

# INDIRECT TAX

## Weekly Digest

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## GOODS & SERVICES TAX

### JUDICIAL UPDATES

#### ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

##### Proportionate reversal of ITC is not required in case of post purchase discount or incentives given by way commercial credit note

#### Facts of the Case

- Shri. Rajesh Gupta, a sole proprietor ('Taxpayer'), is engaged in business of wholesale trading of rice and pulses. The taxpayer having dealership of "India Gate Basmati Rice";
- The supplier supplies India Gate Basmati Rice to the taxpayer. The taxpayer is being offered cash discount for early payment of invoice, incentives for achieving the yearly target by way of issuing commercial credit note.

#### Questions before the AAR

- Whether the ITC can be availed on the whole value of supply or proportionate ITC shall be reversed with respect to cash discount and incentives given by way of issue of commercial credit note?
- Whether GST is leviable on cash discount offered by the supplier to recipient? If yes, what is the applicable HSN and rate of GST?
- Whether GST is leviable on incentives given to the taxpayer? If yes, what is the applicable HSN and rate of GST?

#### Contention of the taxpayer

- The taxpayer contended that the credit note cannot be issued with GST as the conditions laid down in terms of section 15(3) of CGST Act, 2017 is not satisfied;

- The taxpayer also stated that since the conditions laid down in section 34(1) of CGST Act, 2017 is not satisfied, commercial credit notes can be issued as per para-D(iii) of circular no:92/11/201-GST dated 28 June 2019;
- The taxpayer further added that the supplier need not reduce the tax liability for the issuance of financial/commercial credit notes in term of para-D(vi) of circular no:92/11/2019-GST dated 28 June 2019 and hence, the taxpayer need not reverse ITC availed proportionate to credit note issued;
- Further, the taxpayer referred Advance Ruling Karnataka in the case of M/S Kwaliti Mobikers Pvt Ltd. ( Advance ruling no:KAR ADRG 76/2018 dated 24 September 2019) wherein it is held that the supplier need not issue credit note with tax since the credit note is issued for the discount given, and not a supply. Therefore, reversal of ITC is not required by taxpayer for the discount or incentives received.

#### Observations and ruling by the AAR

- The AAR noted that the discount shall not be included in the value of supply as the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act is not satisfied;
- The AAR also stated that the value of supply shall not include secondary discount issued by way of issuance of commercial credit note by supplier, in terms of clause (b) of sub-section (3) of section 15 of the CGST Act, 2017;

- The AAR referred to the AAAR Tamil Nadu ruling in case of MRF limited (2019(27) GSTL 578 (App.AAR-GST) wherein it is held that the proportionate reversal of credit is not required in case of post purchase discount given by the supplier;
- Further, the AAR stated that the supplier is not entitled to reduce the original tax liability since the transaction does not satisfy the conditions laid down in sub-section (3) of section 15 of the CGST Act, 2017. Therefore, the taxpayer is not providing any service to the supplier and it is only receiving discount;
- The AAR held as follows:
  - The taxpayer can avail the ITC of the full GST charged on the invoice given by the supplier;
  - GST is not leviable on discount or incentives offered by the supplier to taxpayer through credit note.

*[AAR-Madhya Pradesh, Shri. Rajesh Gupta Ruling no:MP 01/2022, dated 06 January 2022]*

### **GST for providing storage facility for all other goods including exempt supplies except agriculture produce is 18%**

#### **Facts of the case**

- M/s. Roorkee Cold Storage (P) Ltd ('Taxpayer') is engaged in business of providing cold storage facility for perishable goods;
- The taxpayer intends to provide the services for storage of agriculture produces and has sought advance ruling, in terms of section 97(2)(e) of the CGST Act, 2017.

#### **Questions before the AAR**

- Whether the GST is applicable on the hire charges of storage of agriculture produces?
- Whether the GST is payable on storage of exempted goods?
- Whether the tax is applicable on the same rate or different rates?

#### **Observations and ruling by the AAR**

- The AAR stated that the service by way of storage of the pulses, jaggery, fruits, nuts and vegetables is exempt from GST in terms of entry no:24B of the notification no:12/2017-CT(R) dated 28 June 2017 as amended vide notification no:21/2019-CT(R) dated 30 September 2019 and rate of GST for providing storage facility for all other goods including exempt supplies except agriculture produce as mentioned above is 18%;
- The AAR held as follows:
  - GST is not applicable on hiring charges for storage of agriculture produce.
  - GST is applicable on all goods including exempted goods.
  - Rate of tax charged for storage shall be equal for all the goods.

*[GST-AAR, Uttarakhand, M/s. Roorkee Cold Storage (P) Ltd., Ruling no:4/2019-20, dated 8 July 2020]*

### **ITC shall be availed on GST paid under Reverse Charge Mechanism for renting of Motor Vehicles with more than 13 seating capacity**

#### **Facts of the case**

- M/s. Maanicare Systems India Private Limited ("Taxpayer") is engaged in providing manpower services. The taxpayer has entered into a contract for providing manpower service to one of its customer, wherein the taxpayer will also sub-contract the service of renting of motor vehicle to ensure that the employees reach timely at the premise of customer;
- The service of renting of motor vehicle sub-contracted by the taxpayer is covered under reverse charge mechanism in view of entry no:15 of notification no:13/2017-CT(R) dated 28 June 2017.

#### **Questions before the AAR**

Whether the taxpayer is eligible to take ITC of GST paid under RCM @ 5% for hiring of buses for transportation of employees?

#### **Contention of the Taxpayer**

- The taxpayer contented that as per section 17(5)(b)(a) of CGST Act, 2017, input tax credit on motor vehicles used for transportation of persons having approved seating capacity of more than thirteen persons can be availed;
- Further, the taxpayer referred to section 16(1) and section 16(2) of CGST Act, 2017, stating that ITC used in the course or furtherance of business is available, provided that tax invoice and service is received, liability payable has been discharged and return under section 39 of CGST Act, 2017 has been furnished;
- The taxpayer referred to various judicial pronouncements evidencing that ITC is eligible to the service recipient, for hiring of motor vehicle having capacity of more than 13 seats.

#### **Observations and ruling by the AAR**

The AAR ruled that the ITC availed by the taxpayer is on bus with 49-seater i.e. more than 13 seater. Accordingly, the same does not fall under the restricted credit as per section 17(5) of CGST Act 2017 and the ITC is not restricted to the taxpayer after 01 February 2019 i.e. after necessary amendments have come into effect under section 17.

*[AAR-Maharashtra, M/s. Maanicare System India Pvt Ltd, ruling no:GST-ARA-104/2019-20/B-14 dated 01 February 2022]*

## **FOREIGN TRADE POLICY (FTP)**

### **NOTIFICATION**

#### **Amendment in export policy of syringes**

The export policy of all kinds of syringes falling under HS code 90183100 or falling under any other HS code has been made 'Free' with immediate effect.

*[Notification no:52/2015-2020 dated 31 January 2022]*

## NEWS FLASH

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1. “Record GST collections allow government to focus on aligning with strategic priorities”  
<https://www.financialexpress.com/economy/record-gst-collections-allow-government-to-focus-on-aligning-with-strategic-priorities/2425441/>  
[Source: Financial Express, 4 February 2022]
2. “GST collection tops Rs 1.38 lakh crore in January”  
<https://zeenews.india.com/economy/gst-collection-tops-rs-1-38-lakh-crore-in-january-2432389.html>  
[Source: Zee News, 31 January 2022]
3. “Consumer electronics players lament no reduction in GST on smart TVs, ACs”  
<https://retail.economictimes.indiatimes.com/news/consumer-durables-and-information-technology/consumer-electronics/consumer-electronics-players-lament-no-reduction-in-gst-on-smart-tvs-ac/89299054>  
[Source: Economic Times, 2 February 2022]
4. “Indians need to pay GST on commission paid for crypto trade done on exchanges abroad”  
<https://www.thehindubusinessline.com/money-and-banking/cryptocurrency/indians-need-to-pay-gst-on-commission-paid-for-crypto-trade-done-on-exchanges-abroad/article64965481.ece>  
[Source: The Hindu, 3 February 2022]
5. “Five-year Plan Gone Rogue: How GST Regime Has Created Cracks in Centre-State Relations”  
<https://www.thehindubusinessline.com/money-and-banking/cryptocurrency/indians-need-to-pay-gst-on-commission-paid-for-crypto-trade-done-on-exchanges-abroad/article64965481.ece>  
[Source: Outlook India, 3 February 2022]



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