

INDIRECT TAX

Weekly Digest

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

NOTIFICATION

Increase in GST rate of footwear

Central Board of Indirect Taxes and Customs (CBIC) has notified that footwear with sales value not exceeding INR 1000 per pair shall be taxed at the rate of 12% GST w.e.f 1 January 2022. Earlier the same was taxed at 5% GST.

[Notification no:21/2021-Central Tax (Rate) dated 31 December 2021]

Works Contract Services provided to a Governmental Authority or a Government Entity not eligible for reduced GST rate

Construction services provided as composite supply of works contract as defined in section 2(119) of the CGST Act, 2017 to a Governmental Authority or a Government Entity, shall not be eligible for reduced GST rate of 12%. The changes is effective from 1 January 2022.

[Notification no:22/2021-Central Tax dated 21 December 2021]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Supply of renewable energy devices & parts for their manufacture are taxable at 12% GST

Facts of the Case

- M/s. Coral Coil India Private Limited ("Taxpayer") has received a Purchase Order ("PO") for the manufacture and supply of stator coils for Wind Operated Electricity Generators ("WOEG") and;

- The taxpayer wants to know the applicability of entry no:201A of notification no:1/2017-CT dated 28 June 2017 ("rate notification") on supply of said goods.

Questions Before the AAR

Whether the supply of stator Coil will be eligible for the levy of 12% GST?

Contention of the Taxpayer

- The taxpayer contented that as per circular no:80/54/2018 GST dated 31 December 2018, the taxpayer has to comply with conditions as mentioned in the circular to avail the concession under said entry of rate notification;
- Further, the taxpayer has submitted copy of PO and agreement entered into with the buyer which ensures that goods ordered are for use solely and principally with WOEG production. Hence, concessional rate of 12% GST should be levied on the supply of stator coil.

Submissions by the tax authority

The tax authority stated that as taxpayer failed to submit PO given by the windmill manufacturer, this transaction may attract GST at the rate of 18%.

Observations and Ruling by the AAR

The AAR agreed with the taxpayer regarding submission of documents and also concurred with the submission of taxpayer and ruled that supply of stator coil will be eligible for the levy of 12% GST.

[AAR-Tamil Nadu, M/s. Coral Coil India Private Limited, Advance Ruling No:40/AAR/2021 dated 30 November 2021]

'Diagnostic and laboratory reagents' imported and supplied are taxable at the rate of 12%

Facts of the case

M/s. Bio-Rad Laboratories India Ltd. ('the Taxpayer') engaged in the business of import and sale of medical & laboratory instruments, laboratory reagents and diagnostic reagents falling under tariff heading 3822.

Questions raised before AAR

Whether diagnostic and laboratory reagents imported and supplied by the taxpayer and classified under heading 3822 of the Customs Tariff Act, 1975 are covered under entry no:80 of schedule II to the notification no:1/2017-IGST(R) dated 28 June 2017 attracting 12% GST levy?

Taxpayer's submissions

The taxpayer submitted that schedule 2 of notification no:01/2017 prescribes rates for all diagnostic kits and reagents and it is classified under chapter heading 3822. Chapter 38 of the Customs Tariff covers 'miscellaneous chemical products'. Further, heading 3822 thereunder deals with 'diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials'. The relevant extract of the same is provided below:

Tariff Item	Description of Goods
3822	Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials
382200	Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing. Other than those of heading 3002 or 3006; certified reference materials
	--- For medical diagnosis:
38220011	--- Pregnancy confirmation reagents
38220012	---- Reagents for diagnosing AIDS
38220019	---- Other
38220090	---- Other

- It can be observed that heading 3822 of the Customs Tariff is very broad and covers both diagnostics and laboratory reagents within its ambit. In fact, heading 3822 does not make any bifurcation between diagnostics and laboratory reagents and it is only sub-heading of the said chapter which bifurcates reagents into (a) medical diagnostic reagent (b) other reagents.
- The description under entry no:80 of schedule 2 of GST rate notification covers within its ambit 'all diagnostic kits and reagents'. Said entry is reproduced below for ease of reference:

Sl. No.	Tariff heading	Description of Goods	Rate of Tax
80	3822	All diagnostic kits and reagent	12%

- For a product to be covered under the said entry, following prerequisites to be met:
 - It should be classified under Tariff heading 3822 and
 - Nature of product should be either diagnostic kits or reagents.
- It can be observed that aforesaid entry no:80 of schedule 2 does not create a demarcation between diagnostic and laboratory reagent. Thus, all type of reagents classifiable under tariff heading 3822 would get squarely covered under the said entry;
- Considering the above, the term 'reagents' used in the description of entry no:80 of schedule 2 of GST rate notification connotes all reagents covered under heading 3822, including both diagnostic and laboratory reagents. Therefore, the applicable rate of tax on diagnostic and laboratory reagents imported and supplied by the taxpayer is 12%.

Observations & Ruling by the AAR

- AAR made the observation that the reagents referred to in the heading 3822 of the Customs tariff are both diagnostic and laboratory reagents. Entry no:80 of schedule-II to GST rate notification no:01/2017 dated 28 June 2017, describes the goods under chapter heading 3822 as 'All diagnostic kits and reagents';
- This implies that all reagents falling under chapter heading 3822 are covered under the said entry no:80. The heading 3822 of the Customs tariff applies to both diagnostic and laboratory reagents. Therefore, the correct way to read the entry no:80 of schedule-II would be all diagnostic kits and all reagents;
- To limit the term "reagents" in the rate notification as being applicable only to diagnostic reagents is an incorrect interpretation. When the heading 3822 of the Customs tariff clearly has within its fold reagents which are both diagnostic as well as laboratory reagents on a backing and prepared diagnostic and laboratory reagents with or without a backing. The use of the single word "reagents" in the entry no:80 of schedule 2 should be understood as a generic word encompassing all the reagents mentioned under heading 3822 of the Customs;
- The laboratory and diagnostic reagents imported and supplied by the taxpayer squarely falls within the scope of generic term 'reagents' which is specifically included in entry no:80 of the schedule II. Hence, the said products cannot, by any stretch of imagination, be made to fall within the residuary entry of the GST rate notification;
- The 'diagnostic and laboratory reagents' imported and supplied by the taxpayer and classified under heading 3822 of the Customs Tariff Act, 1975 are covered under entry no:80 of schedule II to the notification no:1/2017-IGST(R) dated 28 June 2017 attracting a levy of Integrated Tax at the rate of 12%, in terms of the clarification issued vide para no:10 of the circular no:163/19/2021-GST dated 6 October 2021.

[AAR-Karnataka, M/s. Bio-Rad Laboratories India Ltd., Ruling No: KAR ADRG 78/2021 Dated 17th December, 2021]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

GST is not applicable on various recoveries (like notice period recovery, Group medical insurance premium, nominal amount for canteen services and telephone charges) made from an employee by an employer

Facts of the case

- M/s. Bharat Oman Refineries Limited (BORL) ('Taxpayer') is a registered company carrying on the business of refining crude oil in the state of Madhya Pradesh;
- The taxpayer earlier had approached AAR and aggrieved by the order of the AAR, taxpayer has filed an appeal against the order on the following questions:

Questions before the AAR

- Whether GST is applicable on payment of notice pay by an employee to the taxpayer-employer in lieu of notice period under clause 5(e) of Schedule II of GST Act?
- Whether GST is applicable on the amount of premium of group medical insurance policy of non-dependent parents recovered from the employees & retired employees at actuals covered under the said Policy?
- Whether GST is applicable on recovery of nominal amount for availing the facility of canteen at the refinery at Bina when it is no supply as per clause 1 of Schedule III of CGST Act?
- Whether GST is applicable on recovery of telephone charges recovered from the employees over and above the fixed rental charges payable to BSNL?
- Whether full ITC is available to the taxpayer in respect of question no: II, III & IV, or ITC will be restricted to the extent of GST borne by the taxpayer-employer?
- Whether the provision of canteen services to all the employees without charging any amount (Free of cost) will fall under para 1 of Schedule III of GST Act and will not be subjected to GST.
- If reply to question VI is yes, whether in view of the explanation to section 17(3) of GST Act, ITC shall be available to the taxpayer on the goods and services used in the activity of provision of free canteen services to the employees?

Ruling by the AAR

AAR pronounced following ruling with respect to above questions:

- That GST is applicable on-
 - payment of notice period amount by an employee to employer being the taxpayer under clause 5(e) of Schedule II of CGST Act, 2017;
 - Premium of group medical insurance policy recovered by taxpayer from the non-dependent parents of employees & retired employees will fall within the ambit of supply and is liable to GST;
 - Recovery of actual amount of canteen services from its employees.
- On this question with respect to eligibility of ITC the AAR is of the view that -
 - The taxpayer shall be eligible to claim ITC in respect of premium paid to insurance company to the extent of its further supply;

- The taxpayer shall not be eligible for the ITC on in respect of canteen services;
- In respect of telephone charges paid to BSNL, the taxpayer shall be eligible to claim ITC, as telephone charges are not covered by the provisions of section 17 relating to blocked credit.

- With respect to question no: VI AAR opined that the canteen services provided to the employees will be supply, even if there is no consideration and it will be liable to tax as per value determined in accordance with rule 28.
- Aggrieved by the above order issued by AAR, taxpayer has filed an appeal against AAAR on the following contentions.

Contention of the taxpayer

- Taxpayer contended that, AAR has erred in concluding that the taxpayer as an employer is tolerating the act or situation by accepting the amount in lieu of notice period without taking into consideration the settled law laid down by the Hon. Madras High Court in the case of GE T & D India Limited (W.P. Nos 35728 to 35734 of 2016) which is not correct;
- Taxpayer submitted that the premium of group medical insurance policy recovered by the taxpayer from the non-dependent parents of employees and retired employees is not covered by the definition of "business" as provided in section 2(17) of the CGST Act, as it is not in the course or furtherance of business and it does not possess the requisite license for providing the insurance services and therefore the said activity of recovery of insurance premium from the employees is not liable to GST;
- With respect to canteen services provided to employees, taxpayer contended that AAR has failed to consider the submissions made by it that the employer is providing the canteen facility by recovering a nominal amount as a consideration for the services provided by the employees to the employer is covered under clause 1 of Schedule I to the Act and hence, same shall be exempted from levy of tax;
- Taxpayer also contended that AAR has failed to take into consideration the decisions of other AAR's on identical issue wherein it has been repeatedly held that the recovery of nominal amount from the employees is not liable for GST;
- The AAR has concluded that the telephone charges recovered by the taxpayer from its employees over and above the fixed rental charges payable by the taxpayer to BSNL is covered under the definition of "business" and "supply" as per GST act. AAR has failed to consider the submissions made by the taxpayer that it does not possess the requisite license for providing the telecommunication services to its employees and hence, same is not in the course or furtherance of business of the taxpayer.

Observations & Ruling by the AAAR

- The AAAR has relied on the ruling of the hon'ble Madras High Court in GE T&D India Ltd Vs Deputy Comm. of Central Excise, LTU, Chennai and held that the AAR had erred in concluding that such activity was liable to GST as the taxpayer employer is tolerating the act by relieving the employee without following the notice period clause upon payment of an amount;
- The activity undertaken by the taxpayer like providing of medi claim policy for the employees' non-dependent

parents/ retired employees through insurance company neither satisfies conditions of section 7 to be held as "supply of service" nor it is covered under the term "business" of section 2(17) of CGST ACT 2017 and hence, same cannot be considered as 'supply of service' under CGST Act;

- AAAR also observed that GST is not applicable on the collection, by the taxpayer of the employees' portion of amount towards food stuff supplied by the third party/canteen service provider;
- The activity undertaken by the taxpayer like providing telephone facility to employees through BSNL neither satisfies conditions of section 7 to be held as "supply of service" nor it is covered under the term "business" of section 2(17) of CGST Act, 2017.
- For the questions relating to availability of ITC on the above question, the AAAR opined that:
 - ITC of GST paid to BSNL on usage charges recovered from employees would not be available to the taxpayer as they are not providing any outward supply of telephone services and the facility is also not attributable to the purposes of their business in terms of section 17(1) of the CGST Act;
 - ITC of GST paid to the insurance provider is also not be available to the taxpayer as health insurance is under blocked credit category under section 17(5) of the CGST Act, 2017 and the said insurance services are not any outward supply of the taxpayer;
 - With regards to the provision of canteen facility AAAR observed that under the proviso of section 17(5)(b) ITC in respect goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law, AAAR is of the view that ITC of GST paid would be available to the taxpayer.

[AAAR-Madhya Pradesh, M/s. Bharat Oman Refineries Limited, Order No:MP/AAAR/07/2021, dated 08 November 2021]

CUSTOMS

NOTIFICATION

Extension of duty exemption on Covid-19 vaccines

CBIC has extended the BCD exemption on COVID-19 vaccines till 30 June 2022. Earlier, the said exemption was up to 31 December 2021.

[Notification no:61/2021-Customs dated 31 December 2021]

Amendment in All Industry Rates of Duty Drawback rates

The CBIC has notified certain changes in All Industry Rates of Duty Drawback, by amending notification no:07/2020-Customs (N.T.) dated 20 January 2020. Changes shall be effective from 1 January 2022.

[Notification no:108/2021-Customs (N.T.) dated 31 December 2021]

Sea Cargo Manifest and Transshipment (Ninth Amendment) Regulations

The CBIC has notified the Sea Cargo Manifest and Transshipment (Ninth Amendment) Regulations, 2021, which amends Regulation 15 of the Sea Cargo Manifest and Transshipment Regulations, 2018 to extend the compliance

regarding transitional provisions of the said regulations from 31 December 2021 till 30 June 2022;

[Notification no:109/2021-Customs (N.T.) dated 31 December 2021]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Amendment in import policy of gold

- The Directorate General of Foreign Trade (DGFT), in addition to nominated agencies as notified by RBI (in case of banks) and nominated agencies notified by DGFT, qualified jewellers as notified by International Financial Services Centres Authority (IFSCA) will be permitted to import gold under specific ITC(HS) codes through India International Bullion Exchange IFSC Ltd. (IIBX);
- However, import of gold/silver under Advance Authorisation and supply of gold/silver directly by foreign buyers to exporters under para 4.45 of FTP against export orders would continue to be governed by the relevant FTP provisions.

[Notification no:49/2015-20 dated 05 January 2022]

Amendment in export policy of Enoxaparin and Intra-Venous Immunoglobulin (IVIG)

DGFT has restricted the export of Enoxaparin (Formulation and API) and Intra-Venous Immunoglobulin (IVIG) (Formulation and API) falling under the ITC(HS) codes specified or falling under any other HS code, with immediate effect.

[Notification no:50/2015-20 dated 10 January 2022]

PUBLIC NOTICE

Inclusion of new agencies in Standing Grievance Committee

DGFT has amended para 9.08 of HBP 2015-20, to revise the composition of Standing Grievance Committee by including other relevant Central/State Government agencies such as Customs/ GST Authorities, Banks, GM DICs etc. to address the grievances / complaints of the industry members at one platform.

[Public Notice no:44/2015-20 dated 05 January 2022]

TRADE NOTICE

Online Applications for EODC/closure under Advance Authorisation Scheme (AAS)

- In cases where the application for EODC/closure has been received in manual/physical mode, RAs on approval of such physical files are required to upload closure letters in the online system & update the status of the AA suitably;
- In some cases of AA, the EODC/closure issued manually in earlier periods is not reflected correctly in the online system. Option is therefore provided on the DGFT website where the status of the past AA authorisations can be seen by concerned exporters;
- In case it is found that Authorisation has been closed/redeemed and the status is not reflected correctly, the exporter is required to upload online the copy of the closure letter/ redemption letter against the said Authorisation;

- RA may verify the request submitted by exporter for EODC updation against available office records and process it suitably. RA may also choose to update the status of the said cases suo-motu after verification from its records;
- Accordingly All AA Holders are requested to verify the status of the AA issued earlier and submit the online request for updation of status(where required), not later than 31 March 2022. In the absence of updated online status, RA may take necessary action, as deemed fit for non-fulfilment of export obligation.

[Trade Notice no:28/2015-20 dated 31 December 2021]

Continuation of operations of the DGFT 'COVID-19 Helpdesk' for International Trade related Issues'

- DGFT have undertaken to monitor the status of export and imports and difficulties being faced by trade stakeholders in view of the surge of COVID-19 cases;
- DGFT has operationalized a 'COVID-19 Helpdesk' to support and seek suitable resolutions to issues arising in respect of international trade;
- The 'COVID-19 Helpdesk' would look into issues relating to Department of Commerce/DGFT, Import and export licensing issues, Customs clearance delays and complexities arising thereon, import/export documentation issues, banking matters etc;
- Further, helpdesk would also collect and collate trade related issues concerning other ministries/departments/agencies of Central Government and State Governments and will co-ordinate to seek their support and provide possible resolution(s).

[Trade Notice no:29/2015-20 dated 06 December 2021]



NEWS FLASH

1. "Taxmen To Give "Reasonable Time" To Explain GST Mismatch"
<https://www.ndtv.com/business/taxmen-to-give-reasonable-time-to-biz-to-explain-reasons-for-mismatch-in-gstr-1-3b-before-recovery-action-2697686>
 [Source: NDTV, 09 January 2022]
2. "GST Input Tax Credit Changes Will Hurt Corporate Cash Flow"
<https://www.bloomberquint.com/gst/gst-input-tax-credit-changes-will-hurt-corporate-cash-flow>
 [Source: Bloomberg Quint, 09 January 2022]
3. "Now, AAAR rules ready-to-eat fryums papad to draw 18% GST"
https://www.business-standard.com/article/economy-policy/now-aaar-rules-ready-to-eat-fryums-papad-to-draw-18-gst-122011100035_1.html
 [Source: Business Standard, 11 January 2022]
4. "Process GST concession of visually impaired man"
<https://timesofindia.indiatimes.com/city/madurai/process-gst-concession-of-visually-impaired-man/articleshow/88820957.cms>
 [Source: Times of India, 11 January 2022]
5. "1.5% GST to be charged from Customers for Sale of Flats in Project, except where entire consideration has been received after Issuance of Completion Certificate: AAR"
<https://www.taxscan.in/1-5-gst-to-be-charged-from-customers-for-sale-of-flats-in-project-except-where-entire-consideration-has-been-received-after-issuance-of-completion-certificate-aar/147662/>
 [Source: Tax Scan, 09 January 2022]

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