

# INDIRECT TAX

## Weekly Digest

06 April 2022  
[www.bdo.in](http://www.bdo.in)



## GOODS & SERVICES TAX

### JUDICIAL UPDATES

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

#### Time of supply on mobilization advance received with respect to supply of service shall be the date of receipt

##### Facts of the case

- M/s. SP Singla Constructions Private Limited ('Taxpayer' / 'SPSC') is engaged in the business of construction of bridges and other projects of Government of India as well as State Governments and undertaking of these Governments. Taxpayer generally enters into Engineering, Procurement and Construction Contract (EPC Contracts) with different authorities;
- The taxpayer receives an interest-bearing advance payment exclusively for mobilization expenses ("Mobilization advance") which is extended for financial assistance to mobilize resources for timely and smooth take off the project;
- The taxpayer is required to furnish a bank guarantee against the mobilization advance received. Further, proportionate amount of mobilization advance is adjusted from value of work completed as shown in invoice;
- Further, the contract provides that if the mobilization advance has not been fully repaid by taxpayer prior to the termination of the contract as envisaged in the contract, the whole of the balance outstanding shall be immediately become due and payable by taxpayer to the concerned authority and in such a case the concerned authority would en-cash the bank guarantee given by taxpayer;
- The taxpayer submitted that the mobilization advance is shown as other non-current liability advance against bank

guarantees in the books of accounts and not shown as income. The advance is provisionally transferred to sale/ consideration for service as and when the proportionate amount is deducted from the invoices raised on the customers.

##### Questions before the AAR

What will be the time of supply for discharging GST in respect of "mobilization advance" received by the taxpayer in respect of construction services provided by it?

##### Contention of the Taxpayer

- The taxpayer has referred to the definition of 'Supply' as per section 7, 'Consideration' as per section 2(31) of the CGST Act, 2017. Further, taxpayer has referred provisions of time of supply of services as per section 13 of the CGST Act, 2017;
- Further, the taxpayer submitted that activities of the taxpayer qualifies as "Works Contract" under section 2(119) of CGST Act, 2017 since it is pertaining to an immovable property;
- In terms of para 6(a) of the Schedule II of the CGST Act, 'Works Contract' is specifically deemed as supply of services;
- Based on provisions of section 13 of the CGST Act, 2017, where payment of 'supply of services' is received in advance i.e., before completion of services or before raising the invoice, GST liability shall accrue on that date. GST shall be liable to be paid when such amount is received towards a supply;
- However, the mobilization advance is not in the nature of payment towards the services provided by the taxpayer.

Mobilization advance is in the nature of deposit, it ceases to be a deposit and assumes the character of a payment when it is applied as a consideration. Further, the definition of consideration categorically excludes any deposit given in respect of the supply of goods or services unless the supplier applies such deposit as a consideration or payment for the said supply;

- The taxpayer has accounted the advance in books of accounts as a non-current liability and not as an income. Taxpayer further submitted certain judgements which held that advance received is in the nature of deposit and not income;
- The taxpayer has further submitted that when a bank guarantee is given to secure the mobilization advance extended by the customers to SPSC, it cannot be said that such mobilization advance is towards discharge of an obligation;
- With reference to the agreement, the taxpayer further contended that where money is paid in discharge of an obligation, there is no question of repayment of the said sum. However, in the present case, the mobilization advance is extended to SPSC with an obligation to repay the same as per the terms of the contract.

#### Observations and Ruling by the AAR

- The AAR has observed that time of supply of service on advances received is date of its receipt.
- The AAR further observed that GST law does not differentiate between advance and interest-bearing advance and therefore GST is levied on advances for supply of services, irrespective of its form;
- The case laws cited by the taxpayer is pertaining to service tax era and cannot be applied to cases covered under GST law. Further, the said advance is applied towards payment hence cannot be termed as deposit. The AAR further observed that the case laws pertaining to direct tax have no bearing on issue at hand to determine time of supply of services under GST Law;
- Further, the taxpayer is supplying Works Contract Services, which is a service as per schedule II to the CGST Act, 2017. Accordingly, advance received is not towards supply of goods by the taxpayer;
- The AAR has observed that the agreement of the contracting parties and contractual bank guarantee shall not obscure the provision of time of supply for services on advances received;
- In addition to above, advance received by the taxpayer is adjusted towards the bill raised by the taxpayer to its service recipient;
- Based on the above observations, the AAR held that time of supply on mobilization advances received by the taxpayer for supply of its service will be date of receipt of such advance.

*[AAR-Gujarat, M/s. SP Singla Construction Private Limited, Ruling No:GUJ/GAAR/R/2022/06, dated 07 March 2022]*

#### Exemption from levy of gst will be available only when all related conditions for exemption are complied

##### Facts of the case

- M/s. Maharashtra Ex-Servicemen Corporation Limited (“Taxpayer”) is engaged in providing security services to various Government entities including various Municipal Corporations;
- The taxpayer has entered into a contract with local municipal corporation for ensuring security of assets of various sites of Municipal Corporation;
- In this regard, the taxpayer intends to know whether the services provided to Municipal Corporation are exempt from levy of GST under entry no:3 of notification no:12/2017-CT(R) dated 28 June 2017 (“Exemption Notification”).

##### Questions before the AAR

Whether taxpayer can avail exemption with respect to above mentioned services provided to Municipal Corporation as per exemption notification?

##### Contention of the Taxpayer

The taxpayer submitted that since all the conditions prescribed under exemption notification for availing exemption from levy of GST are complied with, said services provided to local Municipal Corporation should be exempt from levy of GST.

##### Observations and Ruling by the AAR

On the basis of limited information submitted by the taxpayer, the AAR opined that exemption from levy of GST would only be available if the services provided by the taxpayer are covered the scope of services entrusted to a municipality under Article 243W of the Constitution of India.

*[AAR-Maharashtra, M/s. Maharashtra Ex-Servicemen Corporation Limited, Advance Ruling no:GST-ARA- 105/2019-20/B-33 dated 15 March 2022]*

#### Activity of regasification of LNG owned by another person amounts to job work

##### Facts of the case

M/s. Shell Energy India Private Limited (“Taxpayer”) is engaged in providing Liquefied Natural Gas (“LNG”) regasification services to customers who own LNG and are registered under GST.

##### Questions before the AAR

- Whether service provided by taxpayer amounts to job-work as defined under section 2(68) of CGST Act; and
- If yes, whether GST is leviable under entry no:(id) of notification no:11/2017-CT(R) dated 28 June 2017, at 12% or not?

##### Observations and ruling by the AAR

- The AAR referred to the definition of job work given under section 2(68) of CGST Act, and concluded that as the activity of re-gasification is undertaken by taxpayer on LNG owned by another registered person, the said activity is classifiable under job work;

- The AAR also referred to circular no:126/45/2019-GST dated 22 November 2019 issued by CBIC wherein it has been clarified that tax is to be levied at the rate of 12% instead of 18%. Accordingly, the activity of re-gasification services shall be taxable at the rate of 12%.

*[AAR-Gujarat, M/s. Shell Energy India Private Limited, Advance Ruling No. GUJ/GAAR/2022/08 dated 07 March 2022]*

## CUSTOMS

### NOTIFICATION

#### Exemption of deposits from the provision of section 51 A of Customs Act, 1962

CBIC has exempted the deposits:

- With respect to goods imported or exported in customs stations where customs automated system is not in place;
- With respect to accompanied baggage;
- Other than those used for making payment of, -
  - Any duty of customs, including cesses and surcharges levied as duties of customs.
  - Integrated tax.
  - Goods and Service Tax, Compensation Cess.
  - Interest, penalty, fees, or any other amount payable under the said Act, or the Customs Tariff Act, 1975 (51 of 1975).

from all of the provisions of payments through electronic cash ledger.

*[Notification no:19/2022 dated 30 March 2022]*

#### Exemption of deposits from the provision of section 51 A of Customs Act, 1962

The CBIC has specified that the provisions of 'chapter VIIA - Payment through electronic cash ledger' shall be effective from 01 June 2022. As a corollary, CBIC has notified the Customs (Electronic Cash Ledger) Regulations, 2022 which shall also be effective from 01 June 2022.

The gist of the regulations is summarized below:

##### Manner of maintaining the e-cash ledger

- The e-cash ledger would be maintained in Form ECL-1 on the common portal with respect to every deposit made towards duty, interest, penalty, fee or any other payment under the Customs law and regulations;
- The deposit made in the e-cash ledger would not accrue any interest;
- The unique identification number shall be generated on the common portal when a debit or credit is made to the e-cash ledger and the same shall be indicated in the relevant Customs declaration;
- Any deposit into the e-cash ledger shall be made by generating a deposit challan in Form ECL-2 which shall be valid for 15 days on the common portal;
- The amount may be deposited through any of the following modes in the e-cash ledger
  - Internet banking through an authorised bank
  - NEFT or RTGS
  - Over the counter payment through an authorised bank.

- Over the counter payment, cannot exceed INR. 10,000 per day. However, such limit shall not apply to deposits made by the Government Department or where the Jurisdictional Commissioner of Customs authorises a higher amount to be deposited;
- In case the deposit is being made through NEFT/ RTGS or over the counter payment, a mandate form along with the deposit challan shall be generated on the common portal which would be required to be submitted to the bank;
- On successful credit of the amount, a challan identification number would be generated by the collecting bank and the same would be indicated on the deposit challan as generated in FORM ECL-2;
- On receipt of the challan identification number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect;
- Where the bank account of the person concerned or the person making the deposit on his behalf, is debited but no challan identification number is generated or such number is generated but not communicated to the common portal, the said person may represent electronically through the common portal to the bank or electronic gateway through which the deposit was initiated.

##### Manner of making payment from the e-cash ledger

- A person may use the amount available in the e-cash ledger for making payment towards duty, interest, penalty, fee, or any other sum payable through payment challan in Form ECL-3 generated:
  - By the customs automated system in accordance with the provisions of the Customs law.
  - By the person on the basis of his own ascertainment of duty or sum payable.
- The amount shown in the payment challan would be automatically debited from the e-cash ledger in the following cases:
  - The consent for auto-debit is provided by the person in the customs declaration.
  - The amount available in the e-cash ledger is sufficient for payment of the entire amount of the payment challan.
- The successful debit of the amount shall be visible on the e-cash ledger and the credit shall be shown in the electronic duty payment ledger maintained in Form ECL-4.

##### Refund

- The balance amount remaining in the e-cash ledger, after the payment of various liabilities, may be applied for refund on the common portal in Form ECL-5.
- The amount applied for refund from the balance shall no longer be available for use by the person and its refund shall be decided within 30 days from the date of application on the common portal and the amount to be refunded shall thereafter be credited to the bank account of the person registered with customs automated system.

##### Intimation of discrepancy in electronic cash ledger

A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same on the common portal.

*[Notification no:20/2022 dated 30 March 2022]*

## FOREIGN TRADE POLICY (FTP)

### NOTIFICATION

#### Extension of imports of Tur, Urad under free category

Directorate General of Foreign Trade (DGFT) has extended the free import policy of urad [beans of the SPP vigna mungo (L.) hepper] and tur/pigeon peas (cajanus cajan) under ITC (HS) 2022, Schedule- I (Import Policy) upto 31 March 2023.

[Notification no:63/2015-20 dated 29 March 2022]

#### Extension of Foreign Trade Policy(FTP) & Handbook of Procedures(HBP) 2015-2020

DGFT has further extended the validity of the existing FTP and HBP upto 30 September 2022 which was earlier extended upto 31 March 2022.

[Notification no:64/2015-20 & Public notice no:53/2015-20 dated 31 March 2022]



## NEWS FLASH

1. “GST rules changing from today, April 1 - Lakhs of companies in India to be impacted”  
<https://zeenews.india.com/economy/gst-rules-changing-from-today-april-1-lakhs-of-companies-in-india-to-be-impacted-2449815.html>  
 [Source: Zee News India, 01 April 2022]
2. “Need simpler GST regime, stable policy setting: Sumant Sinha, Assocham President”  
<https://economictimes.indiatimes.com/news/economy/policy/need-simpler-gst-regime-stable-policy-setting-sumant-sinha-asso-cham-president/articleshow/90503873.cms>  
 [Source: Economic Times, 29 March 2022]
3. “Framework for GST summons in works”  
<https://economictimes.indiatimes.com/news/economy/policy/framework-for-gst-summons-in-works/articleshow/90527034.cms>  
 [Source: Economic Times, 30 March 2022]
4. “Miffed With Rising False GST Claims, Centre Mulls Roping In NPCI To Verify Traders’ Bank Accounts”  
<https://www.outlookindia.com/business/miffed-with-rising-false-gst-claims-centre-mulls-roping-in-npci-to-verify-traders-bank-accounts-news-189453>  
 [Source: The Hindu, 31 March 2022]
5. “High Inflation to delay tax overhaul: States want revenue cover, GST hikes”  
<https://www.financialexpress.com/economy/high-inflation-to-delay-tax-overhaul-states-want-revenue-cover-gst-hikes/2474446/>  
 [Source: Financial Express, 29 March 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)

