to following policy conditions:

- All the bamboo charcoal made from bamboo obtained from legal sources are permitted for export subject to proper documentation/Certificate of Origin (COO) proving that the bamboo used for making charcoal has been obtained from legal sources;
- The COO shall be issued by the concerned range forest officer of state forest department from where bamboo has been procured by the purchaser for making bamboo charcoal.

[Notification no:08/2015-20 dated 19 May 2022]

PUBLIC NOTICE

Last date of application for allocation of TRQ under India–UAE CEPA extended

The last date for submission of online applications for allocation of Tariff Rate Quota (TRQ) under India–UAE CEPA first two quarters of FY 2022-23 (01 May 2022 to 30 Sep 2022) has been extended till 31 May 2022.

[Public notice no:08/2015-20 dated 19 May 2022]

NEWS FLASH

1. “GoM recommends 28% GST on online gaming, races, casinos”
<https://economictimes.indiatimes.com/news/economy/policy/gom-recommends-28-gst-on-online-gaming-races-casinos/articleshow/91640273.cms>
[Source: Economic Times, 18 May 2022]
2. “GST levy based on capacity on pan masala, gutkha unlikely”
<https://www.financialexpress.com/economy/gst-levy-based-on-capacity-on-pan-masala-gutkha-unlikely/2528750/>
[Source: Financial Express, 18 May 2022]
3. “SC rulings to bring relief to importers, clarity on GST Council’s role”
<https://www.thehindubusinessline.com/economy/sc-rulings-to-bring-relief-to-importers-clarity-on-gst-councils-role/article65430883.ece>
[Source: The Hindu Business Line, 19 May 2022]
4. “Glitch in GST return filing: Relief for tax professionals”
<https://timesofindia.indiatimes.com/city/ludhiana/glitch-in-gst-return-filing-relief-for-tax-professionals/articleshow/91674767.cms>
[Source: Times of India, 20 May 2022]
5. “GST Council may consider modification in monthly tax payment form for better input tax credit reporting”
<https://economictimes.indiatimes.com/news/economy/policy/gst-council-may-consider-modification-in-monthly-tax-payment-form-for-better-input-tax-credit-reporting/articleshow/91720272.cms>
[Source: Economic Times, 22 May 2022]



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