

# INDIRECT TAX

## Weekly Digest

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## GOODS & SERVICES TAX

### JUDICIAL UPDATES

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

**Annual subscription to online database is not eligible for exemption under notification no:12/2017-CT(R) dated 28 June 2017**

#### Facts of the Case

- M/s. Manupatra Information Solutions Private Limited (“Taxpayer”) is engaged in the business of providing online text-based information such as online books, newspapers, periodicals, directories etc. (judgements/notifications/bare acts/rules/E books/news/ articles) through their website to law firms, lawyers, companies, governments, judiciary and law schools;
- The services provided by the taxpayer is covered under the SAC code “997331” and the applicable GST rate is 18%. But as per notification no:12/2017-CT(R) dated 28 June 2017, further amended by notification no:02/2018-CT(R) dated 25 January 2018, “services provided to an educational institution by way of supply of online educational journals and periodicals” is taxed at nil rate;
- This has created confusion as some law schools are of the contention that GST is not applicable as per the above notification as amended.

#### Questions Before the AAR

- Whether the services provided by them as referred above are covered by the above amendment. If the answer is in affirmative, whether ‘Nil’ rate of tax must be charged by them?

#### Contention of the Taxpayer

- The taxpayer have submitted that as per their interpretation, online text-based information such as online books, newspapers, periodicals and directories through their website should be taxed @ 18%. However, their competitors are charging ‘Nil’ rate of tax on identical services;
- Further, the taxpayer has obtained registration for services “on-line text-based information such as online books, newspapers, periodicals, directories” and the taxpayer is not providing the services which are covered in the entry no:66(b)(v) of notification no:12/2017-CT(R) dated 28 June 2017 as amended by notification no:02/2018-CT(R) dated 25 January 2018. Hence not subjected to ‘Nil’ rate of tax.

#### Observations and ruling by the AAR

- The AAR examined the submissions by the taxpayer in the application as well as the submissions made by the taxpayer and found out that sub-item “(v) supply of online educational journals or periodicals” of item B of entry no:66 was inserted vide notification no:02/2018-CT(R) dated 25 January 2018 is subjected to ‘nil’ rate of tax and the said entry does not cover the supply of E-books, newspapers, directories and non-educational journals or periodicals;
- Further the AAR on scrutiny of invoice copies submitted by the taxpayer has observed that the taxpayer has mentioned the description “Annual subscription online database” and the same has no mention to “online educational journals and periodicals”. The AAR noted that

the taxpayer is collecting fees to grant access to the data available in the database to download articles or information and the said invoices are not in respect of supply of online educational journals and periodicals;

- Further the AAR examined the dictionary meaning of terms “database”, “journal” and “periodical” and has observed that all the three different terms are not one at the same and hence exemption is not available to online database, online books, newspapers, directories and non-educational journals under entry no:66(b)(v) of the notification no:12/2017-CT(R) dated 28 June 2017;
- The AAR has held that services provided by the taxpayer are not covered under notification no:12/2017-CT(R) dated 28 June 2017, further amended by notification no:02/2018-CT(R) dated 25 January 2018 against entry no:66 and hence not subjected to nil rate of tax.

[AAR-Uttar Pradesh, M/s. Manupatra Information Solutions Private Limited. TSAAR order no:UP ADRG 87/2021, dated 25 November 2021]

### Museum created with a profit motive is ineligible for exemption

#### Facts of the case

- M/s. Vakao Theme Park LLP (“Taxpayer”) intends to construct a museum namely ‘sundha Darshan Museum’ near Sunda Mata Temple situated on a hilltop called ‘Sundha’ in Rajasthan. This museum is a unit of M/s. Vakao Theme Park LLP. This Museum is indirectly linked with the devotion of the visitors towards Mata Sundha, and it will exhibit about the history and culture of the temple;
- This museum will provide service like public museum. As per the taxpayer the services rendered would be exempt under the entry “services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo”. However, in the absence of definition of “museum” in the CGST Act, 2017 the application seeking clarification on the same was filed.

#### Questions before the AAR

- Whether the taxpayer is liable to pay tax on the services in relation to Sundha Darshan Museum?
- Whether such services shall be exempt under GST?
- Applicability of the notification no:12/2017-CT(R) dated 28 June 2017 on services provided by the taxpayer?

#### Observations and Ruling by the AAR

- The AAR referred to the definition of “museum” as defined in International Council of Museum (ICOM) statutes adopted by the 22nd General Assembly in Vienna, reproduced below: “A museum is a non-profit, permanent institution in the service of society and its development, open to the public, which acquires, consents, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes.”
- The AAR interpreted Non-Profit Organisation (NPO) as a legal organisation whose primary purpose is to promote public good rather than making profit” founded for a common purpose, to provide service to members and people. NPOs main objective would be endorsing a social cause or supporting a particular outlook;

- NPOs include sports club, public hospitals, religious institutions, cooperative societies, literacy society, etc. The profit made by the non-profit organisations during the course of its activities is used for furthering the aim of the concern. NPOs raise funds through multiple sources, for instance subscriptions, donation, government grant, membership fee, entrance fee, legacies, and charity and so on. However, the ownership of the entities doesn’t belong to any person, not even by the founders;
- Based on the submissions and discussions during personal hearing the AAR observed that, the premises is owned by the taxpayer which is a business entity and the primary business activity is recreational, cultural and sporting activities intended to develop amusement parks. The creation of Sundha Darshan museum is one of the ways with a motto to run these amusement/theme parks;
- The AAR further held that the primary purpose of the said premises is making profit rather than to serve society or public at large. Mere placing some new idols & sculptures in the museum to exhibit story of temple in the name of service to society, does not qualify as ‘museum’ due to its profit earning motto. Further, the said building neither acquires, conserves the heritage of humanity nor having collection of arts, science, and technology, history objects. Hence, that premises termed as ‘Sunha Darshan Museum’ is not a ‘museum’;
- The AAR held that the taxpayer is not eligible to avail benefits of entry ‘Services by way of admission to a museum’ and the taxpayer is liable to pay GST @ 18%;
- As the primary business activity is recreational, cultural and sporting activities which intend to develop amusement parks exemption under entry no:79 of the notification no:12/2017-CT(R)dated 28 June, 2017 is not applicable to the taxpayer.

[AAR-Rajasthan, M/s. Vakao Theme Park LLP Ruling no: RAJ/AAR/2021-22/32, dated 15 December 2021]]

### Residue arising in distillery process cannot be classified as cattle feed based on its end use

#### Facts of the case

- M/s. ADS Agro Industries Private Limited (“taxpayer”) is a 100% grain-based distillery and manufactures alcohol using grains as raw material;
- During distillation process, only the starch portion present in the grain is utilized in production of the alcohol, which is the main product, and the other components viz. protein, fibre and oil are not utilized in the production of alcohol. Another by-product is obtained by further extraction, processing and conversion into wet cake, which is cattle feed/ poultry feed. This is also known as Distilleries Wet Grain Solubles (DWGS)/ wet cake. There is no other use of wet cake other than cattle feed & hence, cattle feed is a by-product in the process of manufacture of alcohol and cannot be termed as ‘residue’;
- DWGS, a by-product, which is being produced after the decantation whereby solids are segregated or separated, in well-designed centrifuge decanters;
- As per the taxpayer, as DWGS is produced in a significant quantity and value by investing in centrifuge decanters, the same can, by any stretch of imagination, not be

considered as mere residue or waste. Accordingly, DWGS is a saleable by-product, used as animal feed/cattle feed/poultry feed and should be considered as a sale of animal feed;

- The taxpayer has referred to the following HSNs which are relevant for determining the classification:
  - HSN 2303 (Taxable at 5%) - Residues of starch manufacture and similar residues, beet pulp, bagasse, and other waste of sugar manufacture, brewing or distillery dregs and waste, whether or not in the form of pellets;
  - HSN 2309 (Taxable at Nil rate) - Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake other than rice bran.

#### Questions before the AAR

- Whether DWGS is a by-product or residues?
- Whether DWGS which is sold as cattle feed is to be classified under tariff entry 2309 of GST Tariff?

#### Observations & Ruling by the AAR

- The taxpayer wants to seek clarification whether DWGS is a by-product or residue and also seeks correct classification thereof;
- It was observed by the AAR that, DWGS cannot be categorized as cattle feed due to merely being slightly valuable in the market and having huge machinery installed for its production;
- The items/description of goods falling under HSN 2309 cannot be classified under such entry as it is quite different from DWGS and do not fit in the frame any by-product or residue by whatever name it is called of brewery, which is generated during the process of manufacturing of alcohol;
- As far as nature of DWGS is concern, it is nothing but distilling dregs coming out as a result of distillation process and only for the purpose of availing the benefits of exemption it cannot be termed as 'cattle feed';
- As per the explanatory notes to the HSN, entry 2303 includes residues of starch manufacture; brewing or distilling dregs and waste, which comprises in particular-dregs of cereals obtained in the manufacture of beer and consisting of exhausted grains remaining after the wort has been drawn off; dregs resulting from the distillation of spirits from grain, etc.;
- In view of above, the AAR has held that DWGS is an inevitable outcome in the process of manufacturing of alcohol classifiable under HSN 2303;
- The AAR held that DWGS is a kind of brewing or distilling dregs & waste. It cannot be classified as cattle feed under tariff entry 2309 of GST tariff but should be classified under tariff entry 2303 as a residue taxable at 5%.

[AAR-Rajasthan, M/s. ADS Agro Industries Private Limited Ruling no:RAJ/AAR/2021-22/27, dated 25 October 2021]

## CUSTOMS

### CIRCULARS

#### List of toolkit for anti-evasion/preventive teams

With a view to enhance the efficiency and professionalism of officers/teams deployed for carrying-out anti-evasion/anti-smuggling work, particularly when they are required to search premises, vehicles; verify a stock of goods, draw up a panchnama or to arrest a person away from their office premises, CBIC has received a suggestion that a standard toolkit may be provided.

In this regard, it is directed that officers/teams deployed for such work in Customs or CGST formations may be equipped with a suitable toolkit. A tentative list of items which could be considered for inclusion in the toolkit is given as Annexure-A. The list is suggestive in nature and may be modified so as to suit local needs.

#### Annexure-A

- Battery power banks
- Binoculars
- Car Inverter to operate Printer etc. independently
- Comprehensive first aid box
- Drug detection/ narcotics test kit
- Fabric thickness gauge
- Faraday bag (cuts off mobile etc. from any sort of radio-waves and prevents remote tampering/deletion of data of mobile etc.)
- File kit containing copies of summons, panchnama, test memo etc.
- GPS tracker
- Hand held metal detector
- High power LED torch
- High precision digital weighing machine, closed door
- Modern search lights
- Multipurpose screwdriver set
- Night vision devices
- Stationery (scissor, stapler, pen, marker, cello tape etc.)
- Swiss knife
- Videoscope

[Circular no:05/2022 dated 04 March 2022]

## FOREIGN TRADE POLICY (FTP)

### NOTIFICATION

#### Amendment in import policy conditions for 'Drosophila melanogaster', commonly known as the "fruit fly"

The import of only 'Drosophila melanogaster' under ITC (HS) 01069000 is 'free' subject to Institutional Bio-Safety Committee (IBSC) approval, as per the provisions of the 'revised simplified procedures/ guidelines on import, export and exchange of GE organisms and products thereof for R&D

purpose' notified by the department of biotechnology vide OM no:BT/BS/17/635/2015-PID dated 17 January 2020. The import of 'drosophila melanogaster' which does not fall under the provisions of aforesaid revised simplified procedures would require an import authorisation from Directorate General of Foreign Trade (DGFT).

[Notification no:57/2015-20 dated 07 March 2022]

#### Extension of last date for submission of applications under certain Scrip based Schemes

The last date for submitting applications under Merchandise Exports from India Scheme (MEIS) (for exports made in the period - 01 April 2020 to 31 December 2020), Rebate of State & Central Taxes and Levies (ROSCTL), Rebate of State Levies (ROSL) and 2% additional ad-hoc incentive (under para 3.25 of FTP, only for exports made in the period 01 January 2020 to 31 March 2020) has been extended. The provisions as notified vide notification no:30/2015-20 dated 01 September 2020 with regard to allocation of Rs 5,000 Cr. stand omitted.

The last date of submitting online applications under respective schemes are as follows:

Details of Scheme	Extended last date
MEIS (for exports made in the period between 1 April 2020 to 31 December 2020)	30 April 2022
2% additional ad-hoc incentives (incentive under para 3.25 of the FTP for exports made in period 1 January 2020 to 31 March 2020 only)	30 April 2022
ROSCTL (for the exports made from 7 March 2019 to 31 December 2020)	15 March 2022
ROSL (for exports made up-to 6 March 2019 for which claims have not yet been disbursed under scrip mechanism)	15 March 2022

The other conditions for MEIS For the period September to December 2020 reiterated below shall remain in place:

“The total reward which may be granted to an IEC holder under the Merchandise Exports from India Scheme (MEIS) shall not exceed INR. 20 Mn per IEC on exports made in the period 01 September 2020 to 31 December 2020 [period based on Let Export Order (LEO) date of shipping bill(s)]. Any IEC holder who has not made any export with LEO date during the period 01 September 2019 to 31 August 2020 or any new IEC obtained on or after 01 September 2020 would not be eligible for submitting any claim for benefits under MEIS for exports made with effect from 01 September 2020.”

No further applications would be allowed to be submitted after the prescribed last date as they would become time-barred. Late cut provisions shall also, not be available for submitting claims thereafter.

[Notification no:58/2015-20 dated 07 March 2022]

#### Curbs on imports of hydrofluorocarbons

Import policy of Hydrofluorocarbons (HFCs) has been revised from “free” to “restricted” category. HFCs will now require an NOC from the Ozone Cell of the Ministry of Environment, Forest, and Climate Change (MoEF&CC) and an import authorization to be permitted for import into India.

[Notification no:59/2015-20 dated 09 March 2022]

#### Amendment in import policy of rice (basmati and non-basmati)

The notification no:12/2015-2020 dated 01 July 2021 is amended to the extent that export of rice (basmati and non-basmati) to EU member states and other European Countries namely Iceland, Liechtenstein, Norway, and Switzerland only will require certificate of inspection from Export Inspection Agency (EIA)/ Export Inspection Council (EIC). Export to remaining European countries (except Iceland, Liechtenstein, Norway, and Switzerland) will require certificate of inspection mandatorily by Export Inspection Council / Export Inspection Agency for export from 01 July 2022.

[Notification no:60/2015-20 dated 09 March 2022]



## NEWS FLASH

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1. “Extension of GST compensation yet to be decided: CM Bommai”  
<https://timesofindia.indiatimes.com/business/india-business/extension-of-gst-compensation-yet-to-be-decided-cm-bommai/articleshow/90125180.cms>  
[Source: Times of India, 10 March 2022]
2. “Increase in GST rates will force small traders to close shops”  
<https://www.thehindu.com/news/cities/Madurai/increase-in-gst-rates-will-force-small-traders-to-close-shops/article65205456.ece>  
[Source: The Hindu, 08 March 2022]
3. “Lower GST on electronics to 18% for industry to grow, says Kodak’s partner”  
<https://www.thehindu.com/business/Industry/lower-gst-on-electronics-to-18-for-industry-to-grow-says-kodaks-partner/article65208121.ece>  
[Source: The Hindu, 10 March 2022]
4. “GST Lowest Slab May Increase to 8% Soon; Your Monthly Budget to Rise”  
<https://www.news18.com/news/business/gst-lowest-slab-may-increase-to-8-soon-your-monthly-budget-to-rise-4863506.html>  
[Source: News 18, 11 March 2022]
5. “Traders’ body seeks exemption from GST registration for small businesses selling online”  
<https://www.thehindubusinessline.com/info-tech/traders-body-seeks-exemption-from-gst-registration-for-small-businesses-selling-online/article65221704.ece>  
[Source: The Hindu Business Line, 13 March 2022]



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