

# INDIRECT TAX WEEKLY DIGEST

17 January 2023  
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## GOODS & SERVICES TAX

### LEGISLATIVE UPDATES CIRCULARS

#### CLARIFICATION REGARDING GST RATES & CLASSIFICATION OF CERTAIN GOODS BASED ON THE RECOMMENDATIONS OF THE GST COUNCIL IN ITS 48TH MEETING

- It is clarified that Rab massecuite (prepared by concentrating sugarcane juice on open pan furnaces, and includes Rab Galawat and Rab Salawat, but does not include khandsari molasses or lauta gur) is classifiable under heading 1702 attracting a GST rate of 18%.
- Effective 01 January 2023, by-products of milling of dal/pulses such as chilka, khanda and churi/chuni would be exempt from the levy of GST vide entry no:102C of notification no:2/2017-CT(R), dated 28 June 2017.
- It is also clarified on the applicability of GST on subject goods, that arose during the intervening period is regularised on an 'as is' basis from the date of issuance of circular no:179/11/2022-GST, dated 03 August 2022, till the date of coming into force of the abovesaid entry no:102C and the entries relating thereto.
- It is clarified that the applicable six-digit HSN code for the goods with the description 'carbonated beverages of fruit drink' or 'carbonated beverages with fruit juice' is HS 2202 99. The said goods attract GST at the rate of 28% and compensation cess at the rate of 12%. Entry no:12B and 4B cover all such carbonated beverages that contain

carbon-dioxide, irrespective of whether the carbon dioxide is added as a preservative, additive, etc.

- It is clarified that the snack pellets (such as 'fryums'), which are manufactured through the process of extrusion, are appropriately classifiable under tariff item 1905 90 30, which covers goods with the description 'extruded or expanded products, savoury or salted', and thereby attract GST at the rate of 18% entry no:16 of schedule-III of notification no:1/2017-CT(R), dated the 28 June 2017.
- It is clarified that compensation cess at the rate of 22% is applicable on motor vehicles, falling under heading 8703, which satisfy all four specifications, namely, these are popularly known as SUVs; the engine capacity exceeds 1,500 CC; the length exceeds 4,000 mm; and the ground clearance is 170 mm and above.
- It is clarified that on goods specified in the list annexed to notification no:3/2017-IGST(R) dated 28 June 2017, which are eligible for an IGST rate of 12% under the said notification and are also eligible for the benefit of a lower rate under schedule I of the said notification or any other IGST rate notification, the importer can claim the benefit of the lower rate.

*[Circular no:189/01/2023-GST, dated 13 January 2023]*

### CLARIFICATIONS REGARDING THE APPLICABILITY OF GST ON CERTAIN SERVICES

- It is clarified that accommodation services provided by air force mess and other similar messes, such as army mess, navy mess, paramilitary and police forces mess to their personnel or any person other than a business entity are covered by entry no:6 of notification no:2/2017-CT(R) dated 28 June 2017 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.
- It is clarified that incentives paid by MeitY to acquiring banks under the incentive scheme for the promotion of RuPay Debit cards and low-value BHIM-UPI transactions are in the nature of subsidy, and hence, not taxable.  
[Circular no:190/02/2023- GST, dated 13 January 2023]

### JUDICIAL UPDATES

#### WRIT PETITION

### PROCEDURES CONTEMPLATED IN THE CIRCULAR WOULD NOT PREVAIL OVER STATUTORY PROVISION

#### Facts of the case

- M/s. Balakrishna Industries Limited (Taxpayer) is engaged in the business of manufacturing tyres and has a factory at Bhuj (Gujarat).
- The Taxpayer had applied for a refund of unutilised ITC on account of zero-rated supplies amounting to INR 315.88mn as per provisions of Section 54(3)(i) of the CGST Act, 2017 and rule 89(4) of the CGST Rules, 2017.
- The Tax Authority had sanctioned the refund of INR 97.21mn and rejected the balance claim of INR 218.67mn on the ground that the Taxpayer did not follow the procedures contemplated in para 3.2 of circular no:59/33/2018-GST dated 04 September 2018 i.e. while claiming refund, the Taxpayer was first required to debit ITC of IGST from Electronic Credit Ledger (ECL) to the extent of balance available.
- The Taxpayer preferred an appeal against the said rejection order and the Appellate Authority held that the Taxpayer is eligible for a refund of INR 217.17mn by filing a fresh application but after only following the procedure mentioned in Circular.
- The Taxpayer had filed a fresh refund application which was responded to by the Tax Authority with another Show-Cause-Notice proposing to reject the claim of refund. It was for the reason that the Taxpayer had not reversed the credit of IGST.
- The Taxpayer filed a Special Civil Application under Article 226 of the Constitution of India to the Honorable Gujarat High Court.

#### Contention of the Taxpayer

- The Taxpayer submitted that the entitlement to claim a refund was not disputed by Appellate Authority, and the Taxpayer had debited ECL by an amount equivalent to the claim of refund as per rule 89(3) of the CGST Rules, 2017.
- Further, the application was filed in the prescribed manner under the provisions of GST law and rules made thereunder, and the Tax authority cannot reject the application solely on the ground that the Taxpayer failed to debit the amount in the ECL in the sequence provided in the Circular.
- The deficiency memo was not issued after the submission of the refund application. Had the deficiency memo been issued, the Taxpayer could have rectified the sequence of debiting the ECL to make it consistent with the Circular.
- The Circular of such nature could not substitute, amend or curtail the ambit of operation of the rules and could not have an overriding effect over the provision of law and rules made thereunder.
- In addition to the above, the Taxpayer relied upon various precedents which had held that circulars are binding on the department and circulars contrary to statutory provisions have no existence of law.

#### Contention by the Tax authority

- The Tax Authority submitted that refund of unutilised ITC on zero-rated supplies made without payment of tax is governed by Section 54(3) of the CGST Act, 2017 which inter alia provides that the refund application must be preferred in the prescribed manner (i.e., as per Rule 89(4) of the CGST Rules, 2017 and Circular no:59/33/2018-GST dated 04 September 2018).
- Further, the Circular was issued under Section 168(1) of the CGST Act, 2017 and the Taxpayer had not complied with the provisions of the circular.
- Hence, the refund claim was rightly rejected as the Taxpayer did not debit the ECL as per the sequence mentioned in the circular.

#### Ruling by the High Court

- The Honorable High Court set aside the order in original and order in appeal and held that non-compliance with the procedure in paragraph 3.2 of the circular will not disentitle the Taxpayer from claiming the refund amount.
- The Honorable High Court also ordered the Tax authority to refund the Taxpayer INR 217.17mn along with statutory interest.

[High Court of Gujarat, M/s. Balakrishna Industries Limited V/s Union of India, R/SCA No: 11254 of 2020, dated, 04 August 2022]

## ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

### GST APPLICABILITY ON FOOD AND BEVERAGES SUPPLIED AS RESTAURANT SERVICES

#### Facts of the case

- M/s. Riddhi Enterprise (Taxpayer) is engaged in the restaurant business. The Taxpayer provides food and beverages prepared at the restaurant as well as readily purchased food and beverages.
- The Taxpayer exclusively provides restaurant services and is not engaged in hotel accommodation. Customers have a choice to either consume the items at the restaurant or take them away.

#### Questions before the AAR

- Whether the food and beverages prepared and supplied at the restaurant qualifies as 'restaurant services' and are classified under SAC 996331 as per notification no:11/2017-CT(R) dated 28 June 2017 (Rate Notification)
- Whether the readily available (not prepared) food and beverages sold at the restaurant qualify as 'restaurant services' and are classified under SAC 996331 as per the Rate Notification

#### Contentions by the Taxpayer

- The Taxpayer submitted that the food and beverages prepared and supplied by them qualify as 'restaurant services' and is classifiable under SAC 996331 as per the Rate Notification and are leviable to tax at the rate of 5% with no Input Tax Credit ('ITC').
- Further, the Taxpayer also stated that the food and beverages readily purchased and sold by them also qualify as 'restaurant services' and is classifiable under SAC 996331 as per the Rate Notification.
- The Taxpayer also referred to circular no:164/20/2021-GST dated 06 October 2021, wherein it is clarified that restaurant services also include take away services of food and beverages.

#### Observations and Ruling by the AAR

- AAR opined that the food and beverages prepared and supplied by the Taxpayer are covered under the definition of 'restaurant services' and classifiable under SAC 996331 as per the Rate Notification.
- However, the readily available food items which are not prepared or cooked in the restaurant do not qualify as 'restaurant service' and shall be treated as a supply of goods with applicable tax rates.

[AAR-Gujarat, M/s. Riddhi Enterprise, Ruling no:GUJ/GAAR/R/2022/51, dated 30 December 2022]

## EXCISE/SERVICE TAX/CUSTOMS

### APPROVAL OF INPUT SERVICES BY THE APPROVAL COMMITTEE IS ONLY A PROCEDURAL REQUIREMENT, A REFUND CANNOT BE REJECTED DUE TO THIS PROCEDURAL LAPSE

#### Facts of the case

- Tax authorities rejected the refund claimed by M/s. DIC Fine Chemicals Private Limited (Taxpayer) made under notification no:15/2009-ST dated 20 May 2009 on the ground that input services on which the refund claim was made is not approved by the Unit Approval Committee of Special Economic Zone (SEZ).
- Being aggrieved by the above decision, the Taxpayer has filed an appeal with CESTAT, Ahmedabad.

#### Contention by the Taxpayer & Tax authority

- The Taxpayer, by placing reliance on various landmark judgements, averred that it is settled law that a refund cannot be rejected only due to the lapse of non-approval of input services in SEZ.
- The Tax Authority re-iterated the finding of the Impugned Order and also pointed out that the Learned Commissioner (Appeals) has not given any finding on the issue of the time bar.

#### Observations and Decisions made by CESTAT, Ahmadabad

- Services supplied to SEZ are immune from Service Tax and conditions of notification granting exemption by way of refund cannot override this immunity.
- The approval of input services by the approval committee is only a procedural requirement and a refund cannot be rejected due to this procedural lapse.
- This issue is no longer res-integra as it was held in numerous legal cases that refund cannot be rejected under notification no:15/2009 -ST dated 20 May 2009 due to non-approval of input services.
- As the Commissioner (Appeals) has not given any finding on the time bar, the matter is remanded to the Commissioner (Appeals) to give a finding on the issue of the time bar.
- Accordingly, the appeals are allowed by way of remand to the Commissioner (Appeals).

[CESTAT- Ahmedabad, DIC Fine Chemicals Private Limited, Final Order no:A/ 12278-12279/2022]

## CIRCULARS

### FACELESS ASSESSMENT - STANDARD EXAMINATION ORDERS THROUGH RMS - PHASED IMPLEMENTATION OF STANDARDISED EXAMINATION ORDERS THROUGH RMS

- CBIC issued [circular no:16/2022-customs dated 29 Aug 2022](#) relating to phases in phase 1 implementation of the Standard Examination Orders (SEO) for goods covered under assessment group 4. Phase 1 refers to cases of risk-based selection for examination after assessment (second check examination).
- Subsequently, vide the [circular no:23/2022-Customs dated 03 November 2022](#), SEO was extended to goods covered under assessment group 5.
- Considering the on-track implementation and feedback from the National Customs Targeting Centre (NCTC) in the above assessment groups, the CBIC has decided to implement SEOs through the Risk Management System across other assessment groups, National Assessment Centre (NAC) wise, as per the schedule specified in the circular.  
*[Circular no:02/2023-Customs 11 January 2023]*

## INSTRUCTIONS

### IMPLEMENTATION OF E-WASTE (MANAGEMENT) RULES, 2022 IN SUPERSESSION OF E-WASTE (MANAGEMENT) RULES, 2016

- Vide D.O. dated 05 December 2022, the Ministry of Environment, Forest and climate change has notified the E-Waste (Management) Rules, 2022 in supersession of E-Waste (Management) Rules, 2016.
- New rules have introduced the concept of a modified Extended Producer Responsibility (EPR) and focus completely on a market-based model and for procedures to be online and seamless.
- Port & Customs authorities have to take necessary action inter-alia to verify the import or export with respect to Extended Producer Responsibility, to Inform Ministry and Central Pollution Control Board of any illegal traffic & take action against the importer for violations under the Indian Ports Act, 1908 or the Customs Act, 1962. Duties and responsibilities of port & Customs are prescribed in schedule-V of said rules.  
*[Instruction no:1/2023 dated 07 January 2023]*

## FOREIGN TRADE POLICY (FTP)

### NOTIFICATION

#### IMPLEMENTATION OF RODTEP COMMITTEE REPORT IN RELATION TO ANOMALIES ETC

The revised Appendix 4R containing the eligible RoDTEP export items, after incorporating changes recommended by the RoDTEP Committee in relation to apparent errors and anomalies in 432 HS Codes in the earlier notified RoDTEP rates/caps, is being notified and will be applicable for exports made from 16 January 2023 to 30 September 2023.

*[Notification no:53/2015-2020 dated 09 January 2023]*

### PUBLIC NOTICE

#### AMENDMENT UNDER APPENDIX 2T (LIST OF EXPORT PROMOTION COUNCILS/COMMODITY BOARDS/EXPORT DEVELOPMENT AUTHORITIES)

Mobile and Electronic Devices Export Promotion Council (MEDEPC) has been included in [Appendix 2T](#) of [FTP 2015-2020](#) for issuing RCMC for specific items, with immediate & effect.

*[Public notice no:49/2015-2020 dated 09 January 2023]*

#### DISCONTINUATION OF TARIFF RATE QUOTA (TRQ) FOR IMPORT OF CRUDE SOYA BEAN OIL

The last date of import of crude soya bean oil under TRQ has been revised to 31 March 2023. Further, no allocation of TRQs for the import of crude soya bean oil shall be made for the Financial Year 2023-24.

*[Public notice no:50/2015-2020 dated 11 January 2023]*

## TRADE NOTICE

### EXPORT OBLIGATION DISCHARGE CERTIFICATE (EODC) ONLINE MONITORING SYSTEM FOR ADVANCE/EPCG AUTHORISATIONS

- Trade notice no:1/2018-19 was issued on 04 April 2018 wherein a system was designed for monitoring the progress of EODC applications of advance/EPCG authorisations.
- After the implementation of the revamped DGFT IT systems, the redemption/EODC details in respect of Advance/ EPCG authorisations including IEC details, the status of the license, redemption applied or approved, details of data transmission, etc. are accessible on the DGFT website <https://dgft.gov.in>.
- In a few cases of AA/EPCG, the EODC/closure is issued manually during earlier periods and is incorrectly reflected in the online system. Therefore, the exporters are provided with an alternative wherein they can confirm the status of past authorisations on the DGFT website.
- In case the authorisation is closed/redeemed, and the status is incorrectly reflected, the exporters are required to upload a copy of the closure/redemption letter against the said authorisation, (<https://dgft.gov.in>) → Services → AA/DFIA/EPCG → 'Manual EODC Update'; RA may verify the submitted requests and update the status of the said cases after verification from its records.

[Trade notice no:24/2022-23 dated 12 January 2023]

## NEWS FLASH

### “Gift or not? The confusion over GST on promotional schemes run by businesses”

<https://economictimes.indiatimes.com/small-biz/gst/gift-or-not-the-confusion-over-gst-on-promotional-schemes-run-by-businesses/articleshow/96900657.cms>

[Source: Economic Times, 11 January 2023]

### “Budget 2023: TV industry demands lower GST slabs, PLI scheme”

<https://www.businesstoday.in/union-budget/expectations/story/budget-2023-tv-industry-demands-lower-gst-slabs-pli-scheme-359818-2023-01-11>

[Source: Business Today, 11 January 2023]

### “GST: Goods/ Services for Installation of Solar Power Panel are Plant and Machinery, ineligible for ITC, rules AAR”

<https://www.taxscan.in/gst-goods-services-for-installation-of-solar-power-panel-are-plant-and-machinery-ineligible-for-itc-rules-aar/245198/>

[Source: Taxscan, 12 January 2023]

### “Exporter eligible for recovery of unused GST ITC under RCM on transportation costs to GTA: AAR”

<https://www.taxscan.in/exporter-eligible-for-recovery-of-unused-gst-itc-under-rcm-on-transportation-costs-to-gta-aar/245185/>

[Source: Taxscan, 12 January 2023]

### “GST Portal releases Module wise New functionalities”

<https://www.taxscan.in/gst-portal-releases-module-wise-new-functionalities/245360/>

[Source: Taxscan, 12 January 2023]

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## 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 or feedback, kindly write to us at [marketing@bdo.in](mailto:marketing@bdo.in)

## BDO IN INDIA OFFICES

### Ahmedabad

The First, Block C - 907 & 908  
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

### Chandigarh

Plot no 55, 5th Floor,  
Industrial & Business Park,  
Phase 1, Chandigarh 160002, 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

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

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