

# INDIRECT TAX

## Weekly Digest

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## GOODS & SERVICES TAX

### JUDICIAL UPDATES

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

**Earthwork is a composite supply of Works Contract Services, attracting GST at the rate of 5%**

#### Facts of the case

- M/s. Shri Venkateshwara Infrastructure J V ('Taxpayer') is a Joint Venture partnership firm having registered office in the state of Maharashtra;
- The taxpayer has been allotted earthwork in embankment, cutting and bridge approaches etc. of central railway department.

#### Questions raised before AAR

Whether entry no:3 (vii) of notification no:11/2017-CT(R) dated 28 June 2017 [as amended by notification no:31/2017-CT(R) dated 13 October 2017] is applicable on the impugned composite supply of works contract, wherein GST rate @ 5% is specified?

#### Contention of the Taxpayer

- The taxpayer claimed that the earthwork undertaken by them is covered by entry no:3(vii) of the said notification attracting GST at the rate of 5% on the following grounds:
  - The impugned supply qualifies as 'composite supply' due to natural bundling of supply of goods and services in the ordinary course of business, offered in conjunction with each other;
  - The contract involves activities such as blasting/cutting of the hard rock, removing of excavation stuff, providing steel support, cement concreting etc. Based on reference to general dictionary meanings for the term 'earthwork', the works of the taxpayer can be considered as an earthwork;

- Earthwork constitutes around 89% of the total contract value and the said contract is entered with Central Government.

#### Observations and ruling by the by AAR

- The AAR noted that the work order comprises of supply of goods as well as services and thus can be treated as a composite supply;
- Since there is a transfer of property in goods like steel etc. along with the services by way of fabrication, rock bolting, cement concreting etc., it qualifies as a works contract pursuant to section 2(119) of the CGST Act, 2017;
- As the supply involves blasting/cutting of the hard rock, removing of excavation stuff, providing steel support, cement concreting etc, it falls within the meaning of the term 'earthwork';
- Upon the perusal of the works contract order, it can be inferred that the contract predominantly consists of earthwork (consisting more than 75% of the value of works contract);
- The contract is entered between the President of the Union of India and the taxpayer. It was signed by chief engineer (Const.), central, CSTM on behalf of President of India. Hence, it can be construed that the central railway department which has allotted the aforesaid work order, can be treated as Central Government;
- Based on the foregoing, it was held that the impugned supply falls within the purview of entry no:3 (vii) of notification no:11/2017-CT(R) dated 28 June 2017 [as amended by notification no:31/2017-CT(R) dated 13 October 2017] and is subject to GST @ 5%.

*[AAR-Maharashtra, M/s. Shri Venkateshwara Infrastructure J V, Ruling No: GST-ARA-75/2020-21/B-40, dated 31 March 2022]*

## GST is not leviable on the amount recovered from employees by employer as a 'pure agent'

### Facts of the case

- M/s. Astral Limited ("Taxpayer") provides canteen facility to its employees at its factory premises;
- The total payment made to canteen service provider comprises of part portion recovered from employees and part borne by the taxpayer.

### Questions before the AAR

- Whether GST is applicable on amount paid by employees for canteen charges, collected by taxpayer and paid to canteen service provider at factory / HO?
- If GST is applicable, then whether ITC is available on the canteen services?
- If ITC is available, whether it will be restricted to cost borne by the taxpayer?

### Contention of the Taxpayer

- The amount recovered from employees and amount borne by the taxpayer, clubbed together represents the actual expenditure incurred by the taxpayer for providing canteen services;
- In other words, there is no element of profit involved in the entire transaction.

### Contention of the Tax authority

The tax authority submitted that the matter may be decided on merits in light of various judicial pronouncements and facts of the case.

### Observation and ruling by the AAR

The AAR held that GST is not leviable on the canteen charges paid by the employees as the taxpayer does not charge any profit of amount incurred to canteen service provider. Accordingly, the question of availability of ITC and its restriction does not apply.

[AAR-Gujarat, M/s. Astral Limited, Ruling no:GUJ/GAAR/R/2022/01 dated 07 March 2022]

## The project management consultancy services provided for service of exploration, mining or drilling of petroleum crude or natural gas would be liable to GST at 18%

### Facts of the case

- M/s. Lloyds Register Consulting Energy Private Limited ('Taxpayer'), a Project Management Consultancy (PMC) company has been engaged by Vendanta Ltd (VL), by way of contract, to plan, monitor & track project progress and validate execution contractor deliverables;
- The taxpayer's scope of work includes project management, technical validation and regulatory compliance to ensure timely project execution.

### Questions before the AAR

Whether the project management consultancy services provided by the taxpayer to VL would be liable to GST at the rate of 12% from January 2018 under entry no:2l(ia) i.e. under SAC 9983 stating "Other professional, technical and business services", of notification no:11/2017-CT(R) dated 28 June 2017, as inserted vide notification no:20/2019-CT(R) dated 30 September 2019 since the said amendment is clarification to

the amendment made vide notification no:1/2018-CT(R) dated 25 January 2018 reducing GST rate for service of exploration, mining or drilling of petroleum crude or natural gas or both to 12%?

### Contention of the Taxpayer

- Cairn oil & gas division of VL was awarded exploration licenses for OLP blocks (onshore & offshore) as part of the Government of India's Open Acreage Licensing Policy (OALP) in 2018;
- Cairn identified execution contractors to execute the project and the scope of execution would be across the entire spectrum including seismic services (Acquisition, processing & interpretation), non-seismic services (FTG, MT etc.), well construction (drilling, completions, fracing & testing), installation of early production facilities wherever applicable and preparation of field development plans (in fields with proven commerciality) and the broad scope of work proved in oil and gas operations by execution contractor is in three phases, i.e. exploration phase, appraisal phase and field development planning phase;
- In GST, oil & gas sector is outside the ambit. Thus, no credit is available of GST paid on inputs availed by such companies. With an intent to reduce the impact the GST on their procurements, Government has provided/ continued certain benefits even in GST regime.
- Notifications referred
  - Notification no:03/2017-CT(R) dated 28 June 2017, provides for concessional rate of GST at 5% (effective rate) for intra state supply of goods to projects relating to exploration of oil and natural gas;
  - Notification no:03/2017-IT(R) dt 28 June 2017 provided the said concessional rate for inter-state supplies;
  - Vide notification no:31/2017-CT(R) dated 13 October 2017, effective rate of GST was reduced to 12% for composite supply of works contract and associated services in respect of offshore works contract relating to oil and gas exploration and production in the offshore area;
  - Notification no:01/2018-IT(R) dated 25 January 2018 stated that the effective rate of GST on supply of service of exploration, mining or drilling of petroleum crude or natural gas or both was reduced to 12%;
  - Subsequently, the above entry was amended vide notification no:20/2019-CT(R) dated 30 September 2019 to read as "Support service to exploration, mining or drilling of petroleum crude or services)... other information technology services nowhere else classified natural gas or both", however the effective rate of tax remained at 12%.
- The taxpayer believes that services provided by them are covered under entry no:21(ia) of notification no:11/2017-CT(R) dated 28 June 2017 and liable to GST at an effective rate of 12%.

### Observations and Ruling by the AAR

- The AAR found that the taxpayer has been appointed as a PMC to manage the project right from the detail design to commissioning and is required to review, monitor, manage and control all aspects of the execution of the project undertaken by the EPC contractor;

- Circular no:114/33/2019-GST dated 11 October 2019 has been issued by the Government of India to clarify scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both and it states that the scope of the entry no:21(ia) under heading 9983 of the rate notification shall be governed by the explanatory notes to service codes 998341 and 998343 of the schemes of classification of services;
- The said explanatory notes to service code 998341 is restricted to geological and geophysical consulting services and 998343 is restricted to mineral exploration and evaluation services and the impugned services being provided by the taxpayer cannot be considered as being connected to either geological and geophysical consulting services or mineral exploration and evaluation services;
- In the subject case even though the impugned services consist of professional, technical and business services, the same are not covered under SAC 9983 (entry no:21(ia)). Therefore, the said professional, technical and business services supplied by the taxpayer are clearly covered under the residual entry no:21(ii) of notification no:11/2017-CT(R) dated 28 June 2017 as amended, attracting tax rate of 18%.

*[AAR-Maharashtra, M/s. Lloyds Register Consulting Energy Private Limited, Ruling no:GST-ARA-04/2020-21/B-37, dated 31 March 2022]*

## CUSTOMS

### NOTIFICATION

#### CBIC exempts Basic Customs Duty (BCD) and Agriculture Infrastructure and Development Cess (AIDC) on import of Raw Cotton for a specified period

The CBIC has exempted cotton, not carded or combed from BCD and AIDC. The notification shall come into effect on 14 April 2022 and will remain in force up to and inclusive of 30 September 2022.

*[Notification no:21/2022 dated 13 April 2022]*

## FOREIGN TRADE POLICY (FTP)

### PUBLIC NOTICE

#### Government eases norms under export incentive scheme for the ease of doing business

Directorate General of Foreign Trade (DGFT) has amended the chapter 5 of the Handbook of Procedures 2015-20 (HBP-2015-20), related to Export Promotion Capital Goods Scheme (EPCG Scheme) to reduce 'Compliance burden' and enhance 'ease of doing business. Following amendments have been made in this regard with respect to the para no. as mentioned below.

- 5.14 Block-wise Fulfilment of Export Obligation (EO)
  - (c) Request for extension of export obligation period of first block shall be submitted within 6 months from the date of expiry of first block EO period along with composition fee of 2% on duty saved amount proportionate to unfulfilled portion of EO pertaining to the block. Regional Authority (RA) may consider the request for extension of block wise EO period, received after 6 months, but within 6 years from date of issue of authorization, with a late fee of INR. 10,000/- per authorization. Application made beyond 6 years, for

extension of block-wise EO period for regularization purpose, shall also be considered by RA concerned, with an additional late fee of INR. 5,000/- for each year per authorization. This late fee is in addition to the composition fee that may be payable on account of shortfall in export obligation. Where EO of the first block is not fulfilled in terms of para (a), except in cases where the EO prescribed for first block is extended by the RA, the authorization holder shall, within 6 months from the expiry of the block, pay duties of customs (along with applicable interest as notified by DOR) proportionate to duty saved amount on total unfulfilled EO of the first block.

- 5.15 Annual reporting of EO fulfillment
  - Authorisation holders shall submit to the RA concerned by 30 June of every year, a report on fulfillment of export obligation through online. Such a report shall contain details such as Shipping bill/GST invoice number, date of export/supply, description of product exported/supplied and FOB/FOR value of export/supply for both specific as well as average export obligation. Any delay in filing such an annual report shall be regularised on payment of INR. 5000/- late fees for each financial year per authorization.
- 5.16 Automatic reduction/enhancement up to 10% duty saved amount and pro-rata reduction/ enhancement in export obligation
  - (a) in excess of the duty saved amount indicated on the authorization by not more than 10%, the authorization shall be deemed to have been enhanced by that proportion. Customs shall automatically allow clearance of such goods without endorsement by RA concerned. The authorization holder shall furnish additional fee to cover excess imports affected, in terms of duty saved amount, to RA concerned, at the time of application for Export Obligation Discharge Certificate (EODC). EO shall automatically stand enhanced proportionately.
- 5.17 Extension in Export Obligation Period.
  - (d) Request for extension in EO period shall be made to RA concerned within 6 months from the date of expiry of original EO period. However, RA may consider the request for extension received after 6 months, but within 8 years from date of issue of authorization, with a late fee of INR. 10,000/-. Application made beyond 8 years, for extension of EO period from 6 to 8 years for regularization purpose, shall also be considered by RA concerned, with an additional late fee of INR. 5,000/- for each year per authorization. This fee is in addition to the composition fee that may be payable on account of shortfall in export obligation. However, EO extension, beyond 8 years from date of issue of authorisation, shall not be allowed by RA under this provision.
- 5.19A - Maintenance of Annual Average Export Obligation
  - The excess exports done towards the average export obligation fulfillment of an EPCG authorization during a year can be used to offset any shortfall in the average EO done in other year(s) of the EO period or the block period as the case may be, provided average EO imposed is maintained on an overall basis, within the EO period.
- 5.22 Export Obligation Discharge Certificate (EODC)
  - (a) Authorisation holder shall apply for EODC in ANF 5B with documents prescribed therein as a proof of EO fulfillment.
  - (b) On being satisfied, RA concerned shall issue EODC to the EPCG authorisation holder and a copy of which will be forwarded to ICEGATE through online, for further action by

Jurisdictional Customs Authorities with whom BG/LUT has been executed. Where EODC is granted to the EPCG authorisation holder based on online application, a copy of EODC will be forwarded online to ICEGATE for further action by Jurisdictional Customs Authorities with whom BG/LUT has been executed.

▪ 5.23 Regularization of Bonafide default and exit from EPCG scheme

(a) In case, EPCG authorisation holder fails to fulfill prescribed export obligation, he shall pay Customs Duty/taxes/Cess along with applicable interest as prescribed by Customs Authority. Such facility can also be availed by EPCG authorisation holder to exit at his option.

*[Public notice no:03/2015-20 dated 13 April 2022]*

## TRADE NOTICE

### Re-operationalisation of online module of scrip transfer recoding

On receiving certain information from exporters about the fraudulent scrip transfers taking place, the Online Scrip Transfer Recording Module ('STRM') was suspended. Thereafter, based on inputs/discussions with Dept. of Revenue and in the interest of trade facilitation, DGFT has decided to re-operationalise the IT module with additional features/limitations. Following additional features are added in the STRM:

- Introduction of time-lag for transfer of scrip from the original scrip owner to the next transferee, i.e., original owner of the scrip (A) will not be able to transfer the scrip to another entity (B) on an immediate basis and will be able to do that after 'n' number of days from the scrip issue date;
- Introduction of time-lag for scrip transfer from one entity to another, i.e., next scrip transfer from entity B to entity C can take place after 'x' number of hours of the last transfer;
- Introduction of time-lag for transfer of scrip subsequent to IEC modification, i.e., once IEC has been modified in the IT database, IEC holder will be able to transfer scrips only after 'x' number of hours of IEC modification date/time;
- Introduction of limit on number of scrip transfers which can be initiated for transfer or accepted by each IEC per day, i.e., 'y' number of scrips can only be initiated for transfer or transfer accepted by each IEC per day;
- Email and SMS notifications to IEC holder and directors/partners attached to IEC on the following trigger points:
  - Transfer of scrips;
  - Modification of IEC- change in email/mobile for correspondence and changes in director/partner section;
  - Linking of users to IEC.
- Automatic de-linking of users from IEC every 6 months;
- Automatic de-linking of digital signature and Aadhaar registration every 90 days;
- Certain IECs which have been 'flagged' in IT database based on certain rules like
  - same mobile number linked to more than three IECS,
  - PAN mismatch,

- Director/partner name mismatch etc.

will not be allowed to use the STRM until this flag is suitably rectified by IEC holder.

- Following has been advised by the DGFT to the EXIM community:
  - To follow necessary due diligence as per trade notice no:26 dated 26 November 2021;
  - Ensure safe custody of their digital dongles (DSCs);
  - Review their IEC user profile, SMS/Email communications being sent to them on a regular basis;
  - Report any untoward incident to the concerned authorities;
  - Contact the concerned Certifying Agencies (CA) authorised by Controller of Certifying Authority (CCA) under the IT Act if any unauthorised issuance/usage of DSC in your name is noticed for corrective actions including cancellation of such DSC.

Please note that the original duty scrip holder is required to register the duty credit scrip at the port of registration with Customs and the 'transfer' of scrips from one IEC to another IEC will be as per the negotiated terms & conditions between the buyer and the seller.

DGFT/Customs shall not be responsible for any lapse between the transferor or the transferee (old or new owner of the scrips) or any dispute in this regard.

*[Trade notice no:01/2022-23 dated 11 April 2022]*

## NEWS FLASH

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1. “GST Council’s 47th meeting likely to be held next month”  
<https://www.newindianexpress.com/business/2022/apr/12/gst-councils-47th-meeting-likely-next-month-2441027.html>  
[Source: Indian Express, 12 April 2022]
2. “GST compensation: Some states may get relief package”  
<https://economictimes.indiatimes.com/news/economy/finance/gst-compensation-some-states-may-get-relief-package/articleshow/90788493.cms>  
[Source: Indian Express, 12 April 2022]
3. “Companies likely to face stiff queries from GST authorities”  
<https://economictimes.indiatimes.com/news/economy/policy/companies-likely-to-face-stiff-queries-from-gst-authorities/articleshow/90766712.cms>  
[Source: Economic Times, 12 April 2022]
4. “Balm for consumers: Centre wants GST rate rejig to be gradual”  
<https://www.financialexpress.com/economy/balm-for-consumers-centre-wants-gst-rate-rejig-to-be-gradual/2491235/>  
[Source: Financial Express, 14 April 2022]
5. “Local soft drink players move to 160ml packs to offset higher GST”  
<https://timesofindia.indiatimes.com/business/india-business/local-soft-drink-players-move-to-160ml-packs-to-offset-higher-gst/articleshow/90790326.cms>  
[Source: Times Of India, 12 April 2022]



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