

# INDIRECT TAX

## Weekly Digest

08 June 2022

[www.bdo.in](http://www.bdo.in)

## GOODS & SERVICES TAX

### JUDICIAL UPDATES

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

#### Exemption notifications to be construed strictly to avail exemption from levy of GST

##### Facts of the case

- M/s. Hyderabad Metropolitan Water Supply and Sewerage Board (“Taxpayer”) have incurred medical insurance expenditure to provide health insurance to employees/pensioners and their family members. The taxpayer has also incurred expenditure for insuring vehicles owned by the taxpayer;
- In this regard, taxpayer intends to know whether benefit of exemption from levy of GST would be available to them in view of entry no:3 of notification no:12/2017-CT(R) dated 28 June 2017 (“exemption notification”).

##### Questions before the AAR

- Does medical insurance premium taken to provide health Insurance to the employees, pensioners, and their family members, eligible for exemption as mentioned in entry no:3 of the notification no:12/2017-CT(R), dated 28 June 2017?
- Does vehicle insurance policy taken to provide insurance to the vehicles owned by the taxpayer, eligible for exemption as mentioned in entry no:3 of the notification no:12/2017-CT(R) dated 28 June 2017?

##### Observations and Ruling by the AAR

- The AAR observed that exemption notification stipulates a condition that only those services, which are procured in relation to performing functions entrusted under Article 243W of the Constitution of India, will be exempt from levy of GST;

- Since the medical insurance and vehicle insurance services procured by the taxpayer have no direct nexus with the services as per Article 243W of the Constitution of India, these services shall not be eligible for exemption.

[AAR-Telangana, M/s. Hyderabad Metropolitan Water Supply And Sewerage Board, Ruling no: TSAAR Order no:28/2022, dated 03 June 2022]

#### GST is not applicable on monthly collection not exceeding INR. 7,500 per member even if total collection of Resident Welfare Association (RWA) is more than INR. 2 Mn a year

##### Facts of the case

M/s. Jayabheri Orange County Owners Association (‘Taxpayer’), a Resident Welfare Association (RWA) collects monthly maintenance charges, certain annual fee by name sinking fund and charges for electricity used in common area. They are desirous to know as to whether these collections are liable to tax under GST.

##### Questions before the AAR

- Is GST being applicable on monthly collection not exceeding INR. 7,500 per member as total collection of the society is more than INR. 2Mn a year?
- Is GST being applicable on total monthly maintenance of INR. 7,500 per member plus annual sinking fund collected in July or August month in which annual sinking fund will be collected due to monthly collection including annual sinking fund exceeding INR. 75,00 per member for that month or only on sinking fund which is over and above INR. 7,500 per member?
- Is GST being applicable on monthly collection of common area electricity charge paid by the members in addition to

the INR. 7,500 monthly maintenance charged on the basis of actual bill divided by carpet area of 9,01,913 sq. ft pro rata charged to respective member's flat carpet area?

#### Observations and Ruling by the AAR

- The AAR noted that entry no:77 of notification no:12/2017 dated 28 June 2017 as amended vide notification no:02/2018 dated 25 January 2018 states that service by an unincorporated body or a non-profit entity to its own members is exempt upto an amount of INR. 7,500 per member for sourcing goods or services from a 3rd person for the common use of its members in a housing society or a residential complex;
- Therefore, where the aggregate turnover of a RWA exceeds INR. 2Mn in a financial year and the amount collected for maintenance per member exceeds INR. 7,500 then the entire amount is chargeable to GST at the rate of 18%;
- Even if the annual turnover of the RWA is greater than INR. 2Mn but the monthly maintenance charged per person is INR. 7,500 or less, then such RWA need not pay tax on the amounts so collected;
- Any amount collected periodically along with the monthly maintenance charges are covered under entry no:77 of notification no:12/2017 dated 28 June 2017. Therefore, they are taxable if the total amount collected by the RWA, by whatever name i.e., monthly maintenance or sinking fund etc., exceeds INR. 7,500. Therefore, the total amount collected in July or August month by RWA from the members i.e., the monthly maintenance charge plus sinking fund amount is liable to tax if it exceeds INR. 7,500. Nevertheless, GST is not leviable on electricity and water charges collected from residents.

*[AAR-Telangana, M/s. Jayabheri orange county owners association, Ruling no:29/2022 A.R. Com /44/2018, dated 3 June 2022]*

#### Boarding and lodging services provided to students of healthcare related vocational program is not a composite supply or a mixed supply

##### Facts of the case

- M/s. Healersark Resources Private Limited ('Taxpayer') is in the business of providing boarding and lodging including food to the students undergoing training under healthcare related vocational program;
- The taxpayer is desirous of ascertaining whether the service provided by them falls under entry no:14 of notification no:12/2017 dated 28 June 2017 as they are charging only INR. 300 per day.

##### Questions before the AAR

- What is the applicable GST SAC and GST rate for the supply of service described in this application?
- Is it a composite supply or a mixed supply?
- Whether the service is exempted vide notification no:12/2017-CT(R) dated 28 June 2017?

##### Observations and Ruling by the AAR

- The taxpayer stated that they are providing lodging and boarding to students undergoing training under healthcare related vocational program under Deendayal Upadhyay Grameen Kaushalya Yojana (DDU-GKY) by charging INR. 9,000 per candidate per month; of which INR. 3,500 is towards rent for accommodation at fixed cost and INR. 5,500 towards food on head count/actual number of candidates;

- The taxpayer added that they are charging only INR. 9,000 per month which amounts to INR. 300 per day for both accommodation and food as a composite supply. Further that the supply of food is ancillary to accommodation and accommodation being the principal supply, hence he claimed that their service is exempt from tax in view of this entry;

- The AAR noted that a composite supply is essentially a naturally bundled supply where two or more different supplies invariably exist along with each other;

A naturally bundled supply should possess the following attributes (as mentioned in Education Guide on Taxation of Services published by CBE & C on 20 June 2012 at Para 9.2.4)

- There is a single price, or the customer pays the same amount, no matter how much of the package they actually receive or use;
- The elements are normally advertised as a package;
- The different elements are not available separately;
- The different elements are integral to one overall supply - if one or more is removed, the nature of supply would be affected.

- Hon'ble High Court of Kerala in the case of Abott Health Care Pvt. Ltd., (2020) 74 GSTR 37 (Kerala) held that a composite supply must take into account supplies as affected at a given point in time on "as is where is" basis. In the present case this condition is not fulfilled. Therefore, there are two distinct supplies one for accommodation and the other for food;

- The AAR held as follows:

- The SAC for supply of accommodation is '99631'.
- The supply is not a composite supply or a mixed supply as there are two distinct supplies in this contract one for accommodation and the other for food.
- The service is not exempted vide notification no:12/2017-CT(R) dated 28 June 2017

*[AAR-Telangana, M/s. Healersark Resources Private Limited, Ruling no:26/2022, A.R. Com/04/2021, dated 3 June 2022]*

## CENTRAL EXCISE

### INSTRUCTIONS

#### Manual processing of declarations filed by the co-noticees under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

Instructions are issued for manual processing of declarations filed by the co-noticees under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 for early disposal of cases.

*[Instruction F.No.267/55/2020-CX.8/Pt-I dated 30 May 2022]*

## CUSTOMS

### NOTIFICATION

#### Payment through Electronic Cash Ledger (ECL) under Customs

Section 51A which was introduced in the Customs Act, 1962 vide Finance Act 2018 provides that every deposit made towards duty, interest, penalty, fee, or any other sum payable by a person under the provisions of Customs Act, 1962 or under the Customs Tariff Act, 1975, using authorised mode of payment shall be credited to ECL. The amount available in the

ECL may be used for making any payment towards duty, interest, penalty, fees, or any other sum payable under the provisions of Customs Act, 1962 or under the Customs Tariff Act, 1975. Further, the balance available in ECL shall be refunded in the manner as may be prescribed.

In this regard, Central Board of Indirect Taxes and Customs (CBIC) has prescribed Customs (Electronic Cash Ledger) Regulations, 2022 which were supposed to come into effect from 01 June 2022. However, now CBIC has exempted the deposits pertaining to all classes of persons and all categories of goods, from the provisions of section 51A of the Customs Act, 1962 for the period 01 June 2022 to 29 November 2022.

*[Notification no:47/2022 dated 31 May 2022 & Notification no:48/2022 dated 31 May 2022]*

### Provisional assessment of Saccharin imported from Thailand (CVD)

“Saccharin” falling under tariff item 2925 11 00, originating in or exported from China PR and imported into India, the designated authority in its final findings, published vide notification no:6/18/2018-DGAD, dated 19 June 2019, had come to the conclusion that the Saccharin exported to India from China PR at subsidised value resulted in material injury to the domestic industry.

Based on the aforesaid findings of the designated authority, the Central Government had imposed a countervailing duty 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, has initiated anti-circumvention investigation concerning alleged circumvention of countervailing duty on imports of Saccharin from China PR by imports of these goods from Thailand; And, whereas, the designated authority has satisfied itself regarding the change in pattern of trade by imports of Saccharin from Thailand, thus, undermining the remedial effect of the existing countervailing duty measures, and has accordingly recommended provisional assessment on all imports of the “Saccharin”, imported from Thailand, till the completion of the abovementioned anti-circumvention investigation.

Now, therefore, in exercise of the powers conferred by sub-section (1A) of section 9 of the Customs Tariff Act, 1975 read with sub-rule (4A) of rule 26 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid recommendation of the designated authority, hereby orders that, pending the outcome of the abovementioned anti-circumvention investigation by the designated authority, all imports of the Saccharin from Thailand into India shall be subjected to provisional assessment till the completion of the said investigation.

- The provisional assessment may be subject to such security or guarantee as the proper officer of customs deems fit for payment of the deficiency, if any, in case a definitive countervailing duty is imposed retrospectively on completion of investigation by the designated authority.
- In case of recommendation of countervailing duty after completion of the abovementioned anticircumvention investigation by the designated authority, the importer

shall be liable to pay the amount of such countervailing duty as is imposed on all the imports of the Saccharin from Thailand into India, from the date of initiation of the said investigation.

*[Notification no:3/2022 dated 02 June 2022]*

### INSTRUCTIONS

#### Amendment in export policy of Sugar

DGFT vide its notification no:10/2015-20 dated 24 May 2022, has put sugar under restricted category by amending its export policy with some exceptions, to maintain domestic availability and price stability of sugar.

CBIC now has further clarified that from 01 June 2022, export of sugar i.e., raw, refined, and white sugar will be allowed only on production of specific permission by Department of Food and Public Distribution (‘DFPD’). Further Export Release Orders (‘EROs’) issued would be placed on the DFPD website.

DFPD vide its letter dated 24 May 2022 has issued more detailed guidelines in this behalf including how to apply for EROs from directorate of sugar.

*[Instruction F. No:07/2022-Customs dated 31 May 2022]*

## FOREIGN TRADE POLICY (FTP)

### NOTIFICATION

#### Alignment of appendix 4R with the Finance Act, 2022 with effect from 01 May 2022

Certain changes in the Customs Tariff Schedule shall take effect from 01 May 2022. Accordingly, after alignment, a new RoDTEP schedule (Appendix 4R) is being notified for implementation with effect from 01 May 2022.

This new appendix 4R, with effect from 01 May 2022, containing the eligible RoDTEP export items, rates and per unit value caps, wherever applicable is available at the DGFT portal [www.dgft.gov.in](http://www.dgft.gov.in) under the link ‘Regulatory Updates >RoDTEP’.

*[Notification no:12/2015-20 dated 01 June 2022]*

### TRADE NOTICE

#### Physical verification of Letter of Credits (LCs) to be done before issuing Registration Certificate (RC) to wheat exporters

Notification no:06/2015-2020 dated 13 May 2022 amended the export policy of wheat under entry no:59 of chapter 10 of Schedule-2 of the ITC (HS) export policy 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, trade notice no:08/2022-2023 dated 17 May 2022, trade notice no:09/2022-2023 dated 23 May 2022 and trade notice no:10/2022-2023 dated 24 May 2022.

DGFT (Hq.) vide circular dated 19 May 2022 issued guidelines to all RAs for strict compliance before issuance of RCs to the eligible exporters. Despite these steps and due diligence exercised by RAs in the process, it has been apprehended that some of the exporters are applying for RCs from the RAs based on improper documents and therefore more checks need to be put in the system.

In order to plug the loopholes, it has been decided that RAs will do a physical verification of all LCs, whether already approved or under process and for that, if necessary, help of a

professional agency may be taken. While doing physical verification, validation/endorsement by recipient banks may be ensured.

Further in cases where the LC date is on or prior to 13 May 2022 but the swift message/message exchange date between the Indian and Foreign bank is after 13 May 2022, RAs may conduct full investigation (if required, through external experts) and if these are found to be ante-dated, immediate proceedings under FT (D&R) Act, 1992 needs to be initiated against the exporter. Such cases will be further examined for referring to enforcement agencies like Economic Offence Wing (EOW)/Central Bureau of Investigation (CBI). In case of complicity of any banker in cases where antedating is established, necessary proceedings as per law will be initiated.

Henceforth all RC applications found eligible for approval after physical verification of the LCs by the RAs, would be sent to a 2-member committee of Addl. DGFTS constituted in DGFT (Hqrs.) for further checking and approval. After approval of this committee only, the concerned RA would issue RC to the exporter.

RAs are requested to process all such applications with due diligence and in compliance with the instructions.

*[Trade notice no:11/2022-23 dated 30 May 2022]*

#### **Rebate of State & Central Taxes and Levies (RoSCTL) scrips holders to upload e-BRC by 15 July 2022 for exports made upto 31 December 2020**

DGFT has issued a trade notice to provide that the exporting firms who have been issued scrips under RoSCTL scheme for exports/shipping bills upto 31 December 2020 are required to upload electronic Bank Realisation Certificate ('e-BRCs') at the DGFT server latest by 15 July 2022. Notably, the rebate under RoSCTL scheme is subject to the receipt of export proceeds within the time allowed under the FEMA regulations. The DGFT has also clarified that where the exporter fails to comply with the said requirement, an action would be initiated by the jurisdictional Ras in accordance with the recovery mechanism provided under para 4.96 of HBP.

*[Trade notice no:12/2022-23 dated 30 May 2022]*



## NEWS FLASH

1. "E-art auctions face 12% GST"  
<https://timesofindia.indiatimes.com/city/mumbai/e-art-auctions-face-12-gst/articleshow/91903787.cms>  
[Source: Times of India, 31 May 2022]
2. "Centre clears entire GST compensation dues till date, releases Rs 86,912 crore to states"  
<https://economictimes.indiatimes.com/news/economy/finance/centre-clears-entire-gst-compensation-dues-till-date-releases-rs-86912-crore-to-states/videoshow/91924202.cms>  
[Source: Economic Times, 31 May 2022]
3. "Apex court's GST judgment and fiscal federalism"  
<https://www.newindianexpress.com/opinions/2022/jun/01/apex-courts-gst-judgment-and-fiscal-federalism-2460374.html>  
[Source: Indian Express, 01 June 2022]
4. "Economic activity, higher prices lift GST mop-up 44%"  
<https://indianexpress.com/article/business/economic-activity-higher-prices-lift-gst-mop-up-44-pc-7948213/>  
[Source: Indian Express, 02 June 2022]
5. "As GST Compensation Period Nears End, SC Ruling Reignites Centre-State Tax Chasm"  
<https://www.outlookindia.com/business/as-gst-compensation-period-nears-end-sc-ruling-reignites-centre-state-tax-chasm--news-199970>  
[Source: Outlook India, 02 June 2022]

## Contact Us

For any content related queries, you may please write to the service line experts at:

[taxadvisory@bdo.in](mailto:taxadvisory@bdo.in)

For any other queries, kindly write to:

[marketing@bdo.in](mailto: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, 6<sup>th</sup> 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](http://www.bdo.in)

