

# INDIRECT TAX

## Weekly Digest

13 April 2022  
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## GOODS & SERVICES TAX

### JUDICIAL UPDATES

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

#### EPABX system along with its installation and commissioning for railways is taxable at 12% GST

##### Facts of the case

- M/s. Intellicon Private Limited, ('Taxpayer'), submitted that it supplies Electronic Private Automatic Branch Exchange (EPABX) system along with its installation and commissioning. Installation of a complete EPABX system inter-alia requires other equipment along with laying of cables through the wall/duct/conduit/ceiling at the premises of the customers on the basis of their requirement;
- EPABX system is a private telephone network used by the organizations for various types of communication, either between the employees or with the outside clients. The EPABX works like an exchange that sends, receives and forwards calls from the organization to the outside world. It also helps the staff to communicate among them free of cost.

Taxpayer operates with two types of contracts with respect to their supply as below:

- Supply, installation and commissioning of EPABX system along with laying cables through wall, duct, conduit and earthing ('contract I');
- Supply, installation and commissioning of EPABX machine involving cabling from EPABX machine to main distribution frame ('contract II')

##### Question before the AAR

Whether the entry no:3(v) of the notification no:11/2017-CT(R) dated 28 June 2017 (Rate notification), as amended from time to time, is applicable to supplies by Taxpayer under the contract I and contract II and resultantly, whether such supplies are subjected to 12% rate of GST?

##### Contention of the Taxpayer

- The taxpayer submitted that supplies made under contract I and contract II are covered under entry no:3(v) of the rate notification, as amended from time to time;
- Taxpayer also placed reliability on section 2(119) of the CGST Act, 2017 which provides the definition of works contract as "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;
- Further, the taxpayer submitted a sample contract having the contract no: GEMC-511687702286858 dated 18 August 2021 of West central railway, railway in relation to layout the applicability of entry no:3(V) of the rate notification and stated that the supply made by it to railways qualify for concessional rate of 12% of GST;
- Taxpayer also relied on the rulings of the following cases in addition to the of submissions of the above:
  - Hon'ble Apex Court in case of M/s. Kone Elevator India Pvt. Ltd. Vs State of Tamil Nadu and others [2014 (5) TMI 265-Supreme Court]
  - Hon'ble Bombay High Court in case of Otis Elevator Company (India) Ltd. Vs Superintendent of Central Excise, Range-I [2003 (151) ELT 499 (BOM)]
  - Hon'ble Tribunal in the matter of Blue Star Limited Vs Commissioner of Central Excise, Jaipur [2002 (143) ELT 391 (Tri. -Del.)]
  - Authority for Advance Ruling, Gujarat in case of M/s. The Varachha Co. Op. Bank Ltd. [2021 (8) TMI 736-AAR, Gujarat]

### Observations and Ruling by the AAR

- The AAR found that the EPABX system come into existence by assembly and connection of various goods/components, wherein transfer of property of such goods is involved in the execution of said contracts;
- The process of dismantling, some parts of the EPABX system such as cables, connectors may even be damaged/ may not be usable again;
- The AAR referred to CBEC order no:58/1/2002-Cx dated 15 January 2002 which in para(e), 5(iv) has clarified that:
  - If items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods;
  - If the goods are incapable of being sold, shifted and marketed without first being dismantled into component parts, the goods would be considered as immovable and therefore not excisable to duty.
- The AAR also stated that the subject supply pertained to railways as it was for supply in railway office. As per section 2(3)(d) Railways Act, 1989 railway includes all offices and any other works constructed for the purpose of, or in connection with railway;
- The AAR also referred to the case law of Municipal Corporation of Greater Bombay & ors. V. Indian Oil Corporation Ltd. [199 Supl. SCC 18], wherein one of the questions which Hon'ble Supreme Court considered was whether a petrol tank, resting on earth on its own weight without being fixed with nuts and bolts, had been erected permanently without being shifted from place to place. It was pointed out that the test was one of permanency; if the chattel was movable to another place of use in the same position or liable to be dismantled and re-erected at the later place, if the answer to the former is in the positive it must be a movable property but if the answer to the later part is in the positive then it would be treated as permanently attached to the earth;
- Based on above observations the AAR held that the subject supplies of EPABX system for railways is covered at entry no:3 (v) of the rate notification and liable to 12% GST.

*[GST-AAR, M/s. Intellecton Pvt Ltd. Advance ruling no:GUJ/GAAR/R/2022/09, dated 07 March 2022]*

### Works contract service supplied to government entity meant for commerce/industry is taxable at 18%

#### Facts of the case

- M/s. Siddhartha Constructions ('Taxpayer') are into business of works contracts and executed works for Telangana State Industrial Infrastructure Corporation Limited ('TSIIC');
- The taxpayer has constructed IT towers at Duddada, Kondapaka Mandal, Siddipet District for the TSIIC;
- As per the memorandum of association filed by the taxpayer, TSIIC is owned by the Government of Telangana with paid up equity share capital of the Government of Telangana in excess of 90%.

#### Question before the AAR

- In view of the services provided by the taxpayer to TSIIC, is the taxpayer eligible to avail the concessional rate of

GST at 12% as prescribed in of entry no:3(vi) of the notification no:11/2017- CT(R) dated 28 June 2017 (Rate notification)?

- If not, what is the appropriate rate and classification of GST to be charged by the taxpayer?

#### Contention of the Taxpayer

- The taxpayer has submitted that as per rate notification 'Government entity' means an authority or a board or any other body including a society, trust, corporation which is:
  - Set up by an Act of Parliament or State Legislature; Or
  - Established by any Government, with 90 per cent. or more participation by way of equity or control, to carry-out a function entrusted by the Central Government, State Government, Union Territory or a local authority.
- Accordingly, TSIIC would be wholly owned by Government of Telangana and qualifies to be a government entity under this definition;
- Further, taxpayer has submitted reference to entry no:3(vi) of the rate notification where the rate of tax of the below service is specified at the rate of 12%. 'The works contract service by way of construction, erection, commissioning. Installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;'
- In addition to above, the taxpayer has submitted the memorandum of association of TSIIC in which clause III(a)(3) states that the company pursues the objectives to implement the schemes of incentives, subsidies and the like formulated by the Government of Telangana or Government of India or other authorities or institutions and to administer such schemes of incentives from time to time in the interest of establishments and development of industries;
- Thus, TSIIC organization works to further the policies of the State Government, Central Government and Local Government for development of industries in the State of Telangana;
- According to the above submission, the taxpayer is of the view that GST is applicable at the rate of 12%.

#### Observations and Ruling by the AAR

- The AAR is of the view that the works contract service is supplied to government entity. However, the works contract executed by the taxpayer for construction of IT towers for TSIIC falls under exception to entry no:3(vi) of rate notification wherein the civil structure is meant for commerce/industry;
- Accordingly, the supply of works contract services as specified above is chargeable to GST under the rate of 18%.

*[AAR-Tamil Nadu, M/s. Siddhartha Constructions, Ruling No: 11/2022, A.R.Com/16/2021, dated 02 March 2022]*

### Implementation, operation and maintenance of Toll Management System (TMS) is taxable @18%

#### Facts of the case

- M/s. Tecsidel India Private Limited ('Taxpayer') is engaged in development and integration of advanced information

systems along with installation & commissioning of TMS;

- The taxpayer was awarded the project by M/s. Adani Road Transport Ltd. (ARTL) for performance of design, engineering, supply, testing, freight & transit insurance, erection, installation and commissioning and trial run of TMS as per tender specification in complete along with associated civil works, supply of mandatory spares and on site manpower support for maintenance of TMS for 24 months for the project of Tolling, Operation, Maintenance & Transfer of National Highway stretch from Palanpur-Randhanpur-Samkhiyali, section of NH-27 in the State of Gujarat.

#### Questions before the AAR

- Based on the above facts, the taxpayer had filed an application to determine the GST rate applicable to the composite supply of works contract.
- Whether it is classified under 3(vi)/(iv) of the notification no:11/2017-CGST(R) dated 28 June 2017 (Rate notification) attracting GST at 12% or at 18% under the residual category of the rate notification?

#### Observations and Ruling by the AAR

- Entry no:3 (vi) of the rate notification covers a composite supply of works contract provided to the Government authority or a Government Entity and the civil structure or original works must be predominantly meant for use other than for commerce, industry, or any other business or profession;
- The TMS works is supplied by the taxpayer to M/s. Adani and not to the Government Authority or Entity. Further, the activity of collection of toll excludes the TMS works from the category of 'predominantly meant for use other than for commerce, industry, or any other business or profession'. Thus, conditions of this entry no:3(vi) are not satisfied in subject matter;
- Entry no:3(iv) of the rate notification covers a composite supply of works contract by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, Bridge, tunnel, or terminal for road transportation for use by public;
- TMS neither provides real time information about traffic conditions nor is it involved in construction of road, bridge, tunnel or transport terminal & thus, conditions of this entry no:3(vi) are not satisfied in subject matter;
- The taxpayer submitted that since its services will become part of road contract it seeks clarification regarding the rate at which it shall invoice to Adani, as rate of GST in case of road construction contract is 12%. It is understood from the service order that the contract between taxpayer and Adani is not for supply of road construction service along with TMS but exclusively and simply for TMS supply;
- Thus, the transaction falls under the residual category 3(xii) of the rate notification no:11/2017-CT(R) dated 28 June 2017 and attracts GST @18%.

*[AAR-Gujarat, M/s Tecsidel India Private Limited, Ruling no:GUJ/GAAR/R/2022/10, dated 07 March 2022]*

## CUSTOMS

### NOTIFICATION

#### Second tranche of tariff concessions as per India Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA)

CBIC has amended the notification no:25/2021-Customs dated 31 March 2021 to give effect to second tranche of tariff concessions as per CECPA.

*[Notification no:17/2022 dated 31 March 2022]*

#### Extended exemption to specified goods imported on procurement by EOU's, STP Units, EHTP units etc. for specified purposes

CBIC has extended exemption to specified goods imported on procurement by EOU's, STP Units, EHTP units etc. for specified purposes from 1 April 2022 to 1 July 2022.

*[Notification no:18/2022 dated 31 March 2022]*

#### Extended the exemption from Integrated Tax and Compensation on goods imported against AA/EPCG authorizations

CBIC has extended the exemption from Integrated Tax and Compensation Cess upto 30 June 2022 on goods imported against AA/EPCG authorizations from 31 March 2022.

*[Notification no:19/2022 dated 31 March 2022]*

#### Amendment in the name of one of the agencies allowed to import cut and polished diamonds

CBIC has substituted the name of M/s International Institute of Diamond Grading & Research India Pvt Ltd by M/s De Beers India Pvt Ltd with in the list of laboratory/agency allowed to import cut and polished diamonds subject to conditions.

*[Notification no:20/2022 dated 06 April 2022]*

## FOREIGN TRADE POLICY (FTP)

### PUBLIC NOTICE

#### Track & trace system for export of drug formulations extended till 31 March 2023

The date for implementation of track and trace system for export of drug formulations with respect to maintaining the parent-child relationship in packaging levels and its uploading on central portal has been extended up to 31 March 2023 for both SSI and non-SSI manufactured drugs.

*[Public notice no:01/2015-20 dated 04 April 2022]*

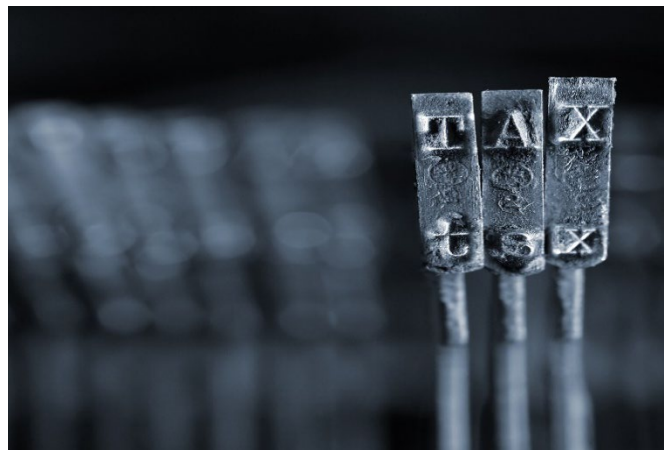
#### Amendment in details of an authorized agency under Appendix 2E of FTP, 2015-2020

The name of 'Ernakulam Chamber of Commerce', enlisted under Appendix 2E (List of agencies authorised to issue certificates of origin- non preferential) of FTP 2015-20, has been amended as 'Kerala Chamber of Commerce & Industry' along with the contact details of the chamber.

*[Public notice no:02/2015-20 dated 07 April 2022]*

## NEWS FLASH

1. "GST rate for COVID-19 medicines pegged at 5% GST: govt"  
<https://economictimes.indiatimes.com/news/economy/policy/gst-rate-for-covid-19-medicines-pegged-at-5-gst-govt/articleshow/90638357.cms>  
[Source: Economic Times, 04 April 2022]
2. "GST collections hit all-time high of Rs 1.42 lakh crore"  
<https://indianexpress.com/article/business/economy/gst-collections-hit-all-time-high-of-rs-1-42-lakh-crore-7847074/>  
[Source: Indian Express, 02 April 2022]
3. "Exporters in dilemma for recovery notices of GST refund"  
<https://cfo.economictimes.indiatimes.com/news/exporters-in-dilemma-for-recovery-notices-of-gst-refund/90697714>  
[Source: Economic Times, 07 April 2022]
4. "Fruit-based fizzy drinks to draw 40% rate under GST after Gujarat ruling"  
[https://www.business-standard.com/article/economy-policy/fruit-based-fizzy-drinks-to-draw-40-rate-under-gst-after-gujarat-ruling-122040700754\\_1.html](https://www.business-standard.com/article/economy-policy/fruit-based-fizzy-drinks-to-draw-40-rate-under-gst-after-gujarat-ruling-122040700754_1.html)  
[Source: Business Standard, 07 April 2022]
5. "Brick Manufacturing, Trading To Attract 6% GST Without ITC; 12% With Credit"  
<https://www.outlookindia.com/business/brick-manufacturing-trading-to-attract-6-gst-without-itc-12-with-credit-news-189624>  
[Source: Outlook India, 01 April 2022]



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