

# INDIRECT TAX

## Weekly Digest

14 July 2021  
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## GOODS & SERVICES TAX

### JUDICIAL UPDATES

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

#### Facilitation of supply of goods / services under any arrangement amounts to intermediary services

##### Facts of the case

- M/s. Airbus Group India Private Limited (“Taxpayer”) is engaged in providing various technical advisory, professional and business support services to Airbus Invest SAS, France (“holding company”) wherein following activities are performed by the taxpayer:
  - Obtain initial quotations from prospective suppliers and share the same with the holding company for selection;
  - Ensure production quality is maintained by the supplier by reviewing their performance as well as onsite assessment; and,
  - Create awareness related to ethics and compliance guidelines of the Airbus Group amongst the suppliers.
- Basis the agreement executed with the holding company, aforesaid services are rendered on principal to principal basis whereby fees is charged on cost plus markup approach; and
- In this backdrop, the taxpayer intends to know the correct classification of such services.

##### Questions Before the AAR

- Whether the activities carried-out by the taxpayer are classifiable as ‘other support services’ / ‘intermediary services’ or under any other classification of services ?
- Whether such services qualify as exports or not ?

##### Contentions of the Taxpayer

- The taxpayer contended that HSN code ‘9985 - Other support services’ is not applicable in the instant case as it excludes services related to technical advisory and business support services from its ambit. Rather, the services specifically fall under HSN code ‘9983 - Other professional, technical and business services’;
- Further, the taxpayer relied upon several judicial pronouncements and submitted that the services rendered cannot be construed as intermediary services basis the following grounds:
  - The taxpayer is not undertaking any activity relating to purchase or sale of goods / services;
  - All the services are being provided on principal to principal basis as elucidated in the agreement;
  - Said services are being provided on own account rather than on behalf of the holding company; and
  - The taxpayer is recovering service fees on a cost plus markup basis and is not contingent on fruition of any contract; and
- Furthermore, the taxpayer stated that said services are squarely covered under the definition of ‘export of services’ as provided under section 2(6) of IGST Act, 2017 since all the conditions are fulfilled. Accordingly, GST will not be levied on supply of such services.

##### Observations and ruling by the AAR

- The AAR dismissed the contention of the taxpayer regarding applicability of HSN code 9983 since services performed by the taxpayer do not correspond with any description of services prescribed under said HSN;

- The AAR observed that the Taxpayer plays a significant role in selection of vendors as well as in maintaining correspondence between such vendors and the holding company. Thus, the holding company will not be able to procure goods from the vendors without existence of such services. Hence, the same amounts to facilitation of supply of goods or services to the holding company;
- The AAR further highlighted that the criterion of the nature of the payment is not part of the definition of 'intermediary' provided under section 2(13) of the IGST Act, 2017. Hence, the same could be in the form of commission payment, cost plus mark up or any other way;
- In light of above, the AAR concluded that the services rendered will be construed as intermediary services. Further, place of supply of such services falls within India in terms of section 13(8) of the IGST Act, 2017. Accordingly, services rendered in the given case do not qualify as export of services; and
- Said services being 'intermediary services' will be classified under HSN code 998599 taxable at the rate of 18% GST.

*[AAR-Karnataka, M/s. Airbus Group India Pvt. Ltd., Advance Ruling no:KAR ADRG 31/2021 dated 01 July 2021]*

### The land given under lease by a local authority for fish and crab farming is an exempted supply

#### Facts of the case

- M/s. Chellanam Grama Panchayath ('Taxpayer') is a Local Self Government institution and is engaged among other activities in leasing of wet land for fish farming;
- Taxpayer has allotted some wet land, i.e., water channel (paruthithodu chaal in Chellanam) on lease. The land is used for fish and crab farming. The person who has taken the wet land on auction has to pay the agreed auction amount.

#### Question before the AAR

Whether lease rent charged by Municipality/Panchayath for land i.e., water channel used for fish farming falls within the meaning of "services relating to rearing of all life forms of animals by way of renting or leasing of vacant land" eligible for GST exemption as per entry no:54 of notification no:12/2017-CT(R) dated 28 June 2017 and corresponding notification under Kerala GST?

#### Contention of the taxpayer

- The taxpayer stated that as per entry no:54 of notification no:12/2017-CT(R) dated 28 June 2017; under heading 9986 - services relating to rearing of all life forms of animals, by way of renting or leasing of vacant land with or without a structure incidental to its use are exempted from GST;
- It was stated that as per the said entry, exemption is available for services relating to cultivation and rearing of all forms of animals;
- The services can be by way of (i) agricultural operations; (ii) supply of farm labour; (iii) process carried-out at an agricultural farm; (iv) renting or leasing of agro machinery or vacant land (v) loading and unloading of agricultural produce (vi) agricultural extension services and (vii) services by any agricultural produce marketing committee;
- Therefore, the conditions to be satisfied for exemption under the said entry is that the activity carried-out should be cultivation or rearing of animals or agricultural produce

and the services provided shall conform to any of the descriptions enumerated therein. The conditions to be satisfied for grant of exemption are; (a) activity carried should be cultivation or rearing; (b) cultivation or rearing should be of agricultural produce or animals;

- In the given case the activity carried-out is fish and crab farming. The term "rearing" means bring up and care for until they are fully grown, or care for until they are fully grown. The wet land is given on annual lease. This is clear from the allotment letter and agreement. The auction was carried-out only to ascertain the tenant who quotes the highest rent. Merely for the reason that auction is done, does not take away the activity from renting;
- As per definition in 2(zz) of notification no:12/2017-CT(R) dated 28 June 2017 "renting in relation to immovable property" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, licensing or other similar arrangements in respect of immovable property. From the above definition, it is clear that the arrangement between lessee and Chellanam Grama Panchayath clearly comes within the meaning of renting;
- The last condition is that the renting should be of vacant land with or without structure incidental for its use. As per Black's Law dictionary; "land" includes not only the soil or earth, but also things of a permanent nature affixed thereto or found therein, whether by nature as water, trees, grass, herbage, other natural or perennial products, growing crops or trees, mineral under the surface, or by hand of man, buildings, fixtures, fences, bridges as well as works constructed for use of water, such as dikes, canals etc. It is thus clear that canals also fall within the meaning of the term "land". The word 'chaal' used in Malayalam is synonymous with canal and forms part of land mass (in this case of paruthithodu chaal) and land referred at entry no:54 of notification no:12/2017-CT(R) dated 28 June 2017 therefore includes canals. Thus, all the conditions stipulated in entry no:54 of the notification no:12/2017-CT(R) dated 28 June 2017 is satisfied and the lease of vacant land for fish farming qualifies for exemption as per the said entry;
- The tax authority also agreed with the taxpayer's submissions.

#### Observations and ruling by the AAR

- AAR considered the submissions of taxpayer and noted that on a plain reading of the above said entry, it is evident that the services relating to cultivation of plants and rearing of all life forms of animals by way of renting or leasing of vacant land with or without structures is exempted under the entry;
- AAR accepted the contention of the taxpayer that is providing water channel (paruthithodu chaal in Chellanam) and there is no doubt that the water channel comes under the category of land, hence the first condition is satisfied;
- The nature of provision of the land as evidenced by the allotment letter and agreement comes within the scope of definition of renting of immovable property in para 2(zz) of notification no:12/2017-CT(R) dated 28 June 2017 and hence the second condition also satisfied;

- The vacant wet land is given on rent for rearing of fish and crabs. Thereby the third condition that the rearing should be of animals is also satisfied;
- Based on the above observations the AAR held that the said activity is squarely covered under the exemption at entry at entry no:54 of notification no:12/2017-CT(R) dated 28 June 2017 as services relating to rearing of all life forms of animals by way of renting or leasing of vacant land.

[AAR Kerala, M/s. Chellanam Grama Panchayath Ruling no:KER/100/2021 Dated 25 May 2021]

## ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

**Isopropyl rubbing alcohol IP and Chlorhexidine Gluconate and Isopropyl Alcohol solution are classifiable under Heading 3808 & attract 18 % GST**

### Facts of the case

- M/s. Ce Chern Pharmaceuticals Pvt. Ltd. ("Taxpayer") is engaged in the manufacture sale of different pharmaceutical formulations comprising of tablets, capsules, oral liquids and dry syrups in India and also export the same to various countries across the globe;
- The taxpayer manufactures the following two products at a large scale primarily to combat the situation arising on account of pandemic COVID-19:
  - Isopropyl rubbing alcohol IP (Composition - Isopropyl Alcohol IP 70% v/v Excipients: Purified water IP QS)
  - Chlorhexidine Gluconate and Isopropyl Alcohol solution (Composition: Chlorhexidine Gluconate solution IP 2.5% v/v equivalent to 0.5% w/v of Chlorhexidine Gluconate Isopropyl Alcohol IP 70% v/v Purified water IP QS)
- The taxpayer has been manufacturing these products for a significant period of time and the products were classified under the HSN 3808 falling under the tax bracket of 18%. However, it is the taxpayer's understanding that the said goods would fall under HSN 3004 with a GST rate of 12% and thus, they have approached the AAR Karnataka for confirmation on classification;
- Aggrieved by the order passed by AAR with the order no:KAR ADRG 07/2021 dated 26 February 2021 wherein it was held that the said goods fall under chapter heading 3808 and attract 18% GST in terms of entry no:87 of schedule III of notification no:01/2017-CT(R) dated 28 June 2017, the taxpayer filed an appeal.

### Question before the AAR

What is the appropriate classification of the hand sanitizer for the purpose of GST and what is the applicable rate of GST?

### Contention of the taxpayer

- Chapter heading 3004 is the most appropriate chapter heading to cover medicaments which are used for therapeutic or prophylactic value and it is presented that if a product is used for preventing spread of disease, the same would be considered to be of prophylactic use therefore qualifying as a medicament;
- Chapter heading 3808 covers agents that destroy or

irreversibly inactivate undesirable bacteria, viruses or other microorganisms, generally on inanimate objects and as human skin cannot be considered an inanimate surface, hand sanitizers are outside its ambit;

- They also submitted that alcohol-based hand sanitizer is perceived as a hand rub medication that kills the germs thereby preventing diseases and hence, the common parlance test results in the said product in question to be classified under the Heading 3004 as a medicament;
- Products covered under HSN 3401 and 3402 are primarily belong to soap and the lower authority's comparison of the product in question as an alternative to soap has no technical basis;
- As the taxpayer is granted a licence to manufacture the sanitizers under the Drugs & Cosmetics Act, 1940 their product should be considered a medicament;
- Taxpayer also referred to a DGFT notification dated 6 May 2020, which prohibits the export of alcohol-based hand sanitizers falling under ITC HS codes 3004, 3401, 3402 and 3808 94.

### Observations and ruling by the AAAR

- The AAAR referred to definition of "therapeutic" as treatment of a disease whereas 'prophylactic' is preventing the onset or progression of a disease and observed that for a product to be classified as a medicament under Chapter Heading 3004, the product must have either of the two qualities i.e therapeutic or prophylactic;
- It was opined that the product in question is merely recommended for use in hand hygiene practices as such product neither controls the diseases nor does it develop preventive characteristics inside the human body to fight the disease caused by the viruses or bacteria;
- The use of the phrase "generally on inanimate objects" in the Explanatory Notes to Heading 3808 does not mean that a product having disinfecting properties which is made suitable for use on human skin is not disinfectant. The moment it could be used on animate objects, it does not cease to be a 'Disinfectant'. The AAAR referred the judgement of the Kerala High Court in the case of Reckitt Benckiser (India) Ltd. (2011 (270) ELT 25 (Ker));
- As per common parlance, alcohol-based hand sanitizers are commonly understood as hand hygiene product used to disinfect the hands from disease spreading germs. It is not commonly considered as a medicine used for treatment or prevention of any disease or ailment;
- Regulation under the Drugs & Cosmetics Act, 1940 does not ipso facto mean that the product automatically becomes a medicine. There are a number of substances/materials/products which are regulated by the Drugs & Cosmetics Act, 1940 though they are not used or recognized as medicines;
- Both 'hand sanitizer' and 'soap and water' are recommended methods in hand hygiene practices and each method is effective in certain situations and are not alternative to each other;
- A DGFT notification is not an authority for determining the classification of goods under GST law. Classification of goods is to be determined based solely on the description of goods given in the first schedule to the Customs Tariff Act, 1975 read together with the relevant section notes and chapter notes;

- Based on the above observations the AAAR upheld the AAR ruling no:KAR ADRG 07/2021 dated 26 February 2021.

[AAAR Karnataka, M/s. Ce Chern Pharmaceuticals Pvt. Ltd. Ruling no:KAR/AAAR/06/2021 dated 24 March 2021]

## CUSTOMS

### CIRCULARS

#### Improvements in Faceless Assessment - Measures for expediting Customs clearances

- CBIC has comprehensively reviewed the implementation of faceless assessment and deliberated on the further measures required for expediting the pace of assessment and Customs clearance of imported goods. It was found that by and large the objectives of faceless assessment in terms of expeditious assessments, anonymity in assessments and uniformity in assessments have been met. However, it was observed that there is even now scope for improvement which would potentially lead to a substantial increase in the pace of assessments and Customs clearance, while further enhancing the uniformity in assessments and anonymity with a view to reduce interface with the trade;
- Accordingly, CBIC has decided to implement the following measures in the Customs faceless assessment and clearance processes:

#### Enhancement of facilitation levels

- CBIC has earlier reviewed the facilitation levels in imports and vide circular no:39/2011-Customs dated 02 September 2011 decided the facilitation targets should be 80% for aircargo complexes, 70% for seaports and 60% for ICDs. Various initiatives have since been taken to leverage technology as well as simplify extant procedures. As a result, the overall average facilitation levels have already exceeded these levels with the all-India average facilitation level across all Customs stations being 77% for May 2021;
- It was also noted that the use of machine learning and the other state of art technologies now enables RMS to more precisely target the risky consignments thereby enabling more focused attention on lesser number of Bills of Entry for assessment by the FAGs;
- CBIC has decided that w.e.f. 15 July 2021 the facilitation level across all Customs stations would be increased to 90% relating to Risk Management Division (RMD). It is clarified that the element of randomness in interdiction of any Bill of Entry would be retained by Risk Management System (RMS);
- This measure is expected to enable faster clearance of non-risky imports with enhanced focus on risky imports, so that revenue remains safeguarded.

#### Expediting assessment process

At present, the working hours of the e Faceless Assessment Groups (FAGs) across the country are not uniform. Thus, there is uneven output such that some officers of a FAG who begin work earlier clear more than the targeted Bills of Entry while others whose working hours begin later do not get sufficient number of Bills of Entry. Moreover, the time take for the 'first decision' by the Appraising Officers and Deputy/Assistant Commissioners of Customs is also much more than necessary resulting in lower than optimum output. CBIC

has decided to implement changes in the assessment procedure, as follows:

**The working hours of all FAGs shall be uniform from 10 AM till 8 PM on any working day.**

It is clarified that within these uniform working hours, Chief Commissioners of the National Assessment Centres (NACs) shall ensure that no assessing officer is required to work for more than the working hours that are prescribed, as per the existing guidelines of the Government of India. However, considering the nature of Customs functioning, Chief Commissioners of the NACs shall ensure adequate number of assessing officers are available during the holidays as per the fixed roster.

**NACs and jurisdictional Pr. Commissioners/Commissioners of Customs shall administratively monitor that FAGs communicate the 'first decision' on the Bill of Entry within 3 working hours after its allocation.** The first decision could be acceptance of the self-assessment, query to the importer or a first check, as may be warranted.

Jurisdictional Pr. Chief/ Chief Commissioners of Customs shall ensure as far as possible that one appraising officer is given responsibility of not more than 2 (two) FAGs. The re-organisation within the zones may be undertaken such that assessing officers at the ports with the expertise of the items under a FAG are allotted to that FAG.

**The total number of queries which can be raised by an Appraising Officer in respect of a Bill of Entry would now be restricted to 3 (three).** Further, such queries can now be raised without seeking approval of the Addl./Joint Commissioner of Customs.

The option to 'set-aside' 5 (five) Bills of Entry, which is already available with the Appraiser/Superintendent would henceforth not require an approval of the Deputy/Assistant Commissioners of Customs. It is expected that the Appraiser/Superintendent would utilize the facility to set aside certain BEs (upto the limit) to address some genuine issues.

#### Re-organisation of FAGs - Specialization

To promote specialisation in assessment, CBIC has decided to create separate FAGs for certain commodities, which also contribute appreciably to tax authority. These new FAGs would become operational from 15 July 2021 and would be as stated in the circular.

#### Re-organisation of FAGs - Optimisation of workload

- The composition and the performances of various FAGs across zones in recent times have been examined considering the volume of Bills of Entry handled by the FAGs. To further optimise their performance, Board has decided to re-organise the NACs as per Annexure I of the circular;
- Due care has been taken to balance the objectives of improved and faster assessments with the efficient deployment of available manpower. In particular, the endeavor has been to ensure that the reconfiguration of the FAGs does not lead to a disproportionate reduction/increase in the overall workload (i.e. BEs) presently being handled by the zones.

#### Enhancing Direct Port Delivery (DPD)

- Circular no:29/2019-Customs dated 05 September 2019 stipulates the eligibility criteria for availment of DPD by

the importers. Since then a number of measures including advance filing of Bill of Entry have led to quicker turn-around time for the import cargo. The present decision to enhance the facilitation levels is also a step in this direction. However, while facilitation levels are going up, the DPD levels are not rising commensurately;

- This is primarily because the present policy is to have an entity based DPD while facilitation levels are linked primarily to Bills of Entry. Accordingly, in order to enhance DPD for faster Customs clearances as well as de-congestion of ports, CBIC has decided to shift from entity based DPD to a Bill of Entry based DPD;
- CBIC has decided that, as a general principle, all the advance Bills of Entry which are fully facilitated (do not require assessment &/or examination) would be granted the facility of DPD. It is clarified that, this facility is over and above the present system of entity based DPD extended to AEO clients;
- However, the entity whose Bill of Entry has been facilitated for DPD would be required to adhere to the requirements of the ports/terminals/custodians for taking physical delivery of the container;
- In order to optimise the ground handling by the ports/terminals/custodians, the ICEGATE shall modify the electronic message being sent to the ports/terminals/custodians on arrival of the cargo, to additionally flag the containers granted (or ready for) DPD along with IEC details. The flag would also indicate the requirement of scanning of specific containers, wherever applicable. Similar message would be sent to the importer/Customs Broker;

#### Automated generation of examination orders

- In order to enhance uniformity and streamline the examination orders, CBIC has decided to introduce RMS generated uniform examination orders at all Customs stations across the country. Further, the imports of items which ordinarily warrant first check would now be directly routed to the shed for first check examination;
- Such first check Bills of Entry will now be referred to the FAG for assessment only after a first check examination report has been uploaded by the shed officers in the Customs system. The detailed implementation advisory on this will be issued shortly.

#### Anonymised escalation

To better address the grievances of trade relating largely to delays in assessment, DG Systems shall soon shortly operationalise an Anonymized Escalation Mechanism (AEM) on ICEGATE which would empower importers/Customs Brokers to directly register his/her requirement of expeditious clearance of a delayed Bill of Entry, which may be pending for assessment or examination. The features of the AEM would include, amongst others:

- In case of delay of more than 1 working day, an importer/Customs Broker would be able to initiate AEM through ICEGATE or approach Turant Suvidha Kendra (TSK) for the same;
- The AEM will automatically route the grievance to the concerned FAG/import shed, with a notification to Additional/Joint Commissioners of Customs of the concerned FAG and port of import;
- The concerned FAG is required to dispose the grievance promptly and same shall be monitored by the concerned

Additional/Joint Commissioner of Customs of the concerned FAG/Import Shed;

- The status of the disposal would be updated on the dashboard of ICEGATE, TSK, FAG and to the concerned officers.

*[Circular no:14/2021-Customs dated 7 July 2021]*

## FOREIGN TRADE POLICY (FTP)

### TRADE NOTICE

#### Issuance of benefits/scrips under MEIS, SEIS, ROSL and ROSCTL Schemes put on hold for temporary period

The Director General of Foreign Trade ('DGFT') has issued Trade Notice no:08/2021-22 dated 08 July 2021, holding acceptance, processing and issuance of benefits under MEIS, SEIS, ROSL and ROSCTL Schemes for a temporary period.

Summary of the said Trade Notice is as follows: -

- Issuances of benefits/ scrips under MEIS, SEIS, ROSL and ROSCTL Schemes would be on hold for a temporary period due to changes in allocation procedure.
- No fresh applications would be allowed to be submitted at the online IT module of DGFT for these schemes under this period.
- All submitted pending applications for issuance of scrips would also be on hold.
- Trade would be suitably informed, once issuance of scrips is opened again.

*[Trade Notice no:08/2021-22 dated 08 July 2021]*

## NEWS FLASH

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1. “GST officials tap radio frequency data to detect tax evasion, fraud”  
<https://www.livemint.com/news/india/gst-officials-tap-radio-frequency-data-to-detect-tax-evasion-fraud-11625686352221.html>  
[Source: Livemint, 08 July 2021]
2. “GST collections below Rs 1 lakh crore after 8 months”  
<https://timesofindia.indiatimes.com/business/india-business/gst-collections-below-1-lakh-crore-after-8-months/articleshow/84191943.cms>  
[Source: Times of India, 07 July 2021]
3. “GST to Remain Poster Boy of Cooperative Federalism in India”  
<https://www.news18.com/news/business/gst-to-remain-poster-boy-of-cooperative-federalism-in-india-3940472.html>  
[Source: News 18, 08 July 2021]
4. “Bring Fuels Under GST To Slash Price Hike, CTI Urges Centre”  
<https://www.outlookindia.com/website/story/cti-urges-govt-to-bring-petrol-diesel-under-gst-to-reduce-fuel-rates/387530>  
[Source: Outlook India, 08 July 2021]
5. “Good news for taxpayers, Centre gives another opportunity to file GST returns without penalty”  
<https://www.dnaindia.com/business/report-good-news-for-taxpayers-centre-gives-another-opportunity-to-file-gst-returns-without-penalty-2899367>  
[Source: DNA India, 08 July 2021]



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