

INDIRECT TAX

Weekly Digest

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

NOTIFICATION

Amendment in Form GST DRC-03 and tenure of National Anti-Profitteering Authority (NAPA)

- Central Board of Indirect Taxes & Customs (CBIC) has extended the tenure of NAPA is extended to 5 years from 4 years w.e.f. 30 November 2021;
- Further, Form GST DRC-03 shall be used to intimate tax ascertained through Form GST DRC-01A (Intimation of tax ascertained as being payable under section 73(5)/74(5)), showing the details of the Show Cause Notice (SCN);
- DRC-03 shall also be used to pay mismatches between Form GSTR-1 and Form GSTR-3B and Form GSTR-2B and Form GSTR-3B.

[Notification no:37/2021-Central Tax dated 01 December 2021]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

No Input Tax Credit on procurement of land rights

Facts of the Case

- M/s. J M Chemicals (“Taxpayer”) purchased land rights under long-term lease agreement from M/s Ginni Filaments Limited (“transferor”) intending to construct a building on such land; and
- The transferor recovered 18% GST on sale of such rights from the taxpayer and duly paid to the tax authorities.

Questions before the AAR

Whether the taxpayer is eligible to claim Input Tax Credit (“ITC”) of GST paid on procurement of rights of the land/plot?

Contention of the Taxpayer

- The taxpayer stated that section 16(1) of the CGST Act, 2017 principally allows ITC for all goods and services which are used for business purpose. However, section 17(5)(d) of the CGST Act blocks ITC in respect of goods or services used for construction of an immovable property other than plant and machinery;
- Basis the above, the taxpayer contended that purchasing rights of land is not a service procured for construction of immovable property. Thus, ITC of GST paid on land right is eligible under the GST laws.

Observations & Ruling by the AAR

- The AAR observed that section 17(5)(d) provides for disallowance of ITC wherein goods/services are used ‘for’ construction of immovable property. In case said section disallowed ITC of goods/services ‘used’ in construction, then ITC of GST paid on procurement of land would become eligible;
- Further, the AAR held that under the GST laws, meaning of the term ‘plant and machinery’ categorically excludes the term ‘land’. Thus, legislative intent is to deny ITC on purchase of land due to said specific exclusion. Accordingly, ITC is not available in the given case;

- The AAR also added that GST Council Board is contemplating to include sale of land under the exempted category of supplies in order to remove tax burden from project costs;
- Based on above observations, the AAR held that GST amount borne by the taxpayer on subject service is a blocked credit vide section 17(5)(d) CGST Act, 2017 and thereby ineligible for ITC availment.

[AAR-Gujarat, M/s. J. M. Chemicals, Advance Ruling No:GUJ/GAAR/R/55/2021 dated 18 October 2021]

GST is leviable on Maintenance charges and Lease rent of residential land taken on lease

Facts of the case

M/s. Gwalior Development Authority (Taxpayer) is a company that provides residential land on lease, located at Ravinagar in the Gwalior District of Madhya Pradesh.

Questions before the AAR

- The taxpayer providing residential land on lease for which they are charging or receiving lease premium, whether GST is leviable or not?
- Whether GST is leviable on the maintenance charges and lease rent received on such residential land?

Observations and Ruling by the AAR

- It was observed that the definition of 'supply' in CGST Act, 2017 is an inclusive definition and specifically includes the term "lease" and when read with entry no:2 of Schedule II of the Act, which states that lease of land and building is the supply in the nature of a 'supply of service'. Hence, giving a property on lease is unambiguously a 'supply';
- Also, on combined reading of the provisions of the CGST Act, 2017 and the Transfer of Property Act, 1882 shows that granting lease of an immovable property is the transfer of a right for a consideration, which may be in the form of a premium or rent or both is supply of service;
- The taxpayer also referred to the entry that grants exemption vide entry no:41 of notification no:12/2017-CT(R) dated 28 June 2017 for services by way of renting of residential dwelling for use as residence. This entry does not refer to land whether as part of the residential dwelling or otherwise. There are many instances, where the legislature, where it intends a separate dispensation for land or specific treatment of land, uses the phrase "building and land appurtenant thereto";
- In the case of a single unit built on a parcel of land, the land is part of the building and in the case of multiple residential units on a parcel of land, there is share of undivided land that is part of each flat. The land is part and parcel of the building and is not separately let out;
- However, in case of lease of land, on which construction of a building is permitted, it is always the lease of the land that is renewed. The building constructed is not considered while deciding the renewal of the lease. Thus, in the case of residential building constructed by the lessee on leased land, it is always the lease of the land that is renewed. The building does not attain the character of a leasehold property;
- Since the entry grants the exemption to a leased/rented residential dwelling, the benefit is therefore restricted to

a residential building, which has been let out and does not extend to a parcel of land which has been taken on lease for construction of a residential dwelling on the said land;

- Based on the above observations the AAR held as follows:
 - GST is leviable on residential land provided on the lease basis.
 - GST is leviable on maintenance charges and lease rent received by the applicant on such residential land.
- [AAR-Madhya Pradesh, M/s. Gwalior Development Authority Advance Ruling no:09/2021 dated 6 August 2021]*

Items manufactured as well as purchased for a supply, is 'mixed supply' as none of them are not essential component without which the whole cannot function

Facts of the case:

- M/s. Medha Servo Drives ("Taxpayer") are manufacturers of electronics equipments for locomotives and coaches for Indian railways and metro railways;
- The taxpayer has entered into a contract with the Integrated Coach Factory, Chennai for supply of multiple items and they were issued Purchase Order (PO). PO includes some of the items that are manufactured by the taxpayer and some of them are purchased for supply;
- The terms of the contract are as below:
 - The invoice would contain HSN code for each item indicating GST rates separately;
 - The payment will be released for complete rake set and not for part supplies.
- Further, the taxpayer have also entered into a contract with Krishna Bhagya Jala Nigam Limited (Karnataka) for design, manufacturing, supply, installation, operation, and maintenance of phase-II of SCADA and GIS based automation for 5 years after commissioning of the scheme on turn-key basis.

Questions before AAR

- Whether the supplies made for the mentioned PO amounts to 'composite supply' or 'mixed supply' or normal individual supply?
- Whether all the items that are related to locomotive parts can be classified under a single HSN code of 8607 as locomotive parts considering the end-use of the product irrespective of product/item description?
- Whether the scope of work can be treated as supply of goods or Works Contract services and also applicable rate of tax for the contract entered with Krishna Bhagya Jala Nigam Limited?

Contention by the Taxpayer

- The taxpayer submitted that they are making supplies to Integral Coach Factory, Chennai by way of design, development, manufacture, supply, testing and commissioning of 25 KV AV micro-processor controlled Insulated-Gate Bipolar Transistor(IGBT);
- That as per the terms of the agreement the payment is to be released for complete rake set and not for part supplies.

Observations & Ruling by the AAR

- The AAR referred to definition under section 2(74) of 'mixed supply' and section 2(30) pertaining to 'composite supply' of CGST Act, 2017 to decide the type of supply made by the taxpayer;
 - Further, the AAR referred to the decision of Hon'ble High court of Kerala in the case of Abott Health Care Pvt. Ltd. (2020) 74 GSTR 37), where it was held that a 'composite supply' must take into account supplies as affected at a given point in time on "as is where is" basis;
 - Therefore, the AAR listed out the nature of a naturally bundled supply and its attributes:
 - There is a single price, or the customer pays the same amount, no matter how much of the package they actually receive or use;
 - The elements are normally advertised as a package;
 - The different elements are not available separately;
 - The different elements are integral to one overall supply. If one or more is removed, the nature of supply would be affected.
 - Therefore, AAR concluded that supply made by the taxpayer against the PO of Integrated Coach Factory is a mixed supply and the rate of tax applicable is the highest rate of tax as applicable to the particular goods constituting the mixed supply. The AAR also referred to the decision of Hon'ble Supreme Court of India in CCE Vs Insulation Electricals (2008 (224) ELT 512), where it was held that a part is an essential component of the whole without which the whole cannot function;
 - Thus, the AAR observed that if the goods supplied by the taxpayer in the purchase order have to be treated as "parts of railway or tramway" they should qualify for all the above conditions applying principle of Noscitur a sociis. Also, it is seen from the PO that none of the goods supply fall under this HSN code. They are also not essential component without which the whole cannot function;
 - Thus the supplies made under the referred PO to Integral Coach Factory, Chennai do not fall under HSN code 8607;
 - The supply made by the taxpayer is a 'mixed supply' and doesn't fall under the HSN code 8607. For question no:3 the AAR has held that the taxpayer cannot issue any clarification for the supplies made in Karnataka as the 'place of supply' falls outside the state of Telangana.
- [AAR-Telangana, M/s. Medha Servo Drives, TSAAR order no:17/2021, A.R.Com/50/2018, dated 04 September 2021]*

CUSTOMS

INSTRUCTIONS

Import of Sajji/ Pappad Khar

- CBIC has stated that FSS approval (Approval of non-specified food and food ingredients) Regulations, 2017 is not required for importing sajji /pappad khar and same shall be considered as "food not specified" till standards are notified by FSSAI;
 - Also, the imported consignments shall be tested as per the standards for "food not specified" including the standards for heavy metals prescribed under FSS (Contaminants, Toxins, and residues) Regulations, 2011.
- [Instruction no:26/2021-Customs dated 01 December 2021]*

Sale of seized/confiscated gold

- CBIC has issued instruction to the effect that seized/confiscated gold (other than gold ornaments/jewellery/articles) shall be sold to RBI only. Any mention of gold in subsequent paragraphs shall refer to gold other than gold ornaments/jewellery/articles. For this purpose, SPMCIL has been engaged for collection, transportation, conversion into standard gold bars and delivery to RBI. The SPMCIL has facility to melt gold at India Government Mints (IG Mint) located at Hyderabad, Kolkata, and Mumbai;
- Therefore, Hyderabad, West Bengal (P) and Mumbai (General) Customs Commissionerates have been designated as Focal Customs Commissionerates. Customs Commissionerates have been mapped to one of the three mints based on their location. IG Mints will be carrying-out processes such as pre-melting, assaying, and weighing in the presence of Customs Officer. For this purpose, the focal Customs Commissionerate shall nominate an officer not below the rank of Superintendent of Customs;
- The process flow of disposal is given as under:
 - Step-1 Intimation to SPMCIL;
 - Step-2 Collection of gold by SPMCIL transportation of gold to India Government Mints;
 - Step-3 Preliminary assaying melting/minting Conversion into standard gold bars final assaying;
 - Step-4 Delivery of standard gold bars to RBI;
 - Step-5 Payment by RBI through crediting into Government Account.
- Hereafter, as the seized/confiscated gold is ready for disposal, the Dy/Asst Commissioner of Customs in-charge of the disposal, shall intimate SPMCIL on the availability of gold for collection;
- Thereafter, SPMCIL will collect the gold from the Customs Commissionerates. The Customs Commissionerates shall take adequate precautions during handing over of gold to SPMCIL for keeping the evidentiary value of the gold intact, including but not limited to ensuring presence of witnesses, videography of the process of handing over, accounting and obtaining acknowledgement in the form of 'Note of Handing over Gold' to SPMCIL (HOGS Note);
- The printed HOGS note shall be prepared in quadruplicate; original copy shall be handed over to SPMCIL; duplicate copy shall be forwarded to the focal Commissionerate; triplicate copy shall be forwarded to Directorate of Logistics (DoL), New Delhi; Quadruplicate copy shall be kept by the Customs Commissionerate concerned. The HOGS note shall be prepared for each packet separately. The HOGS note shall have reference to the seizure to which the packet belong;
- SPMCIL will perform preliminary assay procedure at IG mints in the presence of nominated officer of the focal Customs Commissionerate. SPMCIL will conduct preliminary X-Ray Fluorescence (XRF) analysis for each packet of gold separately HOGS Note wise. The preliminary XRF analysis will be recorded in CCTV camera. It shall carry-out pre-melting, and sampling process which will also be recorded in CCTV camera. Upon completion of preliminary XRF analysis, SPMCIL will issue copies of XRF assay readings along with the weight slip to the nominated officer of the focal Customs Commissionerate;

- Based on the copy of the XRF assay readings along with the weight slip, issued by SPMCIL, the Dy/Asst Commissioner of the focal customs Commissionerate shall prepare a Preliminary Weight note (PW note) in triplicate. The original copy shall be sent to the respective field Commissionerate from where the gold was collected; the duplicate copy shall be forwarded to the DoL. Triplicate copy enclosing a copy of XRF assay readings along with the weight slip shall be retained by the focal Customs Commissionerate;
- The gold collected from the Customs Commissionerates will be converted into standard gold bars (around 11-13 kg) at IG Mints. SPMCIL will communicate the quantity of gold converted into standard gold bars and the number of such standard gold bars to the nominated officer of the focal Customs Commissionerate through Out Turn Certificate. Based on such communication, the Dy/Asst Commissioner of the focal Customs Commissionerate shall prepare a note on Final Weight (FW note) in duplicate. The original copy shall be sent to the Principal Commissioner, DoL. The duplicate copy along with the copy of the out turn certificate shall be retained by the focal Customs Commissionerate;
- The focal Customs Commissionerate shall maintain a register for recording the receipt of HOGS note, issuance of PW note and FW note;
- SPMCIL will deliver the standard gold bars to the RBI at Issue Department, RBI, Fort, Mumbai preferably within one month of collection of seized/confiscated gold; the quantity of remnant gold, if any, after conversion into standard bars shall be kept by the SPMCIL and the same will be included in the next lot of gold collected and processed; the price of the fine gold to be purchased by RBI shall be determined based on the average LBMA rate of gold for the preceding 30 days from the date of receipt of gold by the RBI at Mumbai and the same shall be converted into INR (rounded-off to the nearest INR) using the Financial Benchmarks India Private Limited (FBIL) USD INR exchange rate of that day;
- Further, RBI shall, on its part, before making payment to CBIC, share the details of the final weight of the gold as mentioned in the delivery cum acknowledgement memo received from SPMCIL and price of the gold to the Principal Commissioner, DoL. The DoL shall acknowledge the receipt of delivery memo;
- The DoL shall maintain proper account of gold for which an appropriate physical/electronic ledger shall be devised. The ledger shall contain the details of HOGS notes received from Customs Commissionerates, PW notes and FW notes received from focal Customs Commissionerates, delivery memo received from RBI and invoice received from SPMCIL. These details should clearly bring out the gold handed over by the Customs Commissionerates, the charges payable to SPMCIL, gold deposited with RBI, amount credited by RBI to CBIC, adjustment in weight required on account of melting and refining and balance quantity of gold carried over to the next cycle by SPMCIL. As mentioned supra, SPMCIL should complete the processes on the gold collected from the Customs Commissionerates within one month of such collection. The Principal Commissioner, DoL shall monitor this time limit. DoL shall also make the payment to SPMCIL upon receipt of the invoice from SPMCIL and delivery cum acknowledgement memo from RBI;

- The Customs Commissionerates can treat the seized/confiscated gold as disposed only on receipt of PW note from focal Customs Commissionerate and on making necessary entries in their stock register, accordingly;
- The forms referred are annexed to the instruction.
[Instruction no:27/2021-Customs dated 03 December 2021]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Amendment in Export Policy of Agar Oil and Agarwood

- Directorate General of Foreign Trade (DGFT) has restricted the export quota of Agarwood Chips and Powder (*Aquilaria Malaccensis*) to 25,000 kg per annum and that of Agar oil to 1,500 Kg per annum;
- Also, the policy condition regarding export of Agarwood (*Aquilaria Malaccensis*) chips and powder and Agar oil, has been notified.
[Notification no:45/2015-2020 dated 29 November 2021]

Updation in list of fertilizers manufactures

DFGT has amended the list of manufacturers/units of NP/NPK, who can freely export their own manufacture subject to the conditions, by adding the name of M/s Universal Crop Protection to the list of existing entries.

[Notification no:44/2015-2020 dated 29 November 2021]

PUBLIC NOTICE

Fixation of two new SIONs

The DGFT has notified two new Standard Input Output Norms (SIONs) for export product Sodium Salicylate and Methyl Cobalamin JP (Mecobalamin) under Chemical & Allied Product Group.

[Public notice no:40/2015-2020 dated 02 December 2021]

TRADE NOTICE

Electronic filing of RCMC/ RC

- DGFT has developed a new online common digital platform for issuance of Registration Cum Membership Certificate (RCMC)/ Registration Certificate (RC).;
- The objective of the platform is to provide an electronic, contact-less, single window for the RCMC/RC related processes including application for fresh/amendment/renewal of RCMC/RC. Applications for RCMC/ RC may be submitted through the common platform w.e.f. 06 December 2021;
- Further, submission of applications on this online platform shall not be mandatory for the exporters in the immediate and there shall be a transition period for issuing agencies as well as exporters to onboard this common digital platform;
- The existing procedure of submitting applications directly to the designated issuing agency shall also be in operation in parallel during this transition period. Submission and issuance of RCMC/ RC by the issuing agencies through their system may continue up to 28 February 2022 or until further orders;
- The details for RCMC/ RC issued using the DGFT portal will be reflected instantly in the profile of the exporter;
- The concerned Indian exporters may take note of the following points with regard to the process being notified herewith:

- Digital Signature Certificate (DSC)/ Aadhar would be required for the purpose of electronic submission of applications. DSC would be the same as used in other DGFT applications;
- No separate registration is required for availing the RCMC/ RC service from the DGFT Portal. Already registered exporters/importers can avail the service using the same login credentials.

[Trade Notice no:27/2021-2022 dated 30 November 2021]



NEWS FLASH

1. “Quitting without serving notice period? You will now have to pay GST on salary in lieu of notice”
<https://zeenews.india.com/personal-finance/quitting-without-serving-notice-period-you-will-now-have-to-pay-gst-on-salary-in-lieu-of-notice-2415197.html>
[Source: Zee News, 01 December 2021]
2. “GST rates and manufacturing growth”
https://www.business-standard.com/article/opinion/gst-rates-and-manufacturing-growth-121120101774_1.html
[Source: Business Standard, 01 December 2021]
3. “Petrol, diesel cannot be brought under GST in pandemic times: Govt official”
<https://www.moneycontrol.com/news/business/economy/petrol-diesel-cannot-be-brought-under-gst-in-pandemic-times-govt-official-7781011.html>
[Source: Money Control, 01 December 2021]
4. “GSTN release Module wise New Functionalities deployed on GST Portal for Taxpayers”
<https://www.taxscan.in/gstn-release-module-wise-new-functionalities-deployed-on-gst-portal-for-taxpayers-2/143000/>
[Source: Tax Scan, 03 December 2021]
5. “Odisha records 64% growth in gross GST collection during November”
<https://timesofindia.indiatimes.com/city/bhubaneswar/odisha-records-64-growth-in-gross-gst-collection-during-november/articleshow/88056104.cms>
[Source: Times of India, 02 December 2021]

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