

# INDIRECT TAX

## Weekly Digest

15 November 2022

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## GOODS & SERVICES TAX

### JUDICIAL UPDATES

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

##### **Solid waste management services provided to the municipal corporation is exempt under GST**

#### Facts of the case

- M/s. Banchu Das (Taxpayer) is engaged in providing solid waste management services to Howrah Municipal Corporation
- Taxpayer supplies operation and maintenance service of portable compactor and hook loader. In this regard, Taxpayer intends to know the levy of GST under the Central Goods & Services Tax Act, 2017 (CGST Act, 2017)

#### Questions before the AAR

Whether solid waste management services provided by Taxpayer is exempt from GST

#### Contention by the Taxpayer

- Taxpayer submitted that services provided by them are 'Pure Services' provided to the local authority
- Supply of 'Pure services' is exempted from the levy of GST in terms of entry no:3 of notification no:12/2017-CT(R) dated 28 June 2017 ('Exemption Notification')

#### Observations and Ruling by the AAR

- AAR, after going through the instant case found that the taxpayer is engaged in the supply of services and goods like spare parts, and thus, would not be considered as the supplier of 'Pure service'

- Since the Taxpayer is engaged in undertaking a composite supply, and the value of goods involved in such supply does not exceed 25% of the total value of supply, the supply in the present case would be exempted in terms of under entry no:3A of Exemption Notification

[AAR-West Bengal, M/s. Banchu Das, Peau Transport, AAR no:13/WBAA/2022-23, dated 21 October 2022]

##### **Corporate Social Responsibility (CSR) expenditures incurred are in the course of furtherance of business, ITC shall be availed**

#### Facts of the case

- M/s. Bambino Pasta Food Industries (Taxpayer) is a manufacturer of vermicelli and pasta products
- During the Covid pandemic, the Taxpayer has donated oxygen plants to AIIMS hospital situated in Bibinagar, Yadadri Bhongir district. For this purpose, the Taxpayer purchased PSA oxygen plants and spare parts for the oxygen plant amounting to INR 6.2mn, which also includes IGST paid by the Taxpayer of INR 0.916mn
- The aforesaid donation of oxygen plants has been carried out for fulfilling the mandatory CSR requirement under Section 135 of the Companies Act, 2013

#### Questions before the AAR

- Whether ITC of GST paid on procurement of oxygen plants would be available considering that the same is towards the fulfilment of the mandatory CSR expenditure requirement under Section 135 of the Companies Act, 2013

### Contention by the Taxpayer

- The Taxpayer has contended that it is eligible to claim ITC on the CSR expenditure incurred by it, since the same is mandatorily required under Section 135 of the Companies Act, 2013
- Considering that CSR is mandatorily required to be incurred by the Taxpayer, the same ought to be considered as 'used or intended to be used in the course or furtherance of business'
- As per Section 17(5)(h) of the CGST Act, 2017, ITC is specifically restricted/blocked on 'goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. This provision inter alia seeks to restrict ITCs on which are written off or disposed of by way of gift or free samples. However, the term 'Gift' has not been defined under the CGST Act, 2017
- The Taxpayer also referred to the Honorable Supreme Court decision in the case of *Ku. Sonia Bhatia v. State of UP (1981-VIL-06-SC)* which had also considered the following definition of 'gift': 'A 'gift' is commonly defined as a voluntary transfer of property by one to another, without any consideration or compensation there for, while the 'gift' is voluntary and occasional the CSR is obligatory and regular in nature
- Since CSR expenses are mandatorily required to be incurred by the Taxpayer, the aforesaid donation made by the Taxpayer cannot be considered as a voluntary act and hence, it cannot qualify as 'gift'. Consequently, ITC in respect of such donations cannot be restricted under Section 17(5)(h) of the CGST Act, 2017.

### Observations and ruling by the AAR

- The AAR examined the provisions Companies Act, 2013 and observed that CSR is a mandatory obligation on the Taxpayer. As a result, the expenses incurred by the Taxpayer can be considered to be in the course or furtherance of business
- In view of the above, the same would not be considered as a 'gift' and hence, ITC of GST paid on procurement of oxygen plants would be available to the Taxpayer.

[AAR, *M/s. Bambino Pasta Food Industries Private Limited, Ruling no:52/2022 A.R.Com/17/2022 dated 20 October 2022*]

### EXCISE/SERVICE TAX

#### Procedural lapses shall not take away the substantial justice

#### Facts of the case

- *M/s. Panacea Biotec Ltd* (Taxpayer) had not made payment of pre-deposit (INR 11,400) at the time of filing the initial appeal before the Commissioner (Appeals), against the Order in Original (O-I-O);
- In terms of Section 35F of the Central Excise Act, an appeal before the Commissioner (Appeals) shall not be entertained unless the Taxpayer deposits the amount equivalent to 7.5% of the duty in dispute, as pre-deposit
- The Taxpayer mentioned that the amount of the pre-deposit could not be deposited due to the high surge in the COVID pandemic and requested the Commissioner to adjust the amount of the pre-deposit against the other two pre-deposits pending for the refund with the Assistant Commissioner on account of the Second Appeal which was allowed by CESTAT

- However, the Commissioner (Appeals) did not consider the aforesaid request and dismissed the appeal filed by the Taxpayer
- Subsequently, the Taxpayer paid the requisite amount of pre-deposit on 27 August 2021 and filed another appeal before the Commissioner (Appeals) but the same was not considered and the Taxpayer was informed vide a letter that his appeal against the O-I-O dated 05 March 2021 was already dismissed vide order of 03 August 2021.

### Observations and Ruling by the CESTAT

- The Taxpayer had not made payment of pre-deposit at the time of filing the initial appeal before the Commissioner (Appeals). Consequently, the Commissioner (Appeals) has not committed any error in rejecting the appeal on the ground of non-compliance with Section 35F of the Central Excise Act
- However, the opportunity of being heard for disposing of the appeal on merits was not considered by the Commissioner (Appeals) even after the taxpayer had complied with the provisions of Section 35F of the Central Excise Act
- Non-compliance with Section 35F is a procedural lapse and the same was made good by the Taxpayer. It is well settled that procedural lapses shall not take away substantial justice
- Since the procedural lapse/defect stands cured by the Taxpayer, the CESTAT deemed it to be a fit case to be heard by the Commissioner (Appeals) on the merits
- Accordingly, CESTAT remanded the matter back to the Commissioner (Appeals) to consider the merits of the appeal for fresh adjudication.

[*CESTAT-Delhi, M/s. Panacea Biotec Ltd. Vs. Commissioner of CGST, 2022-TIOL-422-CESTAT-DEL*]

## FOREIGN TRADE POLICY (FTP)

### NOTIFICATION

#### Amendment in policy condition on registration related to the implementation of Coal Import Monitoring System (CIMS)

The existing policy condition no:7(ii) of Chapter-27 of Schedule-I (Import Policy) of ITC (HS), 2022 has been revised. As per the revised condition, the importer can apply for registration not earlier than the 60th day and not later than 5 days before the expected date of arrival of the import consignment.

[*Notification no:41/2015-2020 dated 07 November 2022*]

#### Amendment in export policy of broken rice under HS Code 1006 40 00

Condition (iii) of para-2 of notification no:31/2015-2020 dated 08 September 2022 has been amended with immediate effect so as to provide clearance to such rice consignments held up in CFS which had been handed over to the Container Freight Station (CFS) before this notification.

[*Notification no:42/2015-2020 dated 07 November 2022*]

#### Amendments under the Foreign Trade Policy(FTP) & Hand Book of Procedures (HBP) in line with RBI A.P.(DIR Series) circular no:10 dated 11 July 2022

Amendments under FTP are notified, to permit export benefits/fulfilment of export obligations for invoicing, payment and settlement of exports and imports in INR,

as per RBI's A.P. (DIR Series) circular no:10 dated 11 July 2022.

Also, amendments in para 5.11 of the HBP are notified, to permit the invoicing, payment and settlement of exports and imports in INR for export proceeds under EPCG Scheme, in sync with RBI's A.P.(DIR Series) circular no:10 dated 11 July 2022.

*[Notification no:43/2015-2020 & Public notice no:35/2015-2020 dated 09 November 2022]*

#### PUBLIC NOTICE

#### Enlistment of Pre-shipment Inspection Certificate (PSIC) under para 2.55 of HBP 2015-2020

Three more agencies are notified as Pre-Shipment Inspection Agencies (PSIAs), additional areas of operation for five existing PSIAs and additional instruments in respect of 3 existing PSIAs have also been notified.

*[Public notice no:34/2015-2020 dated 03 November 2022]*



### NEWS FLASH

1. “Chemically processed seed, not an agri produce; storage, transportation not to get GST exemption: Telangana AAAR”  
<https://www.thehindubusinessline.com/economy/agri-business/chemically-processed-seed-not-an-agri-produce-storage-transportation-not-to-get-gst-exemption-telangana-aaar/article66090885.ece>  
[Source: The Hindu Business Line, 03 November 2022]
2. “GST law panel working on definitions of games of skill, chance”  
<https://economictimes.indiatimes.com/news/economy/policy/gst-law-panel-working-on-definitions-of-games-of-skill-chance/articleshow/95332052.cms>  
[Source: Economic Times, 06 November 2022]
3. “Amendment in GST return format: Why changes regarding ITC will increase complexity for taxpayers”  
<https://economictimes.indiatimes.com/small-biz/gst/amendment-in-gst-return-format-why-changes-regarding-itc-will-increase-complexity-for-taxpayers/articleshow/95347608.cms>  
[Source: Economic Times, 08 November 2022]
4. “GST dept steps up anti-evasion drive”  
<https://www.financialexpress.com/economy/gst-dept-steps-up-anti-evasion-drive/2792454/>  
[Source: Financial Express, 09 November 2022]
5. “Brick Makers Urge Govt To “Reduce Back” GST To 1%”  
<https://www.outlookindia.com/business/brick-makers-urge-govt-to-reduce-back-gst-to-1--news-236069>  
[Source: Outlook India, 09 November 2022]

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