INDIRECT TAX
Weekly Digest

01 November 2022
www.bdo.in

GOODS & SERVICES TAX

LEGISLATIVE UPDATES

NOTIFICATION

Extension of the due date of filing GSTR 3B

The due date for furnishing Form GSTR-3B for the month of September 2022 is extended from 20 October 2022 to 21 October 2022.

[Notification no:21/2022 dated 21 October 2022]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Fair Trade Premium (FTP) forms part of the consideration and is liable to GST

Facts of the case

- M/s. Fair Trade Alliance Kerala (Taxpayer) being an association of over 4000 small farmers, focuses on issues of sustainable farming and trade justice. The intention is to enable farmers to access the global and PAN-India markets and improve their income following principles of 'fair trade'
- Fair Trade Minimum Price (FTMP) is the minimum price that must be paid by buyers to producers for a product. FTP represents the extra sum of money received by the farmers and workers for their produce or labour in addition to the price of the commodity, and FTP is calculated as a percentage of the volume of produce sold
- FTP is not paid by any institution or organisation but is a burden borne by the ultimate consumer. It is reflected in the higher market price which the consumer pays for the fair-trade labelled product picked up from the shop shelves
- After procurement from the farmers, the agricultural produce is sold to another company registered under GST, which is also fair trade certified. The purchaser company would export the goods and raise an invoice on the buyer abroad for a price that is inclusive of the premium at the percentage prescribed for each product
- The premium received by the Taxpayer is allocated for purposes decided by the premium committee of the Taxpayer like converting farms to organic production, etc.

Questions before the AAR

- Whether the Taxpayer engaged in the supply of agricultural produce through the concept of fair trade is liable to pay GST on a component of 'FTP'
- Whether the component of 'FTP' constitutes consideration or additional consideration for the supply of goods made by the Taxpayer
- Whether a component of 'FTP' can be treated as an ex-gratia payment that is not liable for GST either as a supply of goods or as a supply of services

Contention by the Taxpayer

- The Taxpayer submitted that the value of FTP does not form part of the consideration for the supply made by the Taxpayer, and hence, is not liable to be included in the value of the supply of goods

- An essential ingredient of such a sale is the 'price' mutually agreed between the parties. Only such amounts which are made towards or in respect of sale alone can be treated as 'consideration'
- When the buyer undertakes to export goods to a foreign country, the invoice raised on the foreign buyer would have a break-up of the sales price and the FTP component
- The component of FTP does not form part of the price bargain between the Taxpayer and the first buyer, who is the exporter
- FTP is in nature of an 'ex gratia payment' and is not liable for GST

Observations and Ruling by the AAR

- The AAR noted that the Taxpayer receives the FTP from the recipient of supply and FTP has a clear nexus with the supply of goods as it is calculated as a percentage of the volume/quantity of each produce and is collected from the ultimate consumer as a component of the price of the product
- Any payment made or to be made whether in money or otherwise in respect of or in response to the inducement of supply of goods or services or both forms part of the consideration and should form part of the value of taxable supply
- The definition of the term consideration is inclusive which not only includes the payment received by the supplier in relation to the supply from the recipient but also from any other person
- The FTP received by the Taxpayer is nothing but part of the price that is paid in response to the supply of the goods made by the Taxpayer and invariably constitutes an additional consideration received in respect of the supply of goods
- Based on the above observations the AAR held as follows:
  - The FTP forms part of the consideration and value of taxable supply of the goods supplied and the Taxpayer is liable to pay GST on the same rate as applicable to the respective goods supplied
  - The component of 'FTP' does constitute consideration or additional consideration for the supply of goods made by the FTAK
  - 'FTP' cannot be treated as an ex-gratia payment which is not liable for GST either as a supply of goods or as a supply of services

  [AAR-Kerela, M/s. Fair Trade Alliance Kerala, Ruling no:KER/134/2021 dated 18 February 2022]

Bus air-conditioning system inclusive of the rooftop unit, compressor and installation kit for one consolidated price to a single customer merits classification under heading 8415 20 10

Facts of the case

- M/s. Eberspaecher Suetrak Bus Climate Control Systems Pvt Ltd (Taxpayer) is engaged in the manufacture of bus rooftop air conditioning systems which include rooftop units, compressors and installation kits. The Taxpayer also undertakes the installation and servicing of air conditioning systems on the specific requirement of the customer
- The Taxpayer provides the installation of a rooftop and air conditioning system, fitted on mobile vehicles to control the inside temperature and provide adequate ventilation. The system consists of three components (units) and the rates adopted by the company are listed below:

S.No.	Item	GST rate
1	Rooftop unit (as a standalone unit without installation kit and compressor	28%
2	Complete Bus air-conditioning system (sold as a complete unit with installation kit and compressor)	28%
3	Compressor (sold independently with or without alteration i.e. not as a part of the air conditioning system)	18%

Questions before the AAR

- What would be the classification of a bus air-conditioning system inclusive of a rooftop unit, compressor and installation kit for one consolidated price to a single customer
- What would be the classification of the rooftop unit, compressor and installation kit sold to a single customer for a single fitting at the customer end when the price is negotiated and agreed upon separately for each unit
- What would be the classification of the following goods when supplied individually:
  - Rooftop unit alone
  - Rooftop unit and compressor
  - Compressor
  - Installation Kit
  - Compressor and installation kit
  - Rooftop unit and installation kit
  - Rooftop unit and compressor

Observations and Ruling by the AAR

- With respect to the first question, the AAR examined and observed that
  - Chapter 84 of the Customs Tariff Act, 1975 (CT Act) covers machinery and mechanical appliances and parts thereof
  - Heading 8415 covers air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity can't be separately regulated
  - Heading 8415 20 covers air conditioning machines of a kind used for persons in motor vehicles and heading 8415 2010 covers the said machines for buses
  - In the present case, the Taxpayer supplies the air conditioning system, comprising of a rooftop unit, compressor and installation kit, as a single product for a consolidated price to a single customer, exclusively for buses. Thus, the air conditioning system for buses merits classification under heading 8415 20 10 as the same is specifically classified under the said heading
- With respect to the second question on the classification of the rooftop unit, compressor and installation kit sold to a single customer for a single fitting at the customer end, but price negotiated and agreed separately for each unit, it was noted that:
  - The Taxpayer is undoubtedly supplying the bus air conditioning system only comprising all the three major components as in the case of the first question, but the prices of individual components have been

negotiated and agreed upon separately for each of the units
  - It is an admitted fact that these parts are meant for a single fitting at the customer's end. In other words, the entire air conditioning system is fitted into a particular bus, and for a particular customer except that the components are negotiated and agreed upon separately
  - The AAR perused the definition of 'composite machines' and observed that composite machines consisting of two or more machines fitted together to form a whole are to be classified as if consisting only of that component or as being that machine, which performs the principal function
  - In the instant case when the rooftop unit, compressor and installation kit are supplied together to a single customer for a single fitting at the customer's end, it amounts to the supply of a composite machine designed for the purpose of performing the principal function of a bus air conditioning system, and hence, such supply is classifiable under the heading 8415 20 10 and attracts GST accordingly
- With respect to the third question, the AAR noted that the items either individually or in combinations, are to be classified as parts of the composite machine, as they are suitable for solely or principally with a particular composite machine i.e., air conditioning system for the bus. Thus, they merit classification under the heading 8415 90 00 i.e., as parts of air conditioning machines and attract GST accordingly;
- Based on the above observations the AAR held as follows:
  - The bus air-conditioning system inclusive of the rooftop unit, compressor and installation kit for one consolidated price to a single customer merits classification under heading 8415 20 10
  - The rooftop unit, compressor and installation kit are sold to a single customer for a single fitting at the customer end, but the price negotiated and agreed separately for each unit also merits classification under heading 8415 20 10
  - The rooftop unit or installation kit sold individually or in combinations thereof, as mentioned below, merit classification under heading 8415 90 00. The compressor sold alone merits classification under tariff heading 8414 80 11:
    - Rooftop unit alone
    - Rooftop unit and compressor
    - Installation kit
    - Compressor and installation kit
    - Rooftop unit and installation kit
    - Rooftop unit and compressor

    [AAR-Karnataka, M/s. Eberspaecher Suetrak Bus Climate Control Systems Pvt Ltd, KAR ADRG 34/2022 dated 14 September 2022]

EXCISE/SERVICE TAX/CUSTOMS

Refund of Customs duty including CVD and SAD shall be availed where the payment of the same made post-GST implementation

Facts of the case

- M/s. Clariant Chemicals India Ltd (Taxpayer) is a manufacturer of excisable goods who procured certain inputs such as pigments, poly-ether alcohols, etc. from Germany and filed Bill of Entry no:2282496 on 29 June 2017 and cleared the goods upon payment of Customs duty including Countervailing Duty (CVD) and Special Additional Customs Duty (SAD) on dated 10 July 2017
- The Taxpayer received the goods at its factory premises on 19 July 2017 but the said payment of CVD and SAD could not be reflected in the ER-I return as the due date was already over before the goods reached the factory
- Taxpayer sought for a refund of CENVAT credit under Section 11B of the Central Excise Act, 1944
- The tax authority rejected the refund application vide Order-in-Original and the Taxpayer's unsuccessful attempt before Commissioner (Appeals) brought the dispute before the CESTAT

Observations and Ruling by the CESTAT

- CESTAT has taken up the matter noting that the CESTAT is empowered to deal with all kinds of the claim made under the repealed Central Excise Act, 1944 and the amended Finance Act, 1994
- CESTAT observed that it is undisputed that the Taxpayer had paid the CVD and SAD after the appointed date for implementation of the CGST Act, 2017, and that upon receipt of goods at his factory premises on 19 July 2017, there was a window open for a considerable period of time to record the un-availed CENVAT credit through Form GST TRAN-I but it was a mistake committed by the Taxpayer by not availing the same within the stipulated time frame
- It is pertinent to note that the Taxpayer's eligibility to take CENVAT credit is undisputed and only because of procedural lapse the Taxpayer could not avail of CENVAT credits in the GST regime, for which, it sought a refund which was also envisaged under Section 142(6)(a) of the CGST Act that deals with a claim for CENVAT credit after the appointed date under the existing law
- It was also observed that the CENVAT credit balance was not carried forward to the Taxpayer's account on the appointed date since it was not due. Therefore, in terms of Section 142(6)(a) of the CGST Act, the Taxpayer is eligible to get the refund of credit by cash except where unjust enrichment is alleged or established against the Taxpayer
- The CESTAT also noted that the Taxpayer is also otherwise eligible to avail transitional credit through filing Form GST TRAN-I as per the Honorable Supreme Court order in Union of India & Anr. Vs. Filco Trade Centre Pvt. Ltd. & Anr. However, in view of the CESTAT observations that such CENVAT credit amount shall be paid to the Taxpayer in cash, they cannot avail of dual benefit in Form GST TRAN-I once the order of the CESTAT is duly complied by the Tax authority by the closing date of the window
- The CESTAT allowed the appeal and set aside the order passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), and stated that the Taxpayer is eligible to get a refund of INR.1.1mn paid against CVD and SAD with applicable interest, if any,

within a period of two months of the communication of this order

[CESTAT-Mumbai, M/s. Clariant Chemicals India Ltd. Vs. Commissioner of Central Excise & Service Tax, dated 18 October 2022]

CUSTOMS

NOTIFICATION

Imposition of Countervailing Duty (CVD) on Saccharin Imported from Thailand

- 'Saccharin in all its forms' falling under tariff item 2925 11 00 of the First Schedule to the CT Act, originating in or exported from China PR and imported into India, the designated authority in its final findings, vide notification no:6/18/2018-DGAD, dated the 19 June 2019, had come to the conclusion that the saccharin exported to India from China PR at subsidised value, thus, resulting in material injury to the domestic industry. On the basis of the aforesaid findings, the Central Government had imposed a CVD on the saccharin, vide notification no:2/2019-Customs (CVD) dated 30 August 2019
- The designated authority, vide its initiation notification no:07/05/2022-DGTR, dated 17 March 2022, had initiated an investigation in the matter of circumvention of the aforesaid CVD and the consequent need to extend such a CVD on imports of 'saccharin in all its forms' (subject goods) falling under tariff item 2925 11 00 of the First Schedule to the Customs Tariff Act, 2017 originating in, or exported **from Thailand** into India and had recommended imposition of the existing CVD on the imports of 'saccharin in all its forms', originating in or exported from Thailand
- Accordingly, the Central Government, after considering the final findings of the designated authority has imposed a CVD of 20% on 'saccharin in all its forms' originating in or exported from Thailand into India. The levy shall be effective from the date of initiation of the anti-circumvention investigation by the designated authority, vide its initiation notification no:07/05/2022-DGTR, dated 17 March 2022, and will be co-terminus with the CVD on 'saccharin in all its forms' as levied vide notification no:2/2019-Customs (CVD), dated 30 August 2019 (unless revoked, superseded or amended earlier), and the CVD shall be paid in Indian currency

[Notification no:4/2022 (CVD) dated 21 October 2022]

INSTRUCTIONS

Acceptance of Electronic Certificate of Origin (e-CoO) issued under India-UAE CEPA

- Under the India-United Arab Emirates Comprehensive Economic Partnership Agreement (India-UAE CEPA) stating, inter-alia, that the importers are facing difficulties in availing preferential tariff benefits on the basis of e-CoO issued by the issuing authority of UAE, although the said agreement specifically provisions for the same
- It is hereby clarified that an e-CoO, issued electronically by the issuing authority of UAE, is a valid document for the purpose of claiming preferential benefit under India-UAE CEPA, provided that the e-CoO has been issued in the prescribed format, bears an electronically printed seal and signatures of the authorised signatory of the issuing authority, and fulfills all other requirements stated in notification no:39/2022-Customs(N.T.) dated 30 April 2022
- The specimen seals and signatures, circulated in advance, shall continue to be used to verify the genuineness/authenticity of e-CoO. In case of doubt, the matter shall be referred to the FTA cell (under the Directorate of International Customs) for initiating the verification process with the issuing authority of exporting country
- The e-CoO shall be mandatorily uploaded on e-Sanchit by the importer/Customs broker for availing preferential benefit, and the e-CoO particulars such as unique reference number and date, originating criteria, etc. shall be carefully entered while filing the bill of entry
- For defacement of CoO during out-of-charge, a printed copy of the e-CoO shall be presented to the customs officer, who shall cross-check the unique reference number and other particulars entered in the bill of entry with the printed copy of the e-CoO. This will be in lieu of defacing the original hard copy of a certificate of origin. In this regard, it may be recalled that a check has already been introduced in the system to disallow the use of the same CoO reference number in more than one bill of entry

[Instruction no:28/2022-customs, dated 27 October 2022]

SERVICE TAX

INSTRUCTIONS

Pre-deposit payment method for cases pertaining to Central Excise and Service Tax

- Appeals have been rejected by some Commissioner (Appeals) for non-compliance with pre-deposit requirements as mandated under Section 35F of the Central Excise Act, 1944(CEA) and Section 83 of the Finance Act, 1994 read with Section 35F of CEA, where such payments have been made through Form GST DRC-03 on common GST portal, by holding that, it is not a prescribed method of payment of such pre-deposit. The issue has also been referred to CBIC by the Honorableble High Court of Mumbai in the case of Sodexo India Services Pvt. Ltd Vs. Union of India & Ors, with the direction to examine and issue suitable instructions in this regard
- The form GST DRC-03 is prescribed for payment of Tax, Interest and penalty under sub-section 5 and 8 of both sections 73 and 74, and Section 129(1) of the CGST Act, 2017 or any other payment due in accordance with the provisions of the CGST Act, 2017 as specified in rule 142(2) and 142(3) of the CGST Rules, 2017, Further, in GST regime in connection with appeal mechanism under Section 107 of the CGST Act, 2017, rule 108 of CGST Rules, 2017 provides Form GST APL-01 for filing an appeal with an option of payment of admitted amount and pre-deposit through electronic cash/credit ledger. Thus, under GST Act also Form GST DRC-03 is not a prescribed mode for payment of pre-deposit
- Attention is invited to miscellaneous transitional provision sections 142(6)(b), 142(7)(a) and 142(8)(a) of CGST Act, 2017, which, inter-alia, provides that any credit, tax, interest, fine or penalty recoverable from the person before, on or after first July 2017 under the

existing law (Central Excise Act, 1944(CEA) and chapter V of Finance Act, 1994), shall be recovered as an arrear of tax under CGST Act, 2017. It is, however, settled that pre-deposit as a requirement for exercising the right to appeal neither is in the nature of duty nor can be treated as arrears under the existing law and hence cannot be said to be covered under transitional provisions of the CGST Act

- It is clarified that payments through DRC-03 under the CGST regime are not a valid mode of payment for making pre-deposits under Section 35F of CEA and Section 83 of Finance Act, 1994 read with Section 35F of CEA. There exists a dedicated CBIC-GST integrated portal (Circular no:1070/3/2019 dated 24 June 2019) https://cbic-gst.gov.in , which should only be utilised for making pre-deposits under CEA, Finance Act, 1994

  [Instruction no:CBIC 240137/14/2022-Service Tax Section-CBEC dated 28 October 2022]

FOREIGN TRADE POLICY (FTP)

PUBLIC NOTICE

Withdrawal of public notice no:06/2015-2020 dated 14 June 2021 regarding amendment in appendix 2T of FTP 2015-2020

DGFT public notice no:6/2015-2020 dated 14 June 2021 is withdrawn. In pursuance of notification no: S.O. 3515 (E) dated 29 July 2022 regarding the addition of 'cashew nuts and its products' to the first schedule to the Agricultural and Processed Food Products Export Development Authority Act, 1985 (2 of 1986), APEDA is designated as the agency authorized to issue RCMCs for cashew kernels, cashew nut shell liquid and kardanol, with immediate effect.

[Public notice no:33/2015-20 dated 25 October 2022]

NEWS FLASH

1. "Either Centre or state can initiate action for same offence, says GST Council"
   https://economictimes.indiatimes.com/news/economy/policy/either-centre-or-state-can-initiate-action-for-same-offence-saysgst-council/articleshow/95020603.cms
   [Source: Economic Times, 22 October 2022]

2. "18% GST applicable on Construction of Residential Apartments: AAR"
   https://www.taxscan.in/18-gst-applicable-on-construction-of-residential-apartments-aar/216952/
   [Source: Taxscan, 25 October 2022]

3. "No GST on notice pay, nominal canteen fees"
   https://timesofindia.indiatimes.com/business/india-business/no-gst-on-notice-pay-nominal-canteen-fees/articleshow/95068600.cms
   [Source: Times of India, 25 October 2022]

4. "GST offences up to Rs 5 crore may be decriminalised"
   https://www.financialexpress.com/economy/gst-offences-up-to-rs-5-crore-may-be-decriminalised/2730062/
   [Source: Financial Express, 25 October 2022]

5. "'Not supply': AAR rules out GST on canteen fees, notice period pay"
   https://www.business-standard.com/article/economy-policy/not-supply-aar-rules-out-gst-on-canteen-fees-notice-period-pay-122102500445_1.html
   [Source: Business Standard, 25 October 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

Chandigarh
Plot no 55, 5th Floor,
Industrial & Business Park,
Phase 1, Chandigarh 160002, INDIA

Chennai
No. 443 & 445, Floor 5, Main Building
Guna Complex, Mount Road, 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 Bunglow
Chowk, Model Colony, Shivaji Nagar, Pune
411016, INDIA

Visit us at www.bdo.in