

INDIRECT TAX

Weekly Digest

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GOODS & SERVICES TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Liquidated damages for non-performance of contract liable to GST

Facts of the Case

- M/s. Achampet Solar Private Limited (“Taxpayer”) is engaged in production and distribution of electricity obtained from solar energy;
- The taxpayer has sub-contracted the construction of solar power project. The contract provides for recovery of liquidated damages in case of delay in delivering the contract and non-performance of the plant.

Questions Before the AAR

Whether liquidated damages recoverable by the taxpayer on account of delay in commissioning, qualify as a ‘supply’ under the GST law, thereby attracting the levy of GST? If yes, what should be the time of supply when liability to pay GST is triggered?

Observations and Findings of AAR

- The AAR referred to provisions of The Indian Contract Act, 1872 to determine the effect of non-performance of contract within a stipulated time;
- The AAR further referred to para 5(e) of Schedule - II of The Central Goods and Services Act, 2017, considering the liquidated damages as consideration for tolerating an act arising out of contractual obligations.
- The AAR held that the liquidated damages recoverable by the taxpayer constitutes a supply under GST law for toleration of an act, payable as prescribed in the

contract. Further, the liability to pay GST arises on the date at which the liquidated damages are payable as per the contract.

[AAR-Telangana, M/s. Achampet Solar Private Limited, Advance Ruling no: A.R.Com/16/2020 dated 16 February 2022]

All works under EPC agreement qualifies as composite supply of “Works Contracts Services”

Facts of the case

- M/s. Toshiba JSW Power Systems Private Limited (“Taxpayer”), engaged in erection, procurement and commissioning (‘EPC’) of thermal power plants in India;
- The taxpayer proposes to enter into a new ‘EPC’ project which consists of four separate contracts. The four contracts can be clubbed under 2 categories which is transportation of goods by road and other services related to the said project;
- The services of goods transport services have been sub-contracted to a Goods Transportation Agencies (‘GTA’) and not provided directly.

Questions Before the AAR

Whether tax would be applicable on the service of transportation of goods by road to be provided by the company under one of its contracts ?

Contention of the taxpayer

- As per notification no:12/2017-CT(R) dated 28 June 2017, services by way of ‘transportation of goods by road’ except the services of a GTA and a courier agency were exempted under GST;

- As per the said notification, "goods transport agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called";
- The term 'consignment note' has not been defined under GST. Hence, relevance taken from service tax regime; "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency";
- The transportation of goods without issue of consignment note is simple transportation and not the service of a GTA;
- The taxpayer is of the view that since the supplier of service is not a GTA, they are eligible for exemption vide entry no:18 of no:12/2017 CT(R) dated 28 June 2017.

Observations & Ruling by the AAR

- The AAR noted that the taxpayer is engaged in erection, procurement and commissioning package, for thermal power station and all the contracts were awarded to the taxpayer in response to a single tender notification. Upon scrutiny of the contracts entered into, it was observed that all the four contracts are interrelated. The breach of one contract leads to breach of all the contracts;
- Therefore, the supply of transportation services is not a separate supply and the same forms part of the entire project;
- As per section 2(30) of CGST Act, 2017, "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;
- The contracts involve two supplies, one for the supply of goods and the other for the supply of services. The contracts fulfill the conditions of the 'composite supply' as the supply of goods and services are naturally bundled to arrive at the final output as per the contract. The supply of goods and services are provided as a package and if one or more is removed, the nature of the supply would be affected;
- Whether the two taxable supplies are arising from one indivisible contract or from two separate contract is immaterial till these two supplies are naturally bundled and one supply being principal supply and other being ancillary supply to principal supply. The entire transaction of providing the goods and the services is naturally bundled and hence, this is a 'composite supply' of goods and supply of services;
- Further, the contract involves installation and civil structural works which falls under the definition of Works Contract Service (WCS);

- The AAR concluded that the entire service is a WCS which is taxable at 18% as per entry no:3(ii) of notification no:11/2017-CT(R) dated 28 June 2017;
- Based on the above observations the AAR held that the all the four separate contracts falls under a single WCS and the said service is liable to GST at the rate of 18%.
[AAR-Uttar Pradesh, M/s. Toshiba JSW Power Systems Private Limited. Order No:UP ADRG 83/2021, Dated 24 September 2021]

CUSTOMS

NOTIFICATION

Reduction in Agriculture Infrastructure and Development Cess (AIDC) on Crude Palm Oil and Lentils (Mosur) and extend the validity of notifications

The Central Board of Indirect Taxes and Customs (CBIC) vide notification no:48/2021-Customs dated 13 October 2021 has reduced customs duty for crude and refined soya, sunflower and palm oil till 31 March 2022. Now period of exemption stands extended till 30 September 2022.

CBIC also reduced Agriculture Infrastructure and Development Cess(AIDC) leviable on Crude Palm Oil and prescribed 'nil' rate for Lentil (Mosur) covered under HSN 0713 40 00. Moreover, the validity of notification no:49/2021-Customs dated 13 October 2021 levying AIDC has been extend this exemption till 30 September 2022.

[Notification no:16/2022 dated 12 February 2022]

FOREIGN TRADE POLICY (FTP)

TRADE NOTICE

Issuance of Replenishment Authorisation from new online IT module w.e.f. 21 February 2022

- As part of IT revamp of its exporter/importer related services The Directorate General of Foreign Trade (DGFT) has introduced a new online module for filing of electronic, paperless applications for issuance of replenishment authorisation as per para 4.35 and 4.36 of FTP for gems and consumables from new online IT module w.e.f. 21 February 2022;
- All applicants seeking replenishment authorization for gems and consumables may apply online by navigating to the DGFT website (<https://www.dgft.gov.in/CP/> → Services);
- Accordingly, new applications for issuance will need to be submitted in online format as per the above link and replenishment authorisation for gems and consumables will continue to be issued on security paper;
- However, applications submitted before 21 February 2022 through legacy system (<http://dgftcom.nic.in/eComapplications.html>) will continue to be processed through legacy system by RAs.
- For any help and guidance on this new process, the help manual & FAQs may be accessed on DGFT Website → Learn → Application Help & FAQs and the following channels may be assessed for any further assistance:

- Raise a service request ticket through the DGFT Helpdesk service under Services → ‘DGFT Helpdesk Service’.
- Call the DGFT Toll-free-Helpline number.
- Send an email to the Helpdesk on dgftedi@gov.in
[Trade notice no:34/2021-22 dated 15 February 2022]



NEWS FLASH

1. “Online courses to doctors even if mandated by Medical Council should be taxed under GST: AAR”
<https://economictimes.indiatimes.com/news/economy/policy/online-courses-to-doctors-even-if-mandated-by-medical-council-should-be-taxed-under-gst-aar/articleshow/89640766.cms>
[Source: Economic Times, 17 February 2022]
2. “Will Income earned from providing guest lectures liable to 18 pc GST: AAR”
<https://economictimes.indiatimes.com/news/economy/policy/income-earned-from-providing-guest-lectures-liable-to-18-pc-gst-aar/articleshow/89619029.cms>
[Source: Economic Times, 16 February 2022]
3. “GST: Imposition of new ITC restrictions every year is diluting ease of doing business”
<https://economictimes.indiatimes.com/small-biz/gst/gst-imposition-of-new-itc-restrictions-every-year-is-diluting-ease-of-doing-business/articleshow/89655609.cms>
[Source: Economic Times, 18 February 2022]
4. “Companies moving from one state to another considered “supply of services” : AAR”
<https://economictimes.indiatimes.com/news/economy/policy/companies-moving-from-one-state-to-another-considered-supply-of-services-aar/articleshow/89617463.cms>
[Source: Economic Times, 16 February 2022]
5. “Govt likely to propose formula to bring ATF under GST”
<https://www.moneycontrol.com/news/business/govt-likely-to-propose-formula-to-bring-atf-under-gst-8141941.html>
[Source: Money Control, 21 February 2022]

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