

INDIRECT TAX

Weekly Digest

01 June 2022

www.bdo.in

GOODS & SERVICES TAX

LEGISLATIVE UPDATES

NOTIFICATION

Waiver of late fee on GSTR-4

Late fees for delay in filing GSTR-4 for FY 2021-22 is waived from 01 May 2022 to 30 June 2022.

[Notification no:07/2022 dated 26 May 2022]

INSTRUCTIONS

Deposit of tax during the course of search, inspection or investigation

CBIC has noted that some of the taxpayers after voluntarily depositing tax through DRC-03, have alleged use of force and coercion by the officers for making 'recovery' during search or inspection. Now, CBIC has issued instructions for officers regarding recovery and payment of tax during search, inspection & investigation.

- A taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the taxpayer by logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice (SCN) is permissible in terms of provisions of section 73(5) and section 74 (5) of the CGST Act (CGST Act), 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under section 50 of CGST Act;
- Recovery of taxes not paid or short paid, can be made under the provisions of section 79 of CGST Act only after following due legal process of issuance of SCN and subsequent confirmation of demand by issuance of adjudication order.

No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act, 2017 and rules made therein. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently;

- It is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/short payment of taxes before or at any stage of such proceedings
- It is also advised that if any complaint is received against any officer regarding use of force or coercion for payment of tax then the same may be enquired at the earliest and strict action will be taken after enquiry against the defaulting officer.

[Instruction no:01/2022 dated 25 May 2022]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

[Services of training and awareness programs on fire safety and security taxable at 18%](#)

Facts of the case

- M/s. Fire Prevent Systems ('Taxpayer') is engaged in providing training and awareness programs on fire safety and security. Further to provide training programs they have an academy, which is integral part of the M/s. Fire Prevent Systems, a sole proprietorship firm.
- The academy shall provide Diploma courses and training on fire prevention and a merit certificate issued for having successfully completed the course while abiding by the standards of International Accreditation Organisation (IAO) and NABET (National Accreditation Board for Education and Training). Presently the taxpayer pays GST @18%.

Questions before the AAR

What is the applicable GST rate on (Training Academy) Fire Prevention & Emergency Training and Awareness Programmes?

Contention by the taxpayer

The taxpayer stated that the training provided by them is subjected to GST @5% as per the notification which levies GST of 5% on Technical aids for education, vocational training.

Observations & ruling by the AAR

- The AAR noted that the taxpayer is referring to entry no:257 of schedule I of the notification no:1/2017-CT(R) dated 28 June 2017 which is as follows
Assistive devices, rehabilitation aids and other goods for disabled, specified in List 3 appended to this Schedule
- It is observed that the above entry is pertaining to the goods, whereas the taxpayer is rendering training services. Hence the rate as suggested in the notification corresponding to the entry is not relevant;
- The AAR analysed the entry no:69 of notification no:12/2017-CT(R) dated 28 June 2017 which attracts Nil rate;
- The said entry provides exemption on any services provided by a training partner approved by the National Skill Development Corporation (NSDC) or the Sector Skill Council in relation to-
 - The National Skill Development Programme implemented by the NSDC; or
 - A vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
 - any other scheme implemented by NSDC.
- The AAR noted that in order to avail this exemption, the taxpayer must provide details on whether they have been approved by NSDC as a training partner. Due to non-availability of the requisite details, the training program is not covered in the said notification;
- The AAR verified the entry no:30 of the notification no:11/2017-(CT) dated 28 June 2017. Based on the explanatory notes for classification of services under SAC 999293, this service code includes training or coaching provided by any institute or establishment with or without a certificate will attract 18% GST.

[AAR-Karnataka, M/s. Fire Prevent Systems, ruling no:KAR ADRG 16/2022 dated 17 May 2022]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

Right to exploit natural resources taxable at the rate of 18%

Facts of the case

- M/s Broadson Commodities Private Limited ("Taxpayer") is engaged in business of mining of sand. The taxpayer has executed a lease arrangement with the State Department of Mines for sand mining for which the taxpayer is required to pay lease charges to the State Government;
- The taxpayer deposited the tax liability under Reverse Charge Mechanism ("RCM") on the said lease charges paid to State Government on the rate applicable to sale of sand i.e. GST at the rate of 5%;
- The taxpayer filed an application before the Bihar AAR to know whether the taxpayer has rightly deposited tax under RCM at the rate of 5%;
- The AAR basis the findings and discussions, ruled that the taxpayer has correctly deposited the tax liability under RCM at the applicable rates;
- Aggrieved by the decision of the AAR, the tax authority preferred an appeal before the AAAR and made the below mentioned submissions.

Submissions by the Tax authority

- The tax authorities submitted that the AAR has erred in classifying the supply under category 997337 which is "Licensing services for the right to use minerals including its exploitation and evaluation";
- The tax authorities submitted that the taxpayer does not have any right to use the mineral but only has a right to extract the sand;
- Accordingly, service should be taxable at the rate of 18%.

Observation and ruling by the AAAR

- The AAAR agreed with the submissions of tax authority and observed that the leasing arrangement does not assign any right to use the natural resource;
- The lease arrangement in actual provides the taxpayer a right to exploit natural minerals. Accordingly, discharging tax liability at the rate applicable to goods does not hold good;
- The taxpayer is required to discharge GST liability at the rate of 18%.

[AAAR-Bihar, M/s. Broad Son Commodities Private Limited, Ruling no:AAAR/01/2021 appeal dated 23 August 2020]

No ITC on transfer pipeline and foundation/structural support of pipeline, used for unloading gases from vessel

Facts of the case

- M/s. SHV Energy Private Limited is a supplier of Liquefied Petroleum Gas (LPG) in bulk and in cylinders to domestic/other business' segments under the brand name of "Super Gas". SHV also supplies bulk LPG for industrial and auto LPG;
- The taxpayer has stated that they import LPG from outside India and stores or processes the same at various terminals located in India. Their Tuticorin terminal is contemplating expansion to increase the LPG capacity from 3,50,000 Metric Tons Per Annum (MTPA) to 12,00,000 MTPA;

- The expansion will involve suitable augmentation of existing facilities including utilities and offsite systems. The following expenditure is proposed to be incurred by them in the process of expansion amongst others:
 - Construction of transfer pipeline
 - Construction of refrigerated atmospheric storage tank
 - Construction of water tank which is a part of firefighting system
 - Construction of foundation/ structural support through piling.

Questions before the AAR

- Whether the taxpayer is eligible for ITC of GST paid on goods and services used for laying of transfer pipeline and the foundation/structural support for such pipeline, which is intended for unloading propane/butane from the vessel/Jetty to the terminal?
- Whether the taxpayer is eligible for availment of ITC of GST paid on goods and services used for setting-up refrigerated storage tank and ITC of goods and services used for foundation and structural support foundation tanks?
- Whether the taxpayer is eligible for availment of ITC of GST paid on goods and services used for set-up of fire water reservoir (tank) and ITC on goods and services used for foundation and structural support for such reservoir?

Contention of the taxpayer

- Transfer pipelines should be considered as part of the factory premises as defined under section 2(e) of the Central Excise Act, 1944 which states that "factory" means any premises, including the precincts there-of wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried-on or is ordinarily carried-on;
- With respect to the contention that the pipeline has not been added as additional 'place of business' in the GST registration, it is hereby submitted that, even if assuming that it was required to be added in the registration, the same is merely a procedural lapse and the credit eligibility cannot be rejected merely on this ground as eligibility to avail credit is not based on registration as a place of business. From a perusal of the above definition, the term factory includes any premises and precincts thereof. The precinct would mean an area around building or a place;
- The transfer pipelines are an important part of the complete manufacturing process in their business. Thus, such pipelines should be considered as part of the plant and machinery;
- Section 17(5) of the CGST Act, 2017 in its explanation has specifically described the expression plant and machinery and the provision restricts the ITC on immovable property other than plant and machinery;
- The definition of plant and machinery also specifically includes the foundation and structural support. Hence, the impugned ruling rejecting the credit of taxes paid on goods and services used for such pile foundation is erroneous and is liable to be set aside;

- The pile foundation is intended to be constructed with the objective of providing support and stability to these tanks only. Merely the fact that a separate work order has been issued for such foundation work cannot be used as a valid argument to justify that this is not a foundation of the tanks.

Ruling by the AAR

- The AAR held that the taxpayer is not eligible for availment of ITC of GST paid on goods and services for laying of transfer pipeline and the foundation/structural support used for such pipeline which is intended for unloading propane/butane from the vessel/jetty to the terminal;
- The taxpayer is eligible for availment of ITC of GST paid on goods and services used for set-up of refrigerated storage tank including the structural support subject to the condition that the tanks are capitalized in their books of accounts as plant and machinery and not as immovable property, and the taxpayer are not eligible to avail ITC of goods and services used for pile foundation;
- The taxpayer is eligible for availment of ITC of GST paid on goods and services for setting up of fire water reservoir (tank) including the structural support subject to the condition that the tanks are capitalized in their books of accounts as plant and machinery and not as immovable property, and the taxpayer are not eligible to avail ITC of goods and services used for pile foundation.

Observations and ruling by the AAAR

Aggrieved by the ruling of AAR the taxpayer approached the AAAR. The AAAR has ruled as follows:

- A conjoint reading of the term "factory" and "precincts" makes it abundantly clear that the factory includes the surrounding areas which in the case of the taxpayer is the pipes laid from Jetty to terminal;
- The pipelines laid outside the factory premises is specifically excluded for the purpose of expression plant and machinery particularly for chapter V and chapter VI of CGST Act, 2017;
- As the transfer pipelines would not fall under 'plant and machinery', the taxpayer is not eligible to avail ITC on the goods and services used for transfer pipelines, the foundations and structural support related to pipelines would also not eligible for ITC on the goods and services used for foundations and structural support related to pipelines;
- Regarding the lease deed for right of way approval from the V.O. Chidambaranar Port Trust, the same is for the purpose of utilization of land that are required under the relevant Act, which has nothing to do with this Act. In fact, the tax element, if any, involved for the said agreement also not eligible for ITC;
- Based on the above observations the AAR held as follows:
 - The taxpayer is not eligible for ITC of GST paid on goods and services used for laying of transfer pipeline and the foundation/structural support for such pipeline, which is intended for unloading propane/butane from the vessel/jetty to the terminal.
 - On question no:2 & 3, i.e., on the eligibility of ITC paid on the works contract service for 'pile foundation to the project site' also claimed as foundation for the 'storage tanks' and 'water tanks', as there is a

difference of opinion between the members, no ruling is offered as per section 101(3) of the CGST Act, 2017.

[AAAR-Tamil Nadu, M/s. SHV Energy Private Limited ruling order-in-Appeal no:AAAR/06/2022 (AR), dated 07 March 2022]

CUSTOMS & CENTRAL EXCISE

NOTIFICATION

Reduction of Central Excise Duty on Petrol & Diesel

Central excise duty has been reduced by INR 8 per litre for Petrol and by INR 6 per litre for Diesel (by reducing Road & Infrastructure Cess).

[Notification no:25/2022-Customs dated 21 May 2022 & Notification no:02/2022-Central Excise dated 21 May 2022]

Reduction of Import Duty on key raw materials used in the Steel and Plastics industry

CBIC has reduced customs duty on import below mentioned goods w.e.f. 22 May 2022.

Heading	Description of Goods	Existing rate	Standard Rate
2701	<ul style="list-style-type: none"> ▪ Anthracite/Pulverized coal injection (PCI) coal. ▪ Coking coal 	1%	Nil
2704	Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated	5%	Nil
2710	Naphtha	2.5%	1%
2910 20 00	Methyl oxirane (propylene oxide)	5%	2.5%
3904	Polymers of vinyl chloride	10%	7.5%
7202 60 00	Ferro-nickel	2.5%	Nil

CBIC also reduced Agriculture Infrastructure and Development Cess (AIDC) on the import of Anthracite/ Pulverized Coal Injection (PCI) coal & coking coal from 1.5% nil rate.

[Notification no:26/2022 dated 21 May 2022 & Notification no:27/2022 dated 21 May 2022]

Export duties increased on Iron ores, pellets and specified iron and other steel products

CBIC has increased export duty on different steel products including Iron ore and concentrates, non-agglomerated & agglomerated, flat-rolled products of stainless steel of a width of 600 mm or more, other bars and rods of stainless steel; angles, shapes, and sections of stainless steel and various other steel products. Accordingly, changes are made in second schedule to the Customs Tariff Act, 1975 also.

[Notification no:28/2022 dated 21 May 2022 & Notification no:29/2022 dated 21 May 2022]

Exemption of Customs Duty and AIDC on import of crude soybean/sunflower oil within Tariff Rate Quota ("TRQ")

CBIC has exempted Customs Duty and AIDC leviable on the import of crude soybean oil and crude sunflower seed oil into India within the TRQ prescribed in the table, subject to the certain conditions and TRQ, w.e.f. 25 May 2022.

Sub-heading	Description of Goods	TRQ Quantity per financial year
1507 10 00	Crude Soya-bean oil, whether or not degummed	20,00,000 MT
1512 11 10	Crude Sunflower seed oil	20,00,000 MT

DGFT has notified the provisions for allocation of TRQ by amending para 2.60 and 2.61 of the Handbook of Procedures (HBP).

[Notification no:30/2022 & Public notice no:10/2015-20 dated 24 May 2022]

Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Amendment Rules, 2022

CBIC has made certain changes in Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Rules, 2011 with relation to the entry in annexure-1 on fish and crustaceans, molluscs and other aquatic invertebrates.

[Notification no:44/2022 dated 20 May 2022]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Amendment in import policy condition related to oxytocin under Chapter 29 and 30

Import of oxytocin shall remain "prohibited". However, import of oxytocin reference standards falling under HS codes 29371900, 29372900, 29379019, 29379090 and all HS Codes at 8-digit level under 3004 is permitted exclusively for the purpose of test and analysis subject to submission of test license issued by the DGCI/CDCSO.

[Notification no:09/2015-20 dated 23 May 2022]

Amendment in export policy of sugar

Export of sugar (raw, refined and white sugar) is placed under 'restricted' category from 01 June 2022 onwards (except fixed quantity of sugar being exported under CXL and TRQ quota to EU and USA). Export after 01 June 2022 will be allowed on production of specific permission (as per the procedure to be notified separately by Directorate of Sugar, Department of Food and Public Distribution (DFPD), Ministry of Consumer Affairs, Food & Public Distribution.

[Notification no:10/2015-20 dated 24 May 2022]

Amendment in import policy of paper and incorporation of policy condition in chapter 48

Import policy of specific tariff lines under chapter 48 of ITC(HS) 2022 as given at annexure -I to the notification is revised from 'free' to 'free subject to compulsory registration under Paper Import Monitoring System (PIMS)'.

[Notification no:11/2015-20 dated 25 May 2022]

PUBLIC NOTICE

Enlistment of agency authorized to issue Certificate of Origin (Non-preferential)

Vizagapatam Chamber of Commerce and Industry (VCCI), Andhra Pradesh has been enlisted under appendix 2E of FTP, 2015-20 for issuing Certificate of Origin (Non-Preferential). The details of Nag-Vidarbha Chamber of Commerce, already enlisted under appendix 2E, have also been amended.

[Public notice no:09/2015-20 dated 20 May 2022]

TRADE NOTICE

Implementation of prohibition on export of wheat.

Reference is invited to notification no:06/2015-2020 dated 13 May 2022 amending the export policy of Wheat under entry no:59 of chapter 10 of schedule-2 of the ITC (HS) from 'free' to 'prohibited' with immediate effect read with trade notice no:06/2022-2023 dated 14 May 2022, trade notice no:07/2022-2023 dated 17 May 2022 and trade notice no:08/2022-2023 dated 17 May 2022.

In this regard, information has been received from sources that fraudulent back dated Letter of Credit (L/C) showing date of issuance, as on or prior to 13 May 2022, are being submitted by some unscrupulous exporters for issue of Registration Certificates (RCs), but as per the L/C, message exchange date between foreign and the Indian bank / swift message is after 13 May 2022.

The said matter has been considered and it is clarified that for registration of L/C with the RAs of DGFT, apart from the L/C date, the message exchange date between the Indian and foreign bank / swift date should also be on or prior to 13 May 2022.

The DGFT decided that the concerned Regional Authorities (RAs) shall issue manually signed and stamped physical copies of the RCs, in order to prevent any misuse of the digitally signed copies of the RC.

[Trade notice no:09/2022-23 dated 23 May 2022 & Trade notice no:10/2022-23 dated 24 May 2022]



NEWS FLASH

1. "GST Council may consider modification in monthly tax payment form for better input tax credit reporting"
<https://economictimes.indiatimes.com/news/economy/policy/gst-council-may-consider-modification-in-monthly-tax-payment-form-for-better-input-tax-credit-reporting/articleshow/91720272.cms>
[Source: Economic Times, 22 May 2022]
2. "SC order won't impact GST council structure: Officials"
<https://www.hindustantimes.com/india-news/sc-order-won-t-impact-gst-council-structure-officials-101653245281253.html>
[Source: Hindustan Times, 23 May 2022]
3. "India puts GST rate tweaks on hold till it has a grip on inflation"
<https://economictimes.indiatimes.com/news/economy/policy/india-puts-gst-rate-tweaks-on-hold-till-it-has-a-grip-on-inflation/articleshow/91799743.cms>
[Source: Economic Times, 26 May 2022]
4. "Uttar Pradesh tops in GST registrations; small businesses dominate"
<https://www.livemint.com/economy/uttar-pradesh-tops-in-gst-registrations-small-businesses-dominate-11653565883883.html>
[Source: Live Mint, 26 May 2022]
5. "GST search ops: No coercive action; dues payment at any stage"
<https://indianexpress.com/article/business/economy/gst-search-ops-no-coercive-action-dues-payment-at-any-stage-7938556/>
[Source: Indian Express, 27 May 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

