

INDIRECT TAX

Weekly Digest

03 February 2022
www.bdo.in



GOODS & SERVICES TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

No reversal of ITC required in respect of discount not covered under section 15(3)(b) of CGST Act, 2017

Facts of the Case

- M/s. Mahaveer Prasad Mohanlal (“Taxpayer”) is engaged in wholesale trading of various products;
- The supplier offers target incentive and cash discount to taxpayer for early payment of invoice and issues credit note for such cash discount and incentives without charging GST. Accordingly, the taxpayer does not reverse its Input Tax Credit (“ITC”) on such credit notes issued by its supplier.

Questions before the AAR

- Whether the taxpayer can avail ITC of the full GST charged on invoice of the supply or a proportionate reversal of the same is required for credit notes issued post purchase?
- Whether GST is leviable on cash discount, incentives or schemes offered by supplier through credit note. If yes, then what is the applicable HSN and GST rate?

Contention of the Taxpayer

- The taxpayer contended that as per section 15(3)(b) of CGST Act, 2017, discounts given after supply are deductible from value of supply only if they are agreed upon before or at the time of supply. Accordingly, in the present case discount should not be deducted from value of supply;

- Further, the taxpayer stated that the discount arrangement is not part of the purchase contract or the invoices since it is not known at the time of supply that whether benefit of cash discount can be availed or not;
- The taxpayer contended that as per circular no:92/11/2019-GST dated 7 March 2019, financial or commercial credit notes can be issued for discounts given after supply where there was no agreement before or at the time of supply. Accordingly, GST should not be levied on such credit notes and there is no requirement to reverse ITC.

Submissions by the tax authority

The tax authority referred to various provisions of CGST Act, 2017 and other judicial pronouncements and inferred that credit notes are being issued after event of sale and accordingly submissions made by taxpayer can be accepted subject to fulfilment of conditions prescribed in section 15(3) of the CGST Act, 2017.

Observations & ruling by the AAR

- The AAR ruled that the taxpayer can avail full ITC and no reversal is required if the said discount is not covered under section 15(3)(b) of CGST Act, 2017 and is not in relation to any prior agreement, provided that the GST paid is not reimbursed by the supplier;
- For levy of GST on cash discount or incentives, the AAR opined that the amount received in the form of credit

note is actually a discount and not a supply. Hence, no GST is leviable.

[AAR-Madhya Pradesh, M/s. Mahaveer Prasad Mohanlal, Advance Ruling no:01/2022 dated 06 January 2022]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

Sale of developed plot is not equivalent to sale of land, but it is a different transaction which attracts GST at the rate of 18% on such sale

Facts of the case

- Mr. Shree Dipesh Anil kumar Naik (“Taxpayer”) being an unregistered person in the GST laws, is a farmer engaged in agricultural activities and has proposed business activities on a vacant land, outside the municipal area of town. The taxpayer intends to develop the land and sell the same as individual plots to buyers without any further construction;
- The taxpayer has sought necessary approvals from the plan passing authority (the Jilla Panchayat) for the plots, as per which the taxpayer is required to develop the primary amenities like sewerage and drainage line, water line, electricity line, land levelling for road, pipe-line facilities for drinking water, streetlights, telephone line etc. before selling to the buyers;
- The taxpayer raised the below question before the AAR and it was held that GST is applicable on sale of plot of land for which, as per approval of the respective authority (the Jilla Panchayat), primary amenities such as, drainage line, water line, electricity line, land leveling etc. are to be provided by the taxpayer.

Question before the AAR

Whether GST is applicable on sale of plot of land for which, as per the requirement of approval by the respective authority (the Jilla Panchayat), primary amenities such as, drainage line, water line, electricity line, land leveling etc. are to be provided by the taxpayer?

Contention of the Taxpayer

- The taxpayer enters into an agreement with the buyer of plot, prior to selling them to provide that the common facilities which shall be constructed by the willing buyers on their own by way of creating an Association of Persons or other artificial judicial person. Thus, the sale of land will be a conditional sale to the buyers, and it will be mere sale of plot of land and nothing beyond that. Hence, it will fall under paragraph 5 of Schedule-III of the CGST Act, 2017;
- The taxpayer further stated that on combined reading of the provisions of section 7, section 8 and Schedule III paragraph 5 of the CGST Act, 2017 the sale of land is excluded from the scope of ‘supply’ under entry no:5 of Schedule III;
- The taxpayer also contended that the entire supply of land is a composite Supply with principal supply being the sale of land. Whereas the common facilities are mandated by the plan passing authority as a condition to sale and such facilities are provided in conjunction with sale of land.

Hence, supply of land is the predominant supply in the present case. The taxpayer has also relied on the case of AAR on Maarq Spaces Pvt.Ltd ((Order No.KAR ADRG/199/2019);

- The taxpayer, in addition to the above, further submitted that the transaction undertaken involves two or more supplies, thus the supply is in nature of bundled supply. The taxability and the rate of tax in bundled supply is decided on the basis of the predominant item in that bundled supply, which, in this case, is the sale of land and as per section 7(2) of the CGST Act, 2017, and hence, it will not attract any tax as it is neither supply of goods nor supply of services;
- The taxpayer concluded that the prime activity in the present case is of sale of land which is squarely covered under entry 5 of Schedule-III and therefore it does not constitute a supply within the meaning of section 7 of the GST laws and therefore GST is not applicable on such sale.

Observations & Ruling by the AAAR

- The AAAR observed that the transaction involves dividing of the vacant land into multiple plots and construction or development of common facilities and then selling of such developed plots of land, along with common facilities, by the taxpayer to the individual buyers. Also, the AAAR observed that there is no evidence submitted by the taxpayer which proves that the price charged by the taxpayer for plots sold does not include the price of the common facilities developed. AAR further stated that due to lack of any supporting, the transaction will be considered a sale of developed land only, since the plan approval authority clearly mandates development of common facilities in the land, prior to its sale;
- The AAAR upon perusal of the definition of ‘consideration’ as per section 2 of the CGST Act, 2017 and value of supply as per section 15 of the CGST Act, 2017, concluded that the expense will undoubtedly be included in the value of supply as per the provisions of section 15(b) of the CGST Act, 2017. Hence, the activity will be squarely covered under the scope of taxable service i.e., ‘construction of civil structure or a part thereof, intended for sale to a buyer.’ under clause(b) of paragraph 5 of Schedule-II of the CGST Act, 2017 and will not fall under entry no:5 of Schedule-III of the CGST Act, 2017;
- The AAAR further added that sale of developed plot is not equivalent to sale of land but is a different transaction. Sale of such developed plot tantamount to supply/rendering of service. The taxpayer’s sales price includes the cost of the land as well as the cost of common amenities as mentioned above, on a proportionate basis;
- The AAAR concluded that the activity is not covered under entry no:5 of Schedule-III of the CGST Act, 2017 as contended, but it is a supply of taxable service involving ‘construction of civil structure falling under the head ‘construction services’ appearing at entry no:3 of notification no:11/2017-CT(R) dated 28 June 2017 and GST

at the rate of 18% is payable on the sale of developed plots;

- The AAAR, confirms the Advance Ruling no:GUJ/GAAR/R/11/2020 dated 19 May 2020 to the extent it has been appealed before and ruled that the taxpayer is liable to pay GST at on the given transaction at 18%.

[AAAR-Gujarat, Mr. Shree Dipesh Anil kumar Naik, order no:GUJ/GAAAR/APPEAL/2021/35, dated 22 December2021]

ITC availed on the input or input services can be utilized to pay GST on outward supply even if the inputs have no nexus with outward supply

Facts of the case

- M/s. Aristo Bullion Pvt ('Taxpayer') intends to engage in business of manufacturing as well as trading of gold & silver bullion and in the business of trading of castor oil seeds;
- The taxpayer intends procure raw material by paying appropriate GST for the manufacture of gold and silver bullion. The taxpayer also intends to procure raw materials from unregistered agriculturists for the business of castor oil seeds.

Question raised before AAR

Whether ITC balance available in the Electronic Credit ledger(ECL) procured for manufacture of gold & silver bullion can be utilized for the payment of outward tax towards trading of castor oil seeds?

Ruling by the AAR

AAR Gujarat vide order no:GUJ/GAAR/R/15/2021 dated 27 January 2021 held that the ITC available in the ECL procured on raw materials for manufacture of gold and silver cannot be utilized for payment of outward tax of trading of castor seeds in terms of section 16(1) of the CGST Act, 2017.

Contentions of the Taxpayer

- The taxpayer quotes examples of "D mart", "Big Bazaar", "Central Mall", "Croma", "Star Bazaar", etc. wherein the businesses are engaged in diverse range of products and utilizes the ITC availed for the payment of GST on outward supply of various items in terms of section 16(1) of the CGST Act, 2017;
- The taxpayer further quoted various cases like Tally Solutions (P.) Ltd. v. CCE [2020] 41 G.S.T.L. 520 (TRI. - BANG.), Pipavav Shipyard Ltd. v. CCE & ST [2016] etc., wherein it is held that the Cenvat credit is available as common pool for the payment of central excise duty or service tax;
- The taxpayer further stated that the ITC availed on procurement of gold and silver Dore bars can be utilized for the payment of outward supply of entire business, in terms of section 16(1) of the CGST Act, 2017.

Observations and ruling by the AAAR

- The AAAR set aside the ruling given by AAR stating that the inward supply of gold and dore bars are intended to be used in the business of appellant as it satisfy the condition

of 'furtherance of business' in terms of section 16(1) of the CGST Act, 2017;

- The AAAR stated that the section 16(1) of the CGST Act, 2017 does not prescribe the manner of utilization of ITC for outward supply;
- The AAAR also stated that the ITC availed on procurement of raw materials for manufacturing gold bullions can be used for making payment of outward supply of castor oil seeds, in terms of section 49(4) of the CGST Act, 2017;
- Further, the AAAR stated that the amount of ITC available in ECL of the taxpayer can be utilized for the payment of outward supply by combined reading of section 16(1), section 2(82), section 49(4) of the CGST Act, 2017.

[AAAR-Gujarat, M/s. Aristo Bullion Pvt. Ruling no:36/GAAAR/2021, dated 22 December 2021]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Amendment in export policy of human hair

The export policy of human hair, unworked, whether or not washed or scoured, waste of human hair or any other form of raw human hair under ITC (HS) code 0501 has been put under restricted category, with immediate effect.

[Notification no:51/2015-2020 dated 25 January 2022]

TRADE NOTICE

Extension of date for mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) through the common digital platform to 31 March 2022

- The transition period for mandatory filing of applications for Non-Preferential Certificate of Origin through the e-CoO Platform has been extended till 31st March 2022;
- The existing systems for submitting and processing non-preferential CoO applications in manual/ paper mode is permitted for the stated time period and the electronic system is not being made mandatory;
- Feedbacks and suggestions for further ease of operations, received from exporters and issuing agencies are duly being taken into consideration. Various enhancements rolled out or proposed to be rolled out are:
 - Bulk upload of line items from file (to save efforts on keying-in each item);
 - Creation of duplicate/cloned application from an existing application (to save efforts on repetitive entries);
 - E-wallet facility for bulk payments of user charges (to avoid payment gateway interaction in each CoO submission);
 - Aadhaar e-sign facility for authentication(in-lieu of Digital Signature Certificates).
- Exporters and issuing agencies already onboarded are advised to make maximum use of the e-CoO platform for process familiarisation and ease of operations;
- The issuing agencies are also advised to issue suitable advisories to the members/exporters to register and

familiarise with the e-CoO platform before the stated timelines;

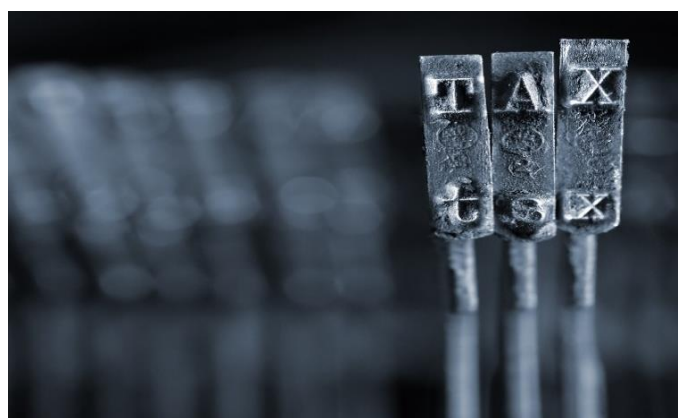
- Agencies as notified under Appendix-2E are required to ensure they are onboarded before 31st March 2022, failing which the agencies shall be de-notified;
- The concerned agencies may reach out over email to ddg2egov-dgft@gov.in for any guidance or clarifications in regard to the on-boarding process;
- Any other technical/procedural issues may be brought to the attention of the CoO helpdesk within the time prescribed. For guidance on exporter registration and application submission process, the help manual & FAQs may be accessed on the e-CoO platform landing page (<https://coo.dgft.gov.in>).

[Trade Notice no:32/2021-22 dated 24 January 2022]

Procedures for application for Tariff Rate Quota (TRQ) under FTA/CECA for FY2022-23

- The details of allocation of Tariff Rate Quota (TRQ) under various FTA/CECA are notified. The procedure for application of TRQ has been laid down in Annexure I, II and III of Appendix 2A of the Handbook of Procedure;
- TRQ applications should not be submitted as ‘Licence for Restricted Imports’;
- The applicant may navigate to the DGFT Website to apply online as follows-- DGFT Website (<https://dgft.gov.in>) --> Services --> Import Management System --> Apply for TRQ;
- For guidance on these e- processes, the Help manual & FAQs may be accessed on the DGFT Website --> Learn --> ‘application help & FAQs’;
- For assistance the taxpayers may utilize any of the following channels:
 - Raise a ticket through the DGFT Helpdesk service under Services --> ‘DGFT Helpdesk Service’;
 - Call the toll-free Helpdesk number;
 - Send an email to the Helpdesk on dgftedi@gov.in

[Trade Notice no:33/2021-22 dated 27 January 2022]



NEWS FLASH

1. “GST brakes on growing digital economy”
<https://www.financialexpress.com/opinion/gst-brakes-on-growing-digital-economy/2417680/>
[Source: Financial Express, 28 January 2022]
2. “Education Budget 2022: Higher GDP allotment and less GST is needed for the sector - here’s why”
<https://www.timesnownews.com/education/article/education-budget-2022-higher-gdp-allotment-and-less-gst-is-needed-for-the-sector-heres-why/854444>
[Source: Times Now, 31 January 2022]
3. “GST on card payments: Why Budget 2022 must remove this tax on tax provision | OPINION”
<https://www.indiatoday.in/opinion-columns/story/gst-card-payments-budget-2022-tax-provision-1906639-2022-01-31>
[Source: India Today, 31 January 2022]
4. “Budget 2022: Realtors seeks input tax credit under GST to boost housing segment”
<https://www.firstpost.com/business/union-budget-2022-budget-2022-realtors-seeks-input-tax-credit-under-gst-to-boost-housing-segment-10334091.html>
[Source: First Post, 31 January 2022]
5. “Why GST Has Taken Five Long Years To Open Old Wounds Of Centre-State Relations”
<https://www.outlookindia.com/business/why-gst-has-taken-five-long-years-to-open-old-wounds-of-centre-state-relations-news-50290>
[Source: Outlook India, 30 January 2022]

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

Bengaluru
SV Tower, No. 27, Floor 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA

Chennai
No. 443 & 445, Floor 5, Main Building
Guna Complex, Anna Salai, Teynampet
Chennai 600018, INDIA

Delhi NCR - Office 1
The Palm Springs Plaza
Office No. 1501-10, Sector-54
Golf Course Road
Gurugram 122001, INDIA

Delhi NCR - Office 2
Windsor IT Park
Plot No: A-1, Floor 2
Tower-B, Sector-125
Noida 201301, INDIA

Goa
701, Kamat Towers
9, EDC Complex, Patto
Panaji, Goa 403001, INDIA

Hyderabad
1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA

Kochi
XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA

Kolkata
Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA

Mumbai - Office 1
The Ruby, Level 9, North West Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA

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

Pune - Office 1
Floor 6, Building # 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

Pune - Office 2
Floor 2 & 4, Mantri Sterling, Deep
Bungalow Chowk, Model Colony,
Shivaji Nagar, Pune 411016, INDIA

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 ©2022 BDO India LLP. All rights reserved.

Visit us at www.bdo.in

