

INDIRECT TAX

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

OFFICE MEMORANDUM

Authority regarding action consequent to the issuance of Show Cause Notice (SCN) and for issuance of recurring SCN in case of an enforcement action initiated by the Central authorities against a taxpayer assigned to the State and vice versa

- Varied practices are being followed by the field formations regarding the issuance of recurring SCNs as well as other consequential actions in cases where an investigation has been initiated and finalised by central tax authorities in respect of the Taxpayers under State tax administration and vice versa. In this regard, it is clarified that:
 - A Taxpayer located within a State is open to enforcement action by both authorities. Accordingly, all consequential action relating to the case including but not limited to appeal, review, adjudication, rectification, revision will lie with the authority which had initiated the enforcement action. However, a refund may be granted only by the jurisdictional tax authority, administering the Taxpayer
 - Issuance of recurring SCNs does not involve any fresh investigation as the subject matter and the ground of SCN remain the same, and therefore, it may be desirable that such further/recurring SCNs are issued

by the actual jurisdictional authorities (responsible for the assessment of returns of the Taxpayer), as they will be in a position to access the records and returns of the Taxpayers and to check whether the grounds of SCN still exist or not and take a view/action for issuance of recurring SCN, based on facts in the said period. Accordingly, it has been clarified that the recurring SCNs may be issued by the concerned jurisdictional tax authorities administering the Taxpayer

[Office Memorandum F.No.757/Follow-up/GSTC/2018/8198, dated 19 October 2022]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Wire rope is not an essential part of the fishing vessel and is to be taxed at 18% GST

Facts of the case

- M/s. Shakti Marine Electric Corporation (Taxpayer) is engaged in the supply of combined wired rope to customers engaged in fishing activities
- The taxpayer is currently charging GST at the rate of 18% on supplies made to its customers but intends to charge GST at the rate of 5%. In this regard, the Taxpayer has filed an application for an advance ruling to obtain clarity on the applicable GST rate on the supplies.

Questions before the AAR

Whether the GST rate of 5% is applicable on the combined wired rope used as part of fishing vessels as per notification no:1/2017-CT(R) dated 28 June 2017 (rate notification)

Contentions by the Taxpayer

- Taxpayer contended that parts of fishing vessels fall under tariff heading 8408 and the supply thereof attracts 5% GST as per circular no:52/26/2018-GST, dated 09 August 2018
- The Taxpayer also cited various judicial precedents and contended that rope is an essential part without which fishing vessels cannot function. Hence, it forms part of fishing activities
- The Taxpayer has also submitted that usage of goods when used as a part of fishing vessels determines the applicable GST Rate. In the instant case, a rope is used to tie a fishing net for the purpose of fishing activities. Thus, it falls under HSN 8902 and is leviable to tax at the rate of 5%

Contentions by the Tax authority

- Tax authority submitted that there is no evidence to prove that rope is an essential part of a fishing boat. Further, judicial pronouncements relied upon by the Taxpayer are different from the facts of the instant case
- Also, fishing vessels are not equipped with rope at the time of manufacturing. Therefore, rope shall not be classified under HSN 8902 and shall attract GST at the rate of 18%

Observations and Ruling by the AAR

- AAR observed that wire rope has a general use to tie the fishing net and does not form an essential part of the fishing vessel. Therefore, the Taxpayer's argument to tax wire rope at the rate of 5% as per rate notification does not hold good
- AAR agreed with the contentions of the Tax authority and held that rope, not being an integral part of the fishing vessel would continue to be taxed at 18%

[AAR-Gujarat, M/s. Shakti Marine Electric Corporation, Ruling no:GUJ/GAAR/2022/45, dated 28 September 2022]

ITC shall not be availed on solar panels installed as the electricity is an exempted goods

Facts of the case

- M/s. VBC Associates (Taxpayer) is in the business of maintenance of immovable property. They provide the services of maintenance of the immovable property, covered under the main SAC 9972
- The Taxpayer makes the payment of electricity charges upfront to the Tamil Nadu Electricity Board (TNEB) for the building as a whole and incurs the expenses of running the DG, along with any other expenses for the business and claims ITC on the inward supplies
- The Taxpayer charges taxes on the Electricity charges and DG charges (EB and DG charges) which are being recovered from the tenant, due to the fact that their supply is composite in nature as their principal supply is taxable supply as per the provisions of CGST Act, 2017
- The Taxpayer have procured solar panels and the power so generated from it is proposed to be used for electrical consumption. With respect to the above, the Taxpayer has sought an Advance ruling in respect of the following question

Questions before the AAR

Whether the ITC on solar power panels procured and installed is a blocked credit under Section 17(5)(c) and 17(5)(d) of CGST/TNGST Act, 2017

Contention by the Taxpayer

- The Taxpayer contended that they have incurred expenses with respect to the procurement of solar panels, and the erection and commissioning of the solar power panel. As per Section 17(5)(c) and 17(5)(d) of the CGST Act, 2017, ITC is not available for works contract services received for the construction of the immovable property and for goods and services received for the construction of an immovable property (other than plant and machinery) on own account. However, in the instant case, the solar panels do not get covered under the definition of immovable property, as panels are not attached to the earth
- The Taxpayer also contended that as per the General Clauses Act, 1897 and Transfer of Property Act, 1882, solar panels do not satisfy the criteria of immovable property and are strictly covered under the definition of 'Plant and Machinery'. Hence, ITC of GST paid on solar panels and erection, commissioning/installation services are available in terms of Sections 16 & 17 of the CGST Act, 2017
- The Taxpayer submitted that they pay the upfront net cost of common electricity consumption [Total consumption by the unit (A) - Credits availed due to generation of Solar power (B)] to the TNEB. However, at the time of raising the bill to the customers, they raise the same as the total consumption (as per (A) above), and GST would be discharged on the amount recovered from the tenant. Hence, the GST liability towards the charges is borne by the customers
- The Taxpayer also submitted that various documents including agreements in relation to various supplies on their own account and supplies of third parties procured on behalf of the service recipients which are essential to ascertain the nature and scope of supply. They have further submitted the following rulings to substantiate their stand:
 - M/s. KLF Nirmal Industries Private Limited (AAR-Tamil Nadu, Ruling order no:19/ARA/2021, dated 18 June 2021)
 - Shri Kesav Cement and Infra Limited (AAR-Karnataka, KAR/AAR/26/2019-20 dated 12 September 2019)
 - M/s Kumaran Oil Mill (AAR-Tamil Nadu, TN/33/AAR/2020 dated 28 September 2020)
- The Taxpayer contended by highlighting that there would not be any sale of the power units generated from the solar power panels, and the units so generated would be utilised only against the consumption of electricity for the leased premises, on which the taxes are being charged to the customers, on the entire value of services and remitted to the Government

Observations and Ruling by the AAR

- The AAR observed that it is not possible to confine the discussion on eligibility to claim ITC restricted to Section 17(5)(c) and 17(5)(d) of the CGST Act, 2017 as desired by the Taxpayer. Hence, relevant statutory provisions of the

CGST Act, 2017 and Rules thereunder to claim of ITC are to be analysed

- The AAR referred to the provisions of Section 17(2) of the CGST Act, 2017 which deals with provisions relating to the apportionment of credit and blocked credits, rule 43 of the CGST Act, 2017 dealing with the manner of determination of ITC in respect of capital goods and reversal thereof in certain cases and Rule 33 of the CGST Act, 2017 dealing with the value of supply of services in case of a pure agent
- AAR also noted that the Taxpayer procured electricity from TNEB, including electricity generated by solar power panels installed at an additional place of business and wheeled by TNEB for captive use at the principal place of business its business. However, the Taxpayer has recovered the amount, for the gross energy units consumed by the customers at the rate charged by TNEB through a separate invoice from the customers, implying that the energy generated by the solar power plant is sold to the customers on their own account
- The AAR further observed electrical energy is goods classified under HSN 2706 and exempted by notification no:02/2017-CT(R) dated 28 June 2017 vide entry no:104. Therefore, electrical energy generated by solar panels installed by the Taxpayer is exempted goods supplied to the customer and consequently, ITC paid on the solar panels are ineligible as ITC on capital goods used exclusively for the supply of exempted goods are not eligible under Section 17(2) read with rule 43(a)
- Further, the AAR informed that the Taxpayer cannot place reliance on the case laws submitted by them as the applicants in the cited rulings are manufacturers who have used the electrical energy generated by solar panels for taxable supplies or taxable and exempted supplies. However, in the instant case, the Taxpayer has used the electrical energy exclusively for exempted supply, as a supply of electricity to customers is covered by the agreement
- The AAR concluded that payment of GST on the electricity charges and other expenses collected from the customers needs to be examined in the light of rule 33 of the CGST Rules, 2017 dealing with the value of services in the case of a pure agent. However, no opinion can be expressed on the value of output supplies for payment of GST, as the ruling only pertains to the eligibility of ITC on solar power panels installation
- Basis the above, the AAR held that the Taxpayer is not eligible for a claim of ITC as per Section 17(2) of the CGST Act, 2017 read with rule 43(a) of CGST Rules, 2017, on the goods/services used in the installation of solar power panels, which are considered as 'Plant and Machinery'.

[AAR-Tamil Nadu, M/s. VBC Associates, Ruling no:33/AAR/2022, dated 31 August 2022]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

'Paratha' merits classification at HSN 2106 90 99 taxable at 18%

Facts of the case

- M/s. Vadilal Industries Limited (Taxpayer), is primarily engaged in the production of Malabar paratha, Mixed vegetable paratha, Onion paratha, Methi paratha, Alu paratha, Lacchha paratha, Mooli paratha, and Plain paratha
- The principal ingredient for all the aforesaid varieties of parathas is wheat flour and other ingredients include water, edible vegetable oil, salt, antioxidants, etc. which are added only for the purpose of taste and flavour. Hence, all varieties can be essentially treated as paratha itself
- Parathas are supplied and sold by them in the packed condition which are to be placed directly on a pre-heated flat pan for about 3-4 minutes before consumption
- Earlier the Taxpayer approached the AAR and it was held that parathas are not ready for consumption but require 3-4 minutes of cooking and that they are not similar to roti or chapati which are primarily wheat flour products. The AAR held that parathas are not the same as chapatis and need to be classified under different headings which attract a GST rate of 18%, while chapati attracts a 5% rate
- Aggrieved by the advance ruling, the Taxpayer approached the AAAR

Questions before the AAAR

- Whether the products viz. 'Paratha' i.e. various varieties of paratha produced by the Taxpayer be classified under HSN Code 1905 90 90
- Whether the product, namely, 'Paratha' i.e. all varieties of parathas produced by the Taxpayer are chargeable to 5% GST under entry no:99A of schedule-I of notification no:1/2017-CT(R) dated 28 June 2017

Contention of the Taxpayer

- According to the Taxpayer, paratha is also a flat unleavened bread of Indian origin having a close resemblance to roti and chapatti. Further, both chapatti and paratha are cooked on a griddle and the way of consumption is also similar
- Therefore, chapatti and paratha being unleavened bread, fall under HSN Code 1905 and consequently under Tariff item no:1905 (subheading no:19059090) of GST tariff and thus chargeable to GST @ 5%

Observations and Rulings by the AAAR

- The AAAR highlighted that Khakhra, plain chapatti, or roti are cooked preparations that do not require any processing for human consumption and hence are ready-to-eat food preparations whereas the 'Paratha' requires 3-4 minutes of cooking

- The HSN code 1905 only covers ready-to-eat products as in the case of plain chapatti or roti whereas HSN code 2106 covers food preparations not elsewhere specified or included in any code as in the case of parathas
- The only common thread between these items is the usage of wheat flour. However, the percentage of usage of wheat flour used in parathas manufactured by the Taxpayer ranges from 36% to 62% whereas the ingredient of plain roti or chapatti is wheat flour apart from water
- Moreover, 'Paratha' also required further processing for human consumption as admitted by Taxpayer. Hence, 'Paratha' is not 'Khakhra, plain chapatti or roti'. Thus, the said entry no:99A of schedule-I to the notification no:01/2017-CT(R) dated 28 June 2017 is not applicable for 'Paratha'
- Hence, paratha is to be classified at HSN 2106 90 99 which is residuary head to HSN code 2106 - 'Food preparations not elsewhere specified or included';
- Also, as there is no mention of the HSN 2106 in the schedule of the notification no:01/2017 CT(R) dated 28 June 2017, paratha would be covered under entry no:453 of schedule-III of the said notification up to 14 November 2017 which covers goods that are not specified in schedule I, II, IV, V or VI of the above said notification
- Furthermore, w.e.f. 15 November 2017, it would be covered under entry no:23 of schedule-III of notification no:01/2017 CT(R) dated 28 June 2017 as amended by notification no:41/2017- CT(R) dated 14 November 2017 and thus, will be liable to GST at the rate of 18%
- The AAAR upheld the ruling passed by the AAR and noted that 'Paratha' merits classification at HSN 2106 90 99 taxable at 18%

[AAAR- Gujrat, M/s. Vadilal Industries Limited, Ruling no:GUJ/GAAAR/APPEAL/2022/20, dated 15 September 2022]

CENTRAL EXCISE

NOTIFICATION

Increase of the Special Additional Excise Duty (SAED) on the production of petroleum crude and export of Aviation Turbine Fuel(ATF)

Notification no:18/2022-CE dated 19 July 2022 has been amended, which prescribes a reduction of the SAED on the production of petroleum crude and export of ATF. In the said notification following amendment is made in the table:

S. No.	Chapter or heading or subheading or tariff item	Description of goods	Existing Rate	Proposed Rate
1	2709	Petroleum crude	INR 8,000 per tonne	INR 11,000 per tonne
2	2710	Aviation Turbine Fuel	Nil	INR 3.50 per Litre

This notification shall come into force on 16 October 2022.

[Notification no:34/2022 dated 15 October 2022]

Increase of the SAED on high-speed diesel oil

Notification no:04/2022-CE, dated 30 June 2022 has been amended, which prescribes the rate of SAED for exports of petrol and diesel. In the said notification following amendment is made in the table:

S. No.	Chapter or heading or subheading or tariff item	Description of goods	Existing Rate	Proposed Rate
2	2710	High-speed diesel oil	INR 3.50 per litre	INR 10.50 per litre

This notification shall come into force on 16 October 2022.

[Notification no:35/2022 dated 15 October 2022]

CUSTOMS

NOTIFICATION

Solar power plants and solar power projects removed from the ambit of the Project Imports

- Central Board of Indirect Taxes and Customs (CBIC) has issued notification no:54/2022-Cus dated 19 October 2022 notifying the Project Imports (Amendment) Regulations, 2022. The said Regulations shall come into force w.e.f. 20 October 2022
- Vide the amended Regulations, solar power plants and solar power projects have been removed from the ambit of the Project Imports. Further, Bhopal Metro Rail Projects and Indore Metro Rail Projects have been included in the list of the 'Metro Rail or Monorail projects' eligible for project imports

[Notification no:54/2022 dated 19 October 2022]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Amendment in export policy of items under HS code 1101 (Wheat or Meslin Flour (Atta), Maida, Samolina Ravi/ Sirgi, Wholemeal atta and resultant atta)

Notification no:30/2015-20 dated 27 August 2022 is amended to the extent that the export of wheat flour (atta) will be allowed against Advance Authorization, and by Export Oriented Units (EOUs) and units in SEZs, to be produced from imported wheat and without the procurement of domestic wheat and subject to conditions as specified in the notification.

[Notification no:39/2015-20 dated 14 October 2022]

PUBLIC NOTICE

Amendment in Para 2.107 (TRQ under FTA/CECA) of Handbook of Procedure 2015-2020

Conditions for TRQ imports under tariff head 7108 under India-UAE CEPA are updated in line with Customs notification no:74/2022-Customs(N.T.) dated 09 September 2022 read with circular no:18/2022-Customs 10 September 2022.

[Public notice no:32/2015-20 dated 20 October 2022]

TRADE NOTICE**Implementation of Export quota of only broken rice (HS code 1006 40 00) for the year 2022-23**

DGFT issued notification no:38/2015-2020 dated 12 October 2022 notifying quota of 3,97,267 MT for export of only broken rice under HSN 1006 40 00 for the period up to 31 March 2023, for the year 2022-23, the export policy of which is 'prohibited'.

The procedure to apply for the registration certificate/permission under quota notified vide notification no:38/2015-2020 dated 12 October 2022 is outlined below:

- Export of broken rice under HSN 1006 40 00 will be allowed for the period up to 31 March 2023, for the year 2022-2023
- Exporters can apply online through DGFT's ECOM system for export authorisations for non-SCOMET restricted Items (refer to Trade Notice no:03/2021-22 dated 10 May 2021). There is no need to send a hard copy of the application via mail or post;
- Online applications for the export of broken rice under HSN 10064000 filed from 16 October 2022 to 20 October 2022 will only be considered
- All the applications will be examined as per para 2.72 of HBP 2015-2020
- Validity of the export authorisation will be till 31 March 2023
- The following is applicable for the issuance of registration certificate/permission:
 - The exporters need to file separate applications if there is more than one ICLC opened before 08 September 2022 as in a single application only one ICLC will be considered
 - LCs should have been opened before notification no:31/2015-2020 dated 08 September 2022
 - The message exchange date between the Indian and foreign bank/swift date should have been prior to 08 September 2022
 - The LCs should have been authenticated by the recipient bank. They should also furnish an active mobile number, landline number and e-mail ID of the contact person of the bank branch
 - The documents to be submitted along with the application must include the following:
 - Copy of purchase order/Invoice
 - Copy of the LC, authenticated by the recipient bank
 - All applicants seeking registration certificate/permission regarding the export of broken rice may apply online by navigating to the DGFT website (<https://www.dgft.gov.in>) -> Services > Export Management Systems > Apply for RC for Export

DGFT reserves the right to decide or alter the modalities of distribution and allocation of quota depending on the total quantity of broken rice, as per applications received, to be exported through the valid LCs.

Deficient applications or applications received through mail or by post or received beyond the specified timeline will not be considered.

[Trade notice no:19/2022-23 dated 14 October 2022]

**NEWS FLASH**

1. "One-time offer to settle minor GST offences in works" <https://economictimes.indiatimes.com/news/economy/policy/one-time-offer-to-settle-minor-gst-offences-in-works/articleshow/94951015.cms>
[Source: Economic Times, 18 October 2022]
2. "GST Council meeting delayed to November-December" <https://www.financialexpress.com/economy/gst-council-meeting-delayed-to-november-december/2721730/>
[Source: Financial Express, 20 October 2022]
3. "Packed, frozen paratha 'quite different' from roti/chapatti; attracts 18% tax: GST Appellate AAR" <https://economictimes.indiatimes.com/news/economy/finance/packed-frozen-paratha-quite-different-from-roti-chapatti-attracts-18-tax-gst-appellate-aar/articleshow/94858346.cms>
[Source: Economic Times, 14 October 2022]
4. "End of GST aid makes states wary: States' capex growth much slower than budgeted" <https://www.financialexpress.com/economy/end-of-gst-aid-makes-states-wary-states-capex-growth-much-slower-than-budgeted/2713739/>
[Source: Financial Express, 17 October 2022]
5. "E-invoices must for businesses with over Rs 5 crore turnover a year" <https://economictimes.indiatimes.com/news/economy/policy/e-invoices-must-for-businesses-with-over-5-crore-turnover-a-year/articleshow/94770329.cms?from=mdr>
[Source: Economic Times, 13 October 2022]

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