

INDIRECT TAX

Weekly Digest

22 June 2022

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

INSTRUCTIONS

Instructions w.r.t. sanction, post-audit and review of refund claims

Sanction of refund

While passing the refund sanction order in FORM GST RFD-06, the proper officer should also upload a detailed speaking order along with refund sanction order in FORM GST RFD-06. To ensure uniformity in issuance of such speaking order, it is clarified that such speaking order should inter-alia contain certain details as mentioned in the instruction. Facility to upload PDF is already available in ACES-GST portal for officer to upload the speaking order along with sanction order which shall be used by officer and to be provided to taxpayer, post-audit/ reviewing authorities.

Post audit and review

As per circular 17/17/2017-GST dated 15 November 2017 it has been held that pre-audit of refund orders is not required to be carried-out under GST.

Considering the large number of refund claims filed in GST, it has been decided that post-audit may henceforth be conducted only for refund claims amounting to INR 0.1Mn or more till further instructions.

The following are the guidelines for post-audit and review of refund claims:

- All the refund orders are to be transmitted in online facility mentioned above after issuance of refund order in RFD-06. The review and post audit officers shall have access to all documents/statement on ACES-GST Portal;

- To undertake the post-audit of a refund order, a post-audit cell under a DC/AC along with superintendents and inspectors may be created in Commissionerate headquarters;
- Post audit to be concluded and findings be communicated within 3 months from the date of issuance of RFD-06 order;
- The review of refund order has to be concluded at least 30 days before the expiry of the time limit for filing of appeal under section 107(2) i.e., 6 months from the date of RFD-06.

Currently the online process is not developed in ACES-GST portal for which it has been proposed to conduct the same in offline mode through E-office and the RFD-06 issued shall be transferred to post-audit cell within 7 days from issuance of final refund order.

[Instruction no:03/2022 dated 14 June 2022]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

GST is not applicable on monthly collection not exceeding INR 7,500 per member even if the total collection of the society is more than INR 2Mn per year

Facts of the case

M/s. Jayabheri Orange County Owners Association ('Taxpayer') is a Resident Welfare Association (RWA) and collects the monthly maintenance charges, annual fee in the name of sinking fund and charges for common area electricity usage.

Questions before AAR

- Whether GST is applicable on monthly collection which is not exceeding INR 7,500 per member even when the total collection of the society is more than INR 2Mn per year?
- Whether GST is applicable on total maintenance charges (Monthly collection amount plus annual sinking fund which is normally collected in July or August month during the year) exceeding INR 7,500 per month for the respective month or only on sinking fund which is over and above INR 7,500 per member?
- Whether GST is applicable on monthly charges collected towards common area electricity usage by the members in addition to INR 7,500 monthly collection. The collection is based on actual bill divided by the respective carpet area owned by the flat members?

Observations & Ruling by the AAR

- The amended entry no:77 of the notification no:12/2017-CT(R) dated 28 June 2022 as amended by notification no:02/2018 dated 25 January 2018 provides an exemption up to an amount of INR. 7,500 per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;
- Therefore, GST is payable on amount collected from members exceeds INR 7,500 and aggregate turnover exceeds INR 2Mn. In such scenario, the entire amount is subject to GST at the rate of 18%;
- Also, any amount collected along with monthly maintenance charges by whatever name called is also subject to GST if the threshold is breached. Nevertheless, GST is not leviable on electricity and water charges collected from residents;
- In view of the foregoing, the AAR held as following:
 - GST is not applicable on monthly collection not exceeding INR 7,500 per member even when the total collection of the society is more than INR 2Mn per year?
 - GST is applicable on total maintenance charges exceeding INR 7,500 per month for the respective month or only on sinking fund which is over and above INR 7,500 per member.
 - GST is not applicable on monthly charges collected towards common area electricity usage by the members in addition to INR 7,500 monthly collection, where the collection is based on actual bill divided by the respective carpet area owned by the flat members.

BDO comments

The Madras High Court has quashed the circular issued by the GST authorities and held that the term 'up-to' in notification no:12/2017 connotes an upper limit. It means that any amount collected up to INR 7,500 would be exempt for the purposes of GST (Union of India Vs TVH Lumbini Square Owners Association (Madras High Court) [W. A. Nos. 2318 and 2321 of 2021 and C.M.P.Nos.14700 and 14708 of 2021]). Accordingly, any amount collected in excess of INR 7,500 and with an annual turnover exceeding INR 2Mn is taxable. However, the above ruling held that the GST is applicable on entire amount which is likely to be contested.

Also, the exemption notification provides for exemption of GST from its members towards collection by way of reimbursement of charges or share of contribution.

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

Movement of goods between two units of a business in a state does not qualifies as 'Supply'

Facts of the case

- M/s. Crown Craft India Private Limited ("Taxpayer"), is engaged in manufacture of thermocol, PET bottles, tableware, kitchenware, toilet ware, plastic chairs. The taxpayer had set up another unit within the same state for expanding their operations. The newly set up unit is engaged in the manufacture of finished goods. Additionally, the taxpayer were also engaged in the manufacture of semi-finished goods which will be sent to first unit for finishing and further sale to the customers;
- The taxpayer has applied for a single registration in the state of Rajasthan and the newly set up unit is declared as an additional place of business in the GST registration certificate;
- In this regard, Input Tax Credit ('ITC') in respect of inputs, input services and capital goods used for the manufacture of the finished goods were availed;
- Basis the above background, the taxpayer filed an application before the AAR for determining the impact of GST on transactions between the two units.

Questions before the AAR

- Whether the movement of goods between the two units would be considered as a 'Supply' and whether GST is applicable on the said transaction?
- What is the value to be considered in the e-way bills for the said movement of goods?
- Whether the provisions of job work will apply for the said transactions?
- Whether the e-way bill is required to be generated for the movement of goods where the value exceeds the applicable threshold limit?
- Whether the ITC availed on the inward supplies for one unit shall be utilised for making payment of output tax liability for another unit?
- Whether separate address of the units is required to be mentioned while making procurement of the goods?
- Whether the address of both the units is required to be mentioned in the tax invoice or the address of the respective unit making the supply to be mentioned in the tax invoice?

Contention of Taxpayer

- The taxpayer submitted that the movement of goods between both the units shall not be considered as 'Supply' since both the units are operating under the same GSTIN;
- Since, the said movement cannot be termed as a 'Supply', a notional value of such goods shall be taken for the purpose of generating e-way bill;
- The taxpayer is of the view that the provisions of the job work will apply in respect of movement of goods for further processing to other units and accordingly, the provisions of e-way bill shall be applicable;
- Further, it was submitted that since both the units are operating under the same GSTIN, the ITC availed will be credited to the common electronic credit ledger and therefore the same can be utilised irrespective of the outward supplies made from either of the units;
- In respect of the addresses to be mentioned in the purchase and sale invoice, the taxpayer contended that there is no requirement to order goods from the vendor for each factory separately since the ITC availed on the said

goods will be credited to the common electronic ledger. However, in respect of sale invoices the address of the concerned unit making the outward supply is to be mentioned in the sale invoice.

Contention by the tax authority

- The GST will not be applicable in respect of movement of goods between the two units within the state since both the units are operating under the same GSTIN;
- The book value of goods shall be considered for the purpose of e-way bills;
- The provisions of job work shall apply in relation to the goods transferred from one unit to other units;
- The provisions of e-way bills will apply in case the value of goods exceeds the threshold limit prescribed under rule 138 of the CGST Rules, 2017;
- The ITC shall be utilised for discharging the output tax liability for supplies made by both the units;
- Both the purchase and sale invoice shall contain the respective address of the units receiving/ supplying the goods.

Observations and Ruling by the AAR

- Since, both the units are operating under a single GSTIN, they shall not be treated as a distinct entity under section 25(4) of the CGST Act 2017. Therefore, the said transaction does not amount to 'Supply';
- Additionally, the said transaction was carried-out without any consideration. The activities shall be treated as a 'Supply' where there is a consideration involved except the activities mentioned in Schedule I and import of services. The activities discussed here does not fall under the category of exceptions. Hence, the same shall not be treated as 'Supply' under GST;
- The AAR is of the view that the movement of goods between two units does not get covered under the exemptions provided to generate e-way bills. Hence, the e-way bill is required to be generated for the said movement of goods and the value of goods is to be considered as explained in explanation 2 to rule 138(1) of the CGST Rules, 2017;
- The question no: 3, 4, 6, 7 was not considered since the said questions does not fall under the category for which an advance ruling can be sought in reference to section 97(2) of the CGST Act, 2017;
- In respect of question 5 which deals with utilisation of ITC for payment of output liability for clearance made from second unit, the provisions of section 16 to be analysed. By referring the above provisions, the company is eligible to avail ITC on inward supplies received and the same shall be credited to the electronic credit ledger. The electronic credit ledger shall be maintained in FORM GST PMT-02 for each registered person eligible for ITC on the common portal and every claim of ITC will be credited to this ledger;
- Hence, AAR ruled that ITC shall be utilised for discharging the output tax liability of either of the units since both the units are operating under same GSTIN.

[AAR-Rajasthan, M/s Crown Craft India Private Limited, Ruling No: RAJ/AAR/2022-23/03 dated 19 May 2022]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

Various activities carried-out in terms of provisions of GIDC Act, 1962 amounts to 'Supply' under section 7 of the CGST Act, 2017

Facts of the case

- M/s. Gujarat Industrial Development Corporation ('GIDC' / 'taxpayer') was established under the provisions of Gujarat Industrial Development Act, 1962 ('the GID Act, 1962') by the Gujarat Government for the purpose of orderly establishment and organization of industries in industrial areas and estates as well as establishing commercial center in connection with the establishment and organization of such industries in the State of Gujarat;
- The taxpayer carries-out various activities for plot holders in terms of provisions of the GIDC Act, 1962 and collects charges for the same as may be notified from time to time;
- It earns income from premium price on lease of plots, sale of tender forms, recovery of fines, hire charges of tools and plants, annual rent of leased land, forfeiture of deposits, scrutiny fees, service charges, rent of buildings, sale of grass, water charges, development charges, drainage cess, penal interest, profit on sale of assets, transfer fee, dividend profit etc.

Questions before the AAR

Whether various activities carried-out by the taxpayer to the plot holders in terms of provisions of GIDC Act, 1962 and charges collected for the same as may be notified from time to time amounts to 'Supply' under section 7 of the CGST Act, 2017?

Contention of the Taxpayer

- The taxpayer contended that income collected by it is not towards activity of business as the activity is statutory duty as viewed by Supreme Court in case of Maharashtra Industrial Development Corporation ('MIDC');
- The taxpayer has submitted that in case of CIT Vs. GIDC[2017-TIOL-HC-AHM-IT], Gujarat High Court held that activities of the taxpayer is for advancement of any other object of general public utility, the same can be for "charitable purpose". Accordingly, it has submitted that its activity is not in furtherance of business and the same is not 'Supply' under section 7 of CGST Act, 2017;
- The taxpayer has further relied upon the cases of CCE Vs MIDC [2017-TIOL-2629- HC-MUM-ST] and Karnataka Industrial Area Development Board Vs CCT wherein it was held that they are not liable to pay service tax on their statutory activities performed under respective act;
- The taxpayer has referred to the judgement of Supreme Court in case of CST Vs Sai Publication Fund [2002] 258 ITR 70/122 Taxman 437 wherein it was held that, where main activity is not business, the connected incidental or ancillary activities of sales carried-out in furtherance of and to accomplish their main object would not, normally amount to business, unless an independent intention to conduct business in these connected, incidental or ancillary activities is established by revenue;
- The taxpayer submitted that their activity, being discharge of sovereign function in terms of their statutory obligation, does not fall under the definition of 'business' and cannot be considered as 'Supply' under CGST Act, 2017.

Observations and Ruling by the AAR

- As per section 16 of GID Act, 1962 GIDC is empowered to declare a specified area as notified area and for that notified area, State Government can appoint the local authority who have all the powers for collection of tax and to provide other civil amenities;
- From the combined reading of notification no:14/2017-CT(R) dated 28 June 2017 and section 7(2) of CGST Act, 2017, it is clear that, if the activity of a local authority is any function entrusted to it under Article 243W (which also refers to Schedule XII), then exemption can be claimed by such local authority;
- Based on the above observations the AAR held that GIDC will fall under category of 'State Government' and 'any activity or transaction undertaken by Central Government, a State Government or any local authority in which they are engaged as public authorities', read with sub-sections (1) and 1(A) of section 7 of CGST Act, 2017 would amount to 'Supply' and is not eligible for exemption mentioned at entry no:04 of notification no:12/2017-CT(R) dated 28 June 2017 (as amended) as the activities carried-out by the taxpayer are not in relation to function entrusted to the municipalities under Article 243W of the Constitution of India;
- Aggrieved above ruling, the taxpayer has filed appeal before the AAAR.

Observations and Ruling by the AAAR

- The AAR noted that as per section 2(17) of CGST Act, 2017, the term "Business" includes-
 - any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
 - any activity or transaction in connection with or incidental or ancillary to subclause; (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;
- It is seen that as per provision (a), activities mentioned therein would fall in category of business even if they are not for a pecuniary benefit. Hence, it is established beyond doubt that the activity of the taxpayer amounts to business, the question of invocation of section 2(17)(b) of CGST Act, 2017 loses relevance;
- The judgments referred by the taxpayer are pertaining to pre-GST era when the terms 'business' was not defined in the act at that time;
- The activity of the taxpayer of organization and development of industries and industrial areas and estates is not related to entry at entry no:3 of XII schedule of the Constitution of India;
- From the above, the AAAR held that the taxpayer falls under the category of 'Government Entity';
- However, the taxpayer is not eligible to claim exemption under entry no:4 of notification no:12/2017-CT(R) dated 28 June 2017 as they are not a governmental authority carrying-out function entrusted to a municipality under article 243 W of the Constitution.

[AAAR-Gujarat, M/s. Gujarat Industrial Development Corporation, Ruling no:GUJ/GAAAR/ APPEAL/2022/07, dated 09 May 2022]

FOREIGN TRADE POLICY (FTP)

PUBLIC NOTICE

Amendment of procedure for issue of Global Authorization for Intra-Company Transfers (GAICT) of SCOMET items

DGFT has laid down the procedure for Global Authorization for Intra-Company Transfer ("GAICT") of the Special Chemicals, Organism, Materials, Equipment and Technologies ("SCOMET") items/software/technology.

Some of the Key highlights include

- Pre-export authorisation not required for export and/or re-export of SCOMET Items including software technology under SCOMET category-8;
- 104 list of items excluded under SCOMET category 8 for export/ re-export under GAICT policy as notified in annexure I;
- GAICT policy is applicable only for export/re-export of items, including software and technology under SCOMET category 8 (except items listed in annexure I), and to only the countries listed;
- Form ANF-20(b) notified for application form for export of SCOMET items including software & technology (under GAICT) listed in appendix 3 to schedule 2 of ITC (HS) classification;
- Revised form ANF-20(c) and end use certificate proforma appendix 2S(iv) notified for applications under GAICT.

Post amendment, any Indian company intending to export/re-export certain SCOMET items to its foreign parent/another subsidiary of a foreign parent or its foreign subsidiary in certain countries can apply for a GAICT license. The policy mainly obviates the need for a case-to-case pre-export authorization for the export/re-export of the SCOMET items/software/technology (SCOMET Items), except for the items listed in annexure I of the policy and is limited to certain countries.

[Public notice no:14/2015-20 dated 13 June 2022]

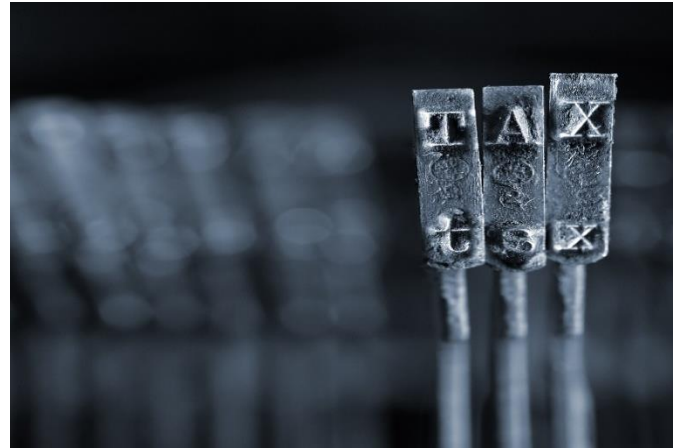
Additional provisions for allocation of Tariff Rate Quota (TRQ) for crude soya bean oil and crude sunflower oil

Changes are made in public notice no:10/2015-20 dated 24 May 2022 for notifying additional provisions for allocation of Tariff Rate Quota (TRQ) for 2 Mn MT of crude soya bean oil and 2Mn MTs of crude sunflower oil for FY 2022-23 and 2023-24.

[Public notice no:15/2015-20 dated 14 June 2022]

NEWS FLASH

1. “GST applicable on voluntary payments made by members to housing societies, says AAR”
<https://economictimes.indiatimes.com/news/economy/finance/gst-applicable-on-voluntary-payments-made-by-members-to-housing-societies-says-aar/articleshow/92218061.cms>
[Source: Economic Times, 15 June 2022]
2. “GST council will decide on compensation cess: CBIC chief”
<https://timesofindia.indiatimes.com/city/goa/gst-council-will-decide-on-compensation-cess-cbic-chief/articleshow/92166647.cms>
[Source: Times of India, 13 June 2022]
3. “CBIC issued detailed procedure for sanction, post-audit, and review of refund claims under GST”
<https://economictimes.indiatimes.com/news/economy/policy/cbic-issued-detailed-procedure-for-sanction-post-audit-and-review-of-refund-claims-under-gst/articleshow/92232817.cms>
[Source: Economic Times, 15 June 2022]
4. “Group of Ministers on GST rate rationalisation to meet on Jun 17”
<https://economictimes.indiatimes.com/news/economy/policy/group-of-ministers-on-gst-rate-rationalisation-to-meet-on-jun-17/articleshow/92229972.cms>
[Source: Economic Times, 15 June 2022]
5. “Unregistered food brands also to attract 5% GST: Group of ministers”
<https://www.financialexpress.com/economy/unregistered-food-brands-also-to-attract-5-gst-group-of-ministers/2564812/>
[Source: Financial Express, 18 June 2022]



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