INDIRECT TAX
Weekly Digest

02 November 2021
www.bdo.in

GOODS & SERVICES TAX

LEGISLATIVE UPDATES

NOTIFICATION

Rate on permanent transfer of Intellectual Property (IP) right in respect of goods

CBIC has prescribed uniform GST rate of 18% on permanent transfer of Intellectual Property (IP) right in respect of goods. Earlier permanent transfer of IP right in respect of goods other than Information Technology software was taxed at 12%.

[Notification no:13/2021-CT(R) dated 27 October 2021]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

ITC shall not be available on inputs/input services procured on promotional schemes

Facts of the case

- M/s. GRB Dairy Foods Pvt. Ltd. ('Taxpayer') engaged in the business of manufacture and supply of ghee and other products. In order to enhance the sales of instant mix, masalas, ready to eat sweets and snacks by the retailers, the taxpayer has launched sales promotional offer named as 'Buy n Fly' scheme. As per the scheme the retailers must achieve the specified target by purchasing the eligible product from the sub stockiest who in turn purchase from the stockiest and the taxpayer itself;
- All the retailers who achieved the target sales fixed by the taxpayer will be rewarded with either a trip to Dubai or gold voucher or television and air cooler depending on the turnover achieved and prescribed by taxpayer;
- To give the above-mentioned rewards, taxpayer has procured the goods or services i.e., trip to Dubai, gold voucher, television and air-cooler on payment of applicable GST charged by the vendor.

Questions before the AAR

Whether the GST paid on inputs/input services procured by the taxpayer to implement the promotional scheme under the name 'Buy n Fly' is eligible for ITC under the GST law in terms of section 16 read with section 17 of the CGST Act, 2017 and TNGST Act, 2017?

Observations and ruling by the AAR

- Taxpayer referred to the definition of 'business' as defined under section 2(17)(b) of the CGST Act, 2017 which also includes activities, or a transaction done in connection with the main business operations of the company. It is also contended that the expenses incurred on sales promotion by the taxpayer is considered as a business activity;
- Further, it was submitted that they fulfil all the conditions to take ITC of inputs and input services, as all the conditions as prescribed u/s 16 of CGST Act, 2017 are satisfied. They have placed reliance on the following case laws "CCE & ST vs H/s Dwarikesh Sugar Industries Ltd. 2016 (12) TMI 91.8 (Tri All)", "M/s Coca Cola India Pvt. Ltd. vs CCE Pune 2009 (8) TMI 50 (Bom HC)", "CCD, Pune vs. Dai Ichi Karkaria 1999 (1 1.2) DLT 353 (SC)";
- Further contended that the reward doesn't fall under the definition of gift as per section 17(h) of CGST Act, 2017 as the sales promotion is not a voluntary gift which is formulated to further its current business pursuant to a contractual obligation;

- AAR placed reliance on one of the AARs of Maharashtra vide order ARA/72/18-19B 65 dated 20 December 2018 in the case of Biostadt India Ltd, where it is ordered that ITC is not available on the procurement of gold coins offered under sales promotion scheme of the applicant company to its customer. Hence the taxpayer is not eligible to avail ITC on the procurement of the products /services to be offered to their customers as sales promotional offers;
- The AAR also noted that the contention of the taxpayer with respect to applicability of the section 17(5)(h) of CGST Act, 2017, that the free gifts or rewards given without consideration, even if they are provided for the sales promotion do not qualify as inputs as no GST is paid on its disposal. Hence, the taxpayer is not eligible for availing ITC of the tax paid on purchase of those products;
- The AAR further referred to the CBIC circular no:92/11/2019 dated 7 March 2019 that only certain sales promotional schemes are eligible for ITC. ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts/free samples distributed without any consideration. Since, the offers are given voluntarily by the taxpayer on fulfilment of conditions, this should be treated as gifts/rewards;
- Based on the above observations the AAR held that the GST paid on inputs/input services procured by the taxpayer to implement the promotional scheme under the name 'Buy n Fly' is not eligible for ITC under the GST law in terms of section 17(5)(g) and (h) of the CGST Act, 2017.

  [AAR, Tamil Nadu, M/s. GRB Dairy Foods Pvt. Ltd. order no:36/ARA/2021, dated 30 September 2021]

Services provided by way of supply of vehicles are exigible to GST

Facts of the Case

- M/s. Geetee Travels Private Limited ("Taxpayer") is engaged in the business of tours and travels and has entered into a contract with Municipal Corporation of Greater Mumbai ("MCGM"), Mumbai to provide vehicles for carrying COVID-19 patients for medical treatment;
- The taxpayer raised the invoice on MCGM and levied GST at the rate of 12%, however MCGM is of the view that as the services are being availed for carrying COVID-19 patients, the same should be exempt from levy of GST;
- In this regard, the taxpayer intends to know whether the services provided to MCGM will be taxable or exempt under GST laws.

Questions before the AAR

Whether services by way of supply of vehicles for carrying COVID-19 patients for medical treatment would be considered as taxable service or exempted service?

Contention by the tax authority

- Tax authority stated that on perusal of Letter of Intent ("LoI"), it is evident that the contract has been executed between Federation of Tourist Taxi operators ("FTTO") and MCGM and the taxpayer is a member of FTTO;
- Further added that as per LoI, all payments will be made in the name of FTTO and not directly in the name of taxpayer. Accordingly, the taxpayer has supplied services to FTTO and FTTO in turn has supplied services to MCGM;
- Thus, the services provided by way of supply of vehicles should be liable to tax.

Observations and ruling by the AAR

- In absence of requisite documents, the AAR stated that the said services cannot be concluded as exempt services. The taxpayer has not submitted any document evidencing that the vehicles supplied by them have been converted into ambulances, nor have they submitted proof of having transported only COVID-19 patients for medical treatment. Further, the vehicles are not registered with RTO for use as ambulance and they are registered as tourist vehicles;
- The AAR concluded that the said services does not satisfy the cumulative conditions of availing benefit of exemption, hence, the services provided by way of supply of vehicles are taxable under GST

  [AAR-Maharashtra, M/s. Geetee Travels Private Limited, Advance Ruling no:GST-ARA-55/2020-21/B-82 dated 25 October 2021]

Second-hand dealer of used cars shall not avail ITC, if they are availing the benefit concessional rate of GST as per notification no:8/2018-CT(R) dated 25 January 2018

Facts of the case

- M/s. Deccan Wheels ("taxpayer" or "the Company") purchases second-hand cars (goods) and after minor processing on it such as change of tyres, change of battery, painting, denting, repairs, servicing, internal cleaning, polishing etc, which does not change the nature of the goods, the said goods are sold;
- The taxpayer does not claim ITC on purchase of second-hand goods and has opted for Margin Scheme and applies GST rate as per notification no:8/2018-CT(R) dated 25 January 2018.

Questions before the AAR

- How to calculate margin on sale of second-hand goods?
- Whether tax is to be calculated on margin or the margin is inclusive of tax?
- Can the taxpayer claim ITC on other indirect expenses incurred for the business such as rent, commission, professional fees, telephone, etc.?
- Can the taxpayer opt for composition scheme for FY 2020-21, in case the total margin for FY 2019-20 is below INR 15Mn, and the total sale value exceeds INR 15Mn during FY 2019-20.

Contention by the tax authority

- It was observed that the taxpayer has paid taxes by relying on notification no:08/2018-CT(R) dated 25 January 2018 and therefore, ITC cannot be claimed on processing charges;
- Additionally, the tax authority stated that taxes is to be calculated on Margin Value;
- Taxes paid on other expenses can be claimed as ITC subject to conditions provided vide section 16 of the CGST Act, 2017;
- For the purpose of ascertaining the aggregate turnover, selling price is to be considered and if it is more than INR 15Mn, the taxpayer cannot opt for composition scheme.

Observations & Ruling by the AAR

- The AAR noted that the taxpayer has withdrawn question no. a, b and d. Therefore, the only pending issue was with respect to availment of ITC on other indirect expenses incurred for the purpose of business activity;
- The AAR observed that the taxpayer relies on notification no:08/2018-CT(R) dated 25 January 2018 for its business activity of buying and selling second-hand cars;
- It was also observed that the concessional rate provided under the notification shall not apply, if the supplier of such goods has availed ITC as defined in section 2(63) of the CGST Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the ITC of Value Added Tax or any other taxes paid, on such goods;
- The AAR ruled that, since the taxpayer has been availing the benefit of the said notification and paying GST at a concessional rate, they shall not avail ITC on such supplies.

  [AAR-Maharashtra, M/s. Deccan Wheels, Ruling No: GST-ARA-103/2019-20/B-81, dated 25 October 2021]

CUSTOMS

NOTIFICATION

Amendment to customs tariff rules on Countervailing Duty and Anti-dumping Duty

CBIC has amended the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. New rules are inserted with respect to anti-absorption review, initiation of investigation to determine absorption and determination of absorption.

[Notification no:83 & 84/2021-Customs (N.T.) dated 27 October 2021]

Amendment to regulations on courier imports and exports (electronic declaration and processing and clearance)

CBIC has amended Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 and Courier Imports and Exports (Clearance) Regulations, 1998. New regulations are inserted in with respect to surrender of registration and validity of registration.

[Notification no:85 & 86/2021-Customs (N.T.) dated 27 October 2021]

FOREIGN TRADE POLICY (FTP)

PUBLIC NOTICE

Amendment in para 2.107(TRQ under FTA/CECA) of Handbook of Procedure(HBP) 2015-2020

TRQ quantity for the items listed in table 4 of notification no:51/2021-Customs dated 22 October 2021 on India-Mauritius CECPA has been revised. The date for submission of online applications with DGFT has been extended from 31 October 2021 to 31 December 2021.

[Public Notice no:31/2015-2020 dated 28 October 2021]

Amendment in HBP regarding export of SCOMET items from DTA to SEZ/EOU and outside the country

Existing entry at para 2.76 of HBP of FTP 2015-20 has been modified to bring out clarity on export policy of SCOMET items for supplies/exports from DTA to SEZ/EOU and outside the country.

[Public Notice no:32/2015-2020 dated 29 October 2021]

NEWS FLASH

1. "Textile sector worries over proposed GST rate hike from 5% to 12% ."
   https://timesofindia.indiatimes.com/business/india-business/textile-sector-worries-over-proposed-gst-rate-hike-from-5-to-12/articleshow/87346322.cms
   [Source: The Times of India, 29 October 2020]

2. "GST - 'Rectification Of Errors Permissible Only At Initial Stages': Supreme Court Dismisses Bharti Airtel's Plea For Refund Of Rs.923 Crore"
   https://www.livelaw.in/top-stories/gst-rectification-of-errors-permissible-only-at-initial-stages-supreme-court-dismisses-bharti-airtels-plea-for-refund-of-rs923-crore-184507
   [Source: Live Law, 29 October 2020]

3. "GST shortfall: Centre releases 44K crore as back-to-back loan"
   https://indianexpress.com/article/business/economy/gst-shortfall-centre-releases-44k-cr-as-back-to-back-loan-gst-collection-7596119/
   [Source: The Indian Express, 29 October 2020]

4. "GST law brought a drastic change. But only a digital GSTAT can be the model for tribunals"
   https://theprint.in/india/gst-law-brought-a-drastic-change-but-only-a-digital-gstat-can-be-the-model-for-tribunals/757435/
   [Source: The Print, 28 October 2020]

5. "Ice-cream parlours facing a meltdown over 18% GST levy"
   https://economictimes.indiatimes.com/industry/banking/finance/ice-cream-parlours-facing-a-meltdown-over-18-gst-levy/articleshow/87294638.cms
   [Source: The Economic Times, 27 October 2020]

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
Tel: +91 98 2564 0046

Delhi NCR - Office 1
The Palm Springs Plaza
Office No. 1501-10, Sector-54
Golf Course Road
Gurugram 122001, INDIA
Tel: +91 124 281 9000

Hyderabad
1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA
Tel: +91 40 6814 2999

Mumbai - Office 1
The Ruby, Level 9, North West Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA
Tel: +91 22 6277 1600

Pune – Office 2
Floor 2 & 4, Mantri Sterling, Deep
Bunglow Chowk, Model Colony,
Shivaji Nagar, Pune 411016, INDIA
Tel: +91 20 6723 3800

Bengaluru
SV Tower, No. 27, Floor 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA
Tel: +91 80 6811 1600

Delhi NCR - Office 2
Windsor IT Park
Plot No: A-1, Floor 2
Tower-B, Sector-125
Noida 201301, INDIA
Tel: +91 120 684 8000

Kochi
XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA
Tel: +91 484 675 1600

Mumbai - Office 2
601, Floor 6, Raheja Titanium
Western Express Highway
Geetanjali Railway Colony, Ram Nagar
Goregaon (E), Mumbai 400063, INDIA
+91 22 6831 1600

Chennai
No. 443 & 445, Floor 5, Main Building
Guna Complex, Anna Salai, Teynampet
Chennai 600018, INDIA
Tel: +91 44 6131 0200

Goa
701, Kamat Towers
9, EDC Complex, Patto
Panaji, Goa 403001, INDIA
Tel: +91 832 674 1600

Kolkata
Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA
Tel: +91 33 6766 1600

Pune – Office 1
Floor 6, Building # 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA
Tel: +91 20 6763 3400

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 ©2021 BDO India LLP. All rights reserved.

Visit us at www.bdo.in