INDIRECT TAX
Weekly Digest

08 November 2022
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GOODS & SERVICES TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Cotton seeds are not an agricultural produce and GST shall be levied on the freight component of its transportation

Facts of the case

- M/s. Ahuja Industries (Taxpayer) is engaged in the business of receiving cotton seeds transported by Goods Transport Agencies (GTA) and pays tax on such service under RCM
- Taxpayer opines that GTA services on agricultural produce are exempt from the levy of GST. The Taxpayer seeks a ruling on the taxability of the freight component of cotton seeds as per the CGST Act, 2017

Questions before the AAR

- Whether cotton seeds be classified as agricultural produce for exemption in GTA service under notification no:12/2017-CT(R) dated 28 June 2017 (Exemption Notification)
- If not exempt, what is the tax rate applicable for GTA services in respect of cotton seeds

Contention by the Taxpayer

- Taxpayer submitted that cotton seeds shall be included under the definition of 'agricultural produce' and GTA services in respect of such agricultural produce is exempt under GST Act vide exemption notification.

Contention by the Tax authority

- The Tax authority on going through the definition of 'agricultural produce' and the process of obtaining cotton seeds submitted that cotton seeds shall not be included in the definition of agricultural produce as per exemption notification
- It was therefore contended that the Taxpayer is liable to pay GST on the freight element on the purchase of cotton seeds under the reverse charge mechanism (RCM)

Observations and Ruling by the AAR

- AAR noted that cotton seeds are not agricultural produce as defined under the CGST Act and hence, the Taxpayer is not eligible to avail of the exemption from the levy of GST on GTA services
- Accordingly, GST shall be chargeable at the rate of 5% on GTA services provided that input tax charged on goods and services has not been availed, else GST at the rate of 12% will be leviable as per notification no:11/2017-CT(R) dated 28 June 2017

  [AAR-Punjab, M/s. Ahuja Industries, Ruling no:AAR/GST/PB/021, dated 20 September 2022]

Body Building of vehicles on a job work basis is the supply of service

Facts of the case

- M/s. Oyester Auto Body (Taxpayer) is engaged in the business of body-building of commercial vehicles used for carrying goods on chassis supplied by customers

- The body is built as per the customer's requirement. In this regard, the Taxpayer seeks a ruling for the classification of supplies made to its customers under GST law

Questions before the AAR

- Whether the activity of commercial vehicle body-building on a job-work basis is a supply of goods or a supply of services
- What is the GST rate applicable on such supply of goods or services

Contention by the Taxpayer

- Taxpayer submitted that he is engaged in job work as defined u/s 2(68) of the CGST Act, 2017. Taxpayer also contended that job work activities carried out by him shall be classified as the supply of service as per Schedule II of CGST Act, 2017
- It was also contended by the Taxpayer that the fabrication of vehicles shall be classified as a supply of service attracting GST at a rate of 18% as per circular no:52/2018

Observations and Ruling by the AAR

- AAR, after examining the matter, concluded that the work contract service supplied by the Taxpayer shall be classified as a supply of service as per Schedule II of CGST Act, 2017
- AAR also concluded that the activity shall be classified under SAC 9988-manufacturing service on physical inputs/goods owned by others and GST shall be leviable at the rate of 18% as per notification no:11/2017-CT(R) dated 28 June 2017

  [AAR-Kerala, M/s. Oyester Auto Body, Ruling no:KER/144/2021, dated 01 August 2022]

CENTRAL EXCISE

NOTIFICATION

Reduction in Special Additional Excise Duty (SAED) on the production of petroleum crude and increase in SAED export of aviation turbine fuel

Amendment has been made in notification no:18/2022-CE, dated 19 July 2022 which prescribes a reduction of the SAED on the production of petroleum crude and export of aviation turbine fuel. In the said notification following amendments have been made to the table:

S. No.	Chapter or heading or subheading or tariff item	Description of goods	Existing Rate	Proposed Rate
1	2709	Petroleum crude	INR 11,000 per tonne	INR 9,500 per tonne
2	2710	Aviation Turbine Fuel	INR 3.50 per Litre	INR 5 per Litre

This notification shall come into force on 02 November 2022.

[Notification no:36/2022 dated 01 November 2022]

Increase in SAED on the export of diesel

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

Chapter or heading or subheading or tariff item	Description of goods	Existing Rate	Proposed Rate
2710	High-speed diesel oil	INR 10.50 per Litre	INR 11.50 per Litre

This notification shall come into force on 02 November 2022.

[Notification no:37/2022 dated 01 November 2022]

CIRCULARS

The mechanism for implementation of additional basic excise duty @ INR 2 per litre levied on the sale of unblended motor spirit (commonly known as petrol)

- As part of Budget 2022-23, an additional Basic Excise Duty at INR 2 per litre was levied on the unblended motor spirit (commonly known as petrol) intended for retail sale and the said duty rate was to be applicable w.e.f 01 October 2022. The date of effect was deferred to 01 November 2022 vide notification no:31/2022-Central Excise dated 30 September 2022. The levy of additional Basic excise duty on unblended motor spirit was introduced to promote blending in the country
- For levy of additional central excise duty on unblended motor spirit, particularly as the blending of duty-paid motor spirit with duty-paid ethanol takes place at depots after clearance from the refinery. The difficulty faced by the OMCs is that at the time of clearance of motor spirit from the refinery, the same is cleared as intended for retail sale as blended but they are not able to estimate the quantity that will eventually be sold as unblended
- Therefore, to ensure the smooth implementation of the differential duty, the following procedures are hereby prescribed in addition to the existing procedures:
  - Central excise duty shall be paid on motor spirit at the refinery stage. However, where the motor spirit is cleared, as intended for retail sale after blending, the manufacturers/refineries shall remove such motor spirit to the depots/terminals by paying applicable central excise duty on blended motor spirit. In such a scenario, the following procedure must be followed:
    - Refinery shall furnish a running bond to the jurisdictional Central Excise Commissioner with an undertaking to pay the differential excise duty along with applicable interest
    - Payment of differential duty along with applicable interest on the quantity sold as unblended from depots shall be made by the 6th of the following month based on actual clearances of the quantity of unblended motor spirit from the depots
    - A reconciliation statement as certified by the statutory auditor shall be submitted to the jurisdictional Central Excise Commissioner by the manufacturer/refinery by the 10th of the following month for every preceding quarter
    - After such reconciliation, in case any short-payment of differential duty is found, the same shall be liable to be paid along with applicable interest

- Detailed records must be maintained electronically at the depots/terminals which will be open to checks by officers of Central Excise

  [Circular no:1085/06/2022 dated 31 October 2022]

CUSTOMS

NOTIFICATION

Export duty exemption to specified varieties of Rice

CBIC has prescribed a nil rate of export duty on the following varieties of rice:

Sl. no.	Product	Conditions to be satisfied
1	Rice in the husk (paddy or rough)	Condition 1
2	Husked (brown) rice	Conditions 2 & 3
3	Semi-milled or wholly-milled rice, whether or not polished or glazed (other than Parboiled rice and Basmati rice)	Conditions 2 & 3
4	Organic non-Basmati rice	Condition 4

Conditions

Condition no.	Condition
1	Goods meant for export to Nepal, when exported through the customs station located at Raxaul or Jogbani or Sonauli, upto an aggregate quantity not exceeding six lakh metric tonnes of total exports of such goods through the said stations, taken together, from the date on which this notification enters into force.
2	Goods meant for export shall have entered the customs station for the purpose of exportation before 09 September 2022, and an order permitting clearance has not been issued by the proper officer.
3	Goods meant for export shall be backed by irrevocable Letter(s) of Credit, wherein the said letter(s) of credit has been opened before 09 September 2022, and the message exchange date between the Indian and Foreign bank/swift date should be before 09 September 2022.
4	Goods meant for export shall be allowed to be exported only when accompanied by a Provisional Transaction Certificate/Transaction Certificate issued by a Certification Body accredited by the National Accreditation Body (NAB) for Organic Products under the National Programme for Organic Production of the Department of Commerce, as mentioned in the Directorate General of Foreign Trade public notice no:73 (RE-2013)/2009-2014, dated 18 November 2014.

This notification shall come into force on 01 November 2022.

[Notification no:55/2022 dated 31 October 2022]

Exemption on import of organic chemicals under chapter 29 in relation to petroleum or coal bed methane operations

Amendment has been made in notification no:50/2017-Customs dated 30 June 2017 which prescribes the effective rates of customs duty and IGST for goods imported into India. Exemption on import of certain goods in relation to petroleum operations or coal bed methane operations is extended to goods under chapter 29 (Organic chemicals) also.

[Notification no:56/2022 dated 01 November 2022]

INSTRUCTIONS

Procedure for identification of parboiled rice varieties during exports

Vide notification no:49/2022-Customs dated 08 September 2022 with effect from 09 September 2022 there was a levy of export duty on rice falling under CTH 1006 30 90. The current classification is as follows:

- 1006 30 - Semi milled or wholly milled rice, whether or not polished or glazed
- 1006 30 10 --- Rice, Parboiled
- 1006 30 20 --- Basmati rice
- 10063090 ---Other

There were confusions on the procedure followed for the identification of the parboiled rice variety of CTH 1006 30 10 (which attracts nil rate of duty) at the time of export to distinguish it from other varieties of rice under the CTH 1006 30 90 which are dutiable. When the provisional assessment has resorted, a bank guarantee is insisted in some field formations (and not in others) leading to uncertainty/delay in export.

- The issue here is only the adoption. The Department of Food and Public Distribution (DFPD) has informed that there is no direct method, other than by testing, found in the literature, to identify parboiled rice variety with certainty vis-à-vis other. It is relevant that the DGFT prescribed export policy condition as 'free' for the above classification structure
- In the above context, the following procedure for confirming the correctness of the declaration shall be adopted in the normal course:
  - Representative samples shall be drawn at the time of export and sent for testing to Central Revenues Control Laboratory (CRCL), and consignments allowed for export on a provisional basis with a bond only
  - However, the same may not be applied to an export consignment of a Tier-2 or Tier-3 certified Authorised Economic Operator (AEO), who may be allowed to export on the basis of the declaration/self-assessment, except when RMS specifies that the sample for test is required to be drawn
- The above procedure shall not be applicable in a case where intervention is required based on specific intelligence or were for reasons recorded in writing deviation from the above procedure is necessary.

  [Instruction no:29/2022 dated 28 October 2022]

EXCISE/SERVICE TAX/CUSTOMS

For levy of penalty or interest on CVD or SAD or surcharge, the authority has to be specific and explicit and expressly provided in the statute

Facts of the case

- M/s. Mahindra and Mahindra Ltd. (Taxpayer) is engaged in the manufacture of vehicles in India
- The Taxpayer had filed four applications before the Settlement Commission (Commission) for settlement of four Show-Cause-Notices (SCNs) which were based on the allegation that the Taxpayer did not declare the entire amount payable in connection with an imported model which amounts to misdeclaration with an intent to evade payment of customs duty
- In this regard, the Commission issued the final order holding that the differential customs duty proposed in the four SCNs was recoverable along with interest
- Aggrieved by the above, the Taxpayer filed four Writ petitions before the Honorable Bombay High Court of Bombay. The Honorable High Court quashed and set aside the four orders passed by the commission in so far as the order related to the imposition of penalty and interest on the customs duty other than Basic Customs Duty (BCD) and directed the Commission to pass fresh orders on merits
- After hearing, the Commission passed a common order (Impugned Order) dated 05 January 2009 confirming its earlier order. The Impugned Order merely records reasons as to why the four orders passed by the Commission earlier were correct
- The Taxpayer has filed a Writ Petition challenging the Impugned Order before the Honorable Bombay High Court

Contention by the Taxpayer

- The Taxpayer contended that the legality of the procedure adopted by the Commission is amenable to challenge before the Hon'ble High Court Article 226 of the Constitution of India
- The Taxpayer submitted that the only ground upon which the Honorable High Court can interfere is where the order of the Commission is contrary to the provisions of the Act and that such contravention has prejudiced the Taxpayer
- It was argued that –
  - Section 90 of the Finance Act, 2000 (FA, 2000) relates to the levy of surcharge, Section 3 of the Customs Tariff Act, 1975 (CTA) relates to the levy of additional duty of customs (equal to excise duty) (CVD) and Section 3A of the CTA relates to the levy of Special Additional Duty (SAD) of customs
  - None of the aforesaid provisions provides for the imposition of penalty or interest on the chargeable duty thereunder

  As a result, there is no power under the provisions of law to impose penalties or interest
- It was also submitted that the BCD with surcharge had already been paid and the penalty and interest are sought to be levied only on the differential duty. Since the aforesaid provisions of CTA or FA, 2000 do not provide for the levy of penalty or interest, there is no power under the Act to impose the same upon the Taxpayer

Contentions by the Tax authority

The Tax authority has made the following contentions:

- The additional customs duty and SAD of customs or surcharge though charged under different statutes are duties of customs and therefore, the prevailing Section 28AB of the Customs Act, 1962 (Customs Act) is applicable
- These duties are part of the total customs duty and calculated by taking into consideration the value of imported goods as well as the BCD and since Taxpayer had misdeclared the assessable value by undervaluing the imported goods
- Under Section 127C of the Customs Act, the Commission had the inherent authority or power to determine the terms of the settlement covering not only the amount of duty but also interest and penalty
- As per Section 127H of the Customs Act, the Commission has the power to grant immunity from prosecution and penalty subject to such conditions as it may think fit to impose. Since there is nothing wrong with the validity of the order, the Court should not interfere and should dismiss the petition

Observations and Ruling by the Honorable Bombay High Court

The Honorable Bombay High Court has made the following observations and ruling:

- In J.K. Synthetics Ltd. Vs. Commercial Taxes Officer [1994 SCC (4) 276], the Honorable Supreme Court held that any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as substantive law and not adjectival law
- Section 28AB of the Customs Act is a taxing provision that creates and fastens the liability of a party. The said provision has to be strictly construed and the same ought to be interpreted as per the language employed in the said provision
- The provision relating to interest and penalty are neither borrowed under the FA, 2000 nor under Sections 3 and 3A of the CTA and hence, no interest and penalty can be levied on the portion of the demand pertaining to a surcharge, CVD and SAD
- The penalty is not a continuation of assessment proceedings and it partakes of the character of an additional tax. Section 3 and Section 3A of the CTA are charging provisions creating a liability for CVD and SAD but do not provide for creating liability or imposition of penalty
- The mere fact that there is machinery provision for the assessment, collection and enforcement of tax and penalty under the Customs Act would not imply that the provision for penalty and interest under the Customs Act would also be applicable under the CTA
- In Pioneer Silk Mills Pvt. Ltd. V/s. Union of India [1995 (80) ELT 507 (Del.)], it was noted that when the penalty is an additional tax, the constitutional mandate requires a clear authority of law for imposition thereof. Where the Act has to be explained by referential legislation or legislation by incorporation, it is better for the Court to lean in favour of the taxpayer. There is no room for a presumption in such cases
- While the provisions of Section 9A(8) of the CTA were amended by Finance (No. 2) Act, 2004 to inter alia

provide reference to the provisions concerning interest and penalties, no such amendment was carried out under Section 3(6) and Section 3A(4) of the CTA. Therefore, the intention of the legislature was very clear that it wanted to include interest and penalties only with regard to anti-dumping duty on dumped articles and not for CVD and SAD. Similarly, no such insertion or amendment was made in Section 90 of the FA, 2000 relating to a surcharge.

- Therefore, interest and penalty cannot be levied on the portion of the demand pertaining to surcharge under Section 90 of the FA, 2000 or CVD under Section 3 of the CTA or SAD under Section 3A of the CTA
- Section 3(6) and Section 3A(4) of the CTA or Section 90 of the FA, 2000 show that the breach of the provisions has not been made penal or an offence. It only provides for the application of the procedural provisions of the Customs Act and the rules and regulations made thereunder so far as it applies to the duty chargeable under Section 3 or Section 3A of the CTA or levy and collection under Section 90 of the FA, 2000
- If a penalty or interest has to be levied on CVD or SAD or surcharge, the legislature has to provide for the same specifically and explicitly
- In the absence of a specific provision relating to the levy of interest in the respective legislations, interest cannot be recovered by taking recourse to machinery relating to the recovery of duty
- In view of the above, the inherent authority of the Commission to determine the terms of the settlement covering not only the amount of duty but also interest and penalty, as well as ex-facie, is untenable
- Reference made by the Commission to Section 127C of the Customs Act for directing payment of interest is totally misplaced as the said Section itself provides that the order of the Commission has to be in accordance with the provisions of the Customs Act. Hence, the Commission certainly cannot pass an order beyond the provisions of the Customs Act
- Considering the above, the order of the Commission to the extent of requiring Taxpayers to pay interest (at the rate of 10% against the SCNs) and penalties are quashed and set aside

[High Court of Bombay, M/s. Mahindra & Mahindra Ltd, Writ Petition No: 1848 of 2009 dated, 15 September 2022]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Extension of date for restriction on the export of sugar

Restriction on the export of sugar (Raw, Refined and White sugar) is extended beyond 31 October 2022 till 31 October 2023, or until further orders, whichever is earlier. Other conditions will remain unchanged.

[Notification no:40/2015-2020 dated 28 October 2022]

TRADE NOTICE

ICEGATE Helpdesk for redressal of RoDTEP-related grievances

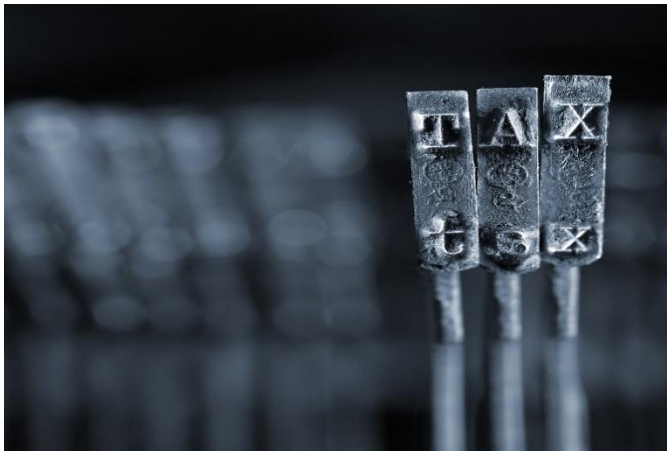
For resolution/examination of exporter grievances related to scrolling out of shipping bills, generation of e-scrips and transfer of e-scrips under the RoDTEP Scheme, the

mechanism of 'ICEGATE Helpdesk', which is available to the exporters 24*7 is functional. In this, an exporter can lodge a grievance either by voice interaction by calling at toll-free no. 1800-3010-1000 or by emailing at icegatehelpdesk@icegate.gov.in. Thereafter, a unique ticket/incident number is generated which the exporter receives for record/follow-up.

In case the RoDTEP grievance continues, the exporter may approach the higher authority at email: jsdbk-rev@nic.in

[Trade notice no:20/2022-23 dated 31 October 2022]

NEWS FLASH



1. "Gameskraft challenges the Rs 21,000 crore tax notice by the GST Intelligence"
   https://www.financialexpress.com/brandwagon/gameskraft-challenges-the-rs-21000-crore-tax-notice-by-the-gst-intelligence/2753687/
   [Source: Financial Express, 28 October 2022]

2. "Relief for small biz. Govt sets the ball rolling on decriminalisation of GST Act"
   https://www.thehindubusinessline.com/news/decriminalisation-of-gst-act-govt-sets-the-ball-rolling/article66069044.ece
   [Source: The Hindu Business Line, 30 October 2022]

3. "Define game of chance, game of skill to decide on taxation: GST law panel"
   https://www.business-standard.com/article/economy-policy/define-game-of-chance-game-of-skill-to-decide-on-taxation-gst-law-panel-122110101153_1.html
   [Source: Business Standard, 01 November 2022]

4. "GST collection in October second-highest ever: Causes, significance"
   https://indianexpress.com/article/explained/gst-collection-in-october-second-highest-ever-causes-significance-8242649/
   [Source: Indian Express, 01 November 2022]

5. "Odisha registers 17% growth in progressive GST"
   https://www.newindianexpress.com/cities/bhubaneswar/2022/nov/03/odisha-registers-17-growth-in-progressive-gst-2514424.html
   [Source: Indian Express, 03 November 2022]

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