

# INDIRECT TAX

## Weekly Digest

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## GOODS & SERVICES TAX

### JUDICIAL UPDATES

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

#### Renting of land for the fish/prawn farming is not eligible for exemption as agricultural activity

##### Facts of the case

M/s. Sri Vinayak Hatcheries ('Taxpayer') had executed an agreement with Grobest Feeds Corporation (India) Private Limited for the purpose of taking a vacant land with a water channel meant for fish/prawn farming.

##### Questions before the AAR

Whether the activity of fish/prawn farming is covered under "services relating to rearing all life forms of animals-by way of renting or leasing of vacant land" and whether eligible for GST exemption as per entry no:54 of notification no:12/2017-CT(R) dated 28 June 2017 ('exemption notification')?

##### Observations and Ruling by the AAR

- As per entry no:54 Heading-9986 of the exemption notification exempts the following services:  
Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of:
  - agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
  - supply of farm labour;

- processes carried-out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
  - renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
  - loading, unloading, packing, storage, or warehousing of agricultural produce;
  - agricultural extension services;
  - services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
  - services by way of fumigation in a warehouse of agricultural produce.
- Cultivation of plants is essentially 'agriculture' while 'rearing of all life forms of animals' is 'animal husbandry'. Animal husbandry is the branch of agriculture where animals are reared, bred and raised for commercial purposes like meat, fibre, eggs, milk, and other food products;
  - Fish farming is not an agricultural activity as no basic agricultural operation 'directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing' are done;
  - In case of fish/prawn farming, any of the processes as listed in the entry no:54 (c) of the notification such as

'tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such other operations which do not alter the essential characteristics of agricultural produce' are not carried-out on the vacant land. Hence, fish/prawn farming is not covered under services to agriculture as enumerated under entry no:54 of the notification;

- Based on the lease agreement entered by the taxpayer, nowhere it is mentioned specifically that the land is leased for any purpose related to agriculture, rearing of animals, fishing etc. The agreement between the lessor and the lessee (taxpayer) is executed in the lines of commercial renting of any other land without any reference to the purpose of usage of the land. It is open ended that the land might be used by the lessee for any other intended purpose in the absence of any specification as such;
- The absence of explicit intention in the lease agreement for the purpose of which the land is used would negate the eligibility criterion for exemption in the instant case. Thus, essentially it is the condition of entry no:54(d) of the exemption notifications that is not met to consider the renting activity of vacant land as services relating to rearing of all life forms of animals;
- Renting of land and whether the activity of fish/prawn farming is covered under "services relating to rearing all life forms of animals-by way of renting or leasing of vacant land" is Ineligible for exemption as per entry no:54 of notification no:12/2017-CT(R) dated 28 June 2017 and taxable at the rate of 18% under entry no:16 of SAC 9972 of notification no:11/2017-CT(R).

[AAR- Andhra Pradesh, M/s. Sri Vinayaka Hatcheries, ruling no:ARA-08/2022-23, dated 30 May 2022]

### Supply of manpower for preparation & serving of spot electricity bills in rural areas to APCPDCL cannot be termed as 'Pure Services'

#### Facts of the case

- M/s. Keshav Projects is engaged in supply of manpower for preparation and serving of spot electricity bills services to Andhra Pradesh Central Power Distribution Corporation Limited ('APCPDCL') with 18% GST;
- The scope of work includes preparation and serving of spot electricity bills in customer premises with GPRS enabled spot billing machines with/without IR/IRDA port readings in both urban and rural areas in state of Andhra Pradesh. Further, the taxpayer has employed appropriate technology and safe and effective equipment, machinery, and methodology to perform the services in accordance with the agreement as entered with APCPDCL;
- The taxpayer has submitted that as per the contention of APCPDCL, the services provided by the taxpayer are exempted as per entry no:3 of notification no:12/2017-CT(R) dated 28 June 2017.

#### Questions before the AAR

Whether the supply of manpower for preparation and serving of spot electricity bills services provided to APCPDCL can be termed as 'Pure Services' as referred in entry no:3 (Chapter 99) of notification no:12/2017-CT(R) dated 28 June 2017 and accordingly eligible for exemption from GST?

#### Contention of the taxpayer

- The taxpayer has submitted various clauses of the contract between the taxpayer and APCPDCL which includes various services which are to be provided by the taxpayer, payment terms, tax clauses etc.
- The taxpayer has submitted entry no:3 of notification no:12/2017-CT(R) dated 28 June 2017 and stated that the services are exempted from GST if the following conditions are satisfied cumulatively:
  - Supplier is rendering pure services;
  - It is provided to the Central Government, State Government or Union Territory or local authority or a government authority;
  - Such services should be in relation to any function entrusted to a panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to Municipality under article 243W of the constitution.
- To substantiate the fulfilment of conditions, the taxpayer has submitted the below explanations:

#### Pure Services:

- The taxpayer has submitted a FAQ which was issued by CBIC on Government services. It was clarified in FAQ that any supply of services without involving any supply of goods would be treated as supply of pure services. The exemption is provided to services which involves only supply of services and not for Works Contract Services(WCS);
- It is further submitted that there is no component of transfer of property in goods as evident from the contract agreement and is purely a service contract. Hence, the supply is not to be treated as WCS.

#### Governmental Authority:

- The APCPDCL was formed during the year 2019 by the Government of Andhra Pradesh. It functions directly under the department of energy of the Government of Andhra Pradesh and in which 99% shareholding are in the hands of Honorable Governor of Andhra Pradesh;
- Hence, APCPDCL, which is formulated by the Government of Andhra Pradesh an/d functions directly under the Ministry of Energy, is responsible for distribution of electricity in specified rural areas of the State of Andhra Pradesh and qualifies to be a 'Local authority'.

#### Specified services:

- APCPDCL has been entrusted for supply and distribution of electricity in the specified areas of state of Andhra Pradesh;
- Hence, the supply of manpower for preparation and serving of spot electricity bills services provided by the taxpayer in rural areas of the state of Andhra Pradesh are in relation to function entrusted to a panchayat under Article 243G of the Constitution of India.

Based on the above submission, the taxpayer is of the view that the supply of manpower for preparation and serving of spot electricity bills services, being a 'pure service', provided by the taxpayer to APCPDCL being a 'Local Authority' would be eligible for exemption under entry no:3 of the notification no:12/2017-CT(R) dated 28 June 2017, as such activity qualify

to be in relation to functions entrusted to panchayat under Article 243G of the Constitution of India.

#### Observations and Ruling by the AAR

- Based on the review of clauses of the contract, the AAR has observed that the taxpayer is required to procure goods under the contract. Hence, the scope of the supply as mentioned by the taxpayer includes supply of both goods and services;
- Accordingly, the taxpayer is not fulfilling the condition of providing 'pure services';
- The AAR has not analyzed the other two conditions since the taxpayer is not fulfilling the first condition itself;
- In view of the above, the AAR has provided the ruling that the taxpayer is not eligible for the exemption.

*[AAR-Andhra Pradesh, M/s. Keshav Projects, Ruling no:05/2022-23, dated 21 March 2022]*

#### Steel Authority of India Ltd. (SAIL) is a 'Government Entity' eligible to concessional levy for GST purpose

##### Facts of the case:

- M/s. NBCC (INDIA) Limited ("the Taxpayer") is a Government of India enterprises under the aegis of Ministry of Urban Development, Government of India;
- The taxpayer has filed an advance ruling to know the applicable rate of GST on the contract awarded by Ms. Steel Authority of India Ltd. (SAIL), wherein the taxpayer has been entrusted/awarded the work relating to planning, designing and construction of "ISPAT Post Graduate Medical Institute and Super Specially Hospital"(Medical Institute) at Rourkela steel Plant (RSP), Rourkela.

##### Questions before AAR:

- Whether the concessional rate of 12% would be applicable to the value of contract in terms of entry no:3(vi) (a) or (b) of notification no:11/2017-CT(R) dated 28 June 2017? Whether the same would be applicable to the entire value of the works contract covered by MOU dated 13 August 2018?
- The taxpayer has paid taxes at 18% on its tax invoices raised to M/s. SAIL till the date of ruling, whether the taxes to the extent of 6% (i.e., 18% paid - 12% as per order) can be regarded as excess paid?
- Whether the excess tax to the extent of 6% so paid would be eligible to be refunded under section 54 of the CGST Act, 2017 and what would be the procedure to claim the excess amount paid?

##### Contention of the taxpayer

- The taxpayer submitted that it had entered into a Memorandum of Understanding (MoU) with M/s. SAIL wherein the taxpayer has been entrusted/awarded the work relating to planning, designing and construction of Medical Institute;
- As per MOU, the taxpayer has acted as an executing agency of the project as deposit work on a turnkey basis. Accordingly, the taxpayer appointed M/s. URC Construction (P) Ltd., as an EPC contractor, to carry-out the project towards its desired completion;

- During the period of construction, the taxpayer applied the tax rate of 18% on its tax invoices raised on M/s. SAIL, as the same was considered as the general rate of tax prescribed for services vide notification no:11/2017-CT(R) dated 28 June 2017. Furthermore, M/s. URC Construction Pvt. Ltd., the contractor, also applied the same rate of tax in its tax invoices raised on the taxpayer;
- The taxpayer on referring to serial no 3(vi)(a) and (b) of notification no:11/2017-CT(R) dated 28 June 2017, mentioned that the pre-requisites that are required to be satisfied to qualify for the notified exemptions are duly satisfied and submitted that the supply made to M/s. SAIL is Works Contract Services (WCS). Henceforth, the entire contract is eligible for specific rate of 12%;
- The taxpayer has also contended that the applicable rate of taxes on the entire value of services is at the rate of 12% and the taxes already paid @18% during the period is excess and are eligible for refund.

##### Observations and Ruling by the AAR

- The AAR examined the submission of the taxpayer and clarified that the GST rate applicable on such supply of goods/services is at concessional rate of tax in terms of notification no:11/2017-CT(R) dated 28 June 2017;
- The AAR has examined the pre-requisites stated in the notification no:11/2017-CT(R) dated 28 June 2017 and observed that the taxpayer has satisfied all the pre-requisites to qualify for the notified exemption i.e., it falls under the ambit of WCS, the said construction is for the clinical establishment and the service is provided to the government entity;
- Further the AAR observed that, the MOU was entered between the NBCC and M/s. SAIL for construction of Medical Institute and the said work was subsequently, entrusted to M/s. URC Construction (P)Ltd (the sub-contractor) for execution. Further held that, when a sub-contractor (M/s. URC Construction (P) Ltd) is allowed to discharge GST at a concessional rate for the supply made to M/s NBCC (Principal Contractor), who in turn makes supply to M/s SAIL, which has been held as "Government entity, the rate of tax cannot be different for the principal supplier (contractor);
- Therefore, the supply of WCS which is being supplied to M/s. SAIL for construction of Medical Institute would merit entitlement for concessional rate of GST @ 12% in terms of notification no:11/2017-CT(R), dated 28 June 2017 (and as amended);
- AAR held that SAIL is a government entity therefore the tax rate applicable to value of contract between the taxpayer and M/s. SAIL is leviable at 12% in terms of entry no:3(vi) (a) or (b) of notification no:11/2017-CT(R), dated 28 June 2017, as amended;
- With regards to second question, it is mentioned that the question raised does not fall under the provisions of section 97(2) of the CGST Act, 2017, therefore, the said question does not merit discussion/consideration at the forum;
- For the last question, it is stated that section 54 of the CGST Act, 2017 deals with refund of taxes, therefore the taxpayer can go through the procedure/provision of said GST section for claiming refund.

*[AAR-Odisha, M/s. NBCC (INDIA) Limited. Ruling no:01/2022-23, dated 20 May 2022]*

## CUSTOMS

### NOTIFICATION

#### Extension of exemption from levy of Agriculture Infrastructure and Development Cess (AIDC) on Lentil (Mosur)

Amendment has been made in notification no:49/2021-Customs, dated 13 October 2021. The exemption on AIDC on Lentils (Mosur) has been extended up to and inclusive of the 31 March 2023

[Notification no:44/2022 dated 23 July 2022]

### CIRCULARS

#### Clarification on Electro-Chemiluminescence Immunoassay kits

CBIC issued clarification on whether Electro chemiluminescence Immuno Assay (ECLIA) kits are covered under the ambit of CLIA diagnostic kits.

Clarification given by CBIC is as below:

- Chemiluminescence immunoassay (CLIA) is a widely used detection method which combines the highly sensitive chemiluminescence assay with highly-specific immune response and affinity of antibodies. In CLIA diagnostic kits, chemiluminescence technique is combined with immunochemical reactions. CLIA Kits are designed to detect the chemiluminescence reactions. In CLIA the label, i.e., the true "indicator" of the analytic reaction, is a luminescent molecule;
- CLIA have different label systems according to the difference of physical chemistry mechanism of the light emission which are mentioned below: -
  - Label Chemical Directly Involved in the Light Emission Reaction
  - Enzyme Catalyzed Light Emission Reaction
  - Redox Reaction Mediated Light Emission Reaction (ECLIA).
- CLIA and ECLIA both, are advanced methods of Immuno diagnostics based on the concept of antibody-antigen binding. CLIA uses a chemical reaction to generate chemiluminescence following antibody-antigen binding while ECLIA uses an electrochemical reaction to generate chemiluminescence signals in the immunoassay technique. Both techniques are rapid, specific, and similar in following points:-
  - Both use the concept of chemiluminescence for detection.
  - Both techniques rely on the concept of antigen-antibody binding.
  - Both are mainly used for disease diagnostics based on analyte detection
- CLIA is a self-sufficient kit which provides a sensitive, high throughput alternative to conventional colorimetric methodologies. In CLIA, the luminescence is produced as a result of chemical reaction whereas in ECLIA. The luminescence is produced as a result of electrochemical reaction. The CLIA and ECLIA can accommodate many immunoassay principles while providing superior performance and the applications, uses of both the techniques are same. Hence both CLIA and ECLIA are one and the same.

[Circular no: 10/2022 dated 25 July 2022]

## FOREIGN TRADE POLICY (FTP)

### POLICY CIRCULAR

#### Clarification regarding Non-Ferrous Metal Import Monitoring System (NFMIMS)

The policy circular has been issued to provide clarification on requirement of compulsory registration under NFMIMS for imports through air mode and several other issues related to NFMIMS.

- NFMIMS will not be applicable on air-freighted goods as this mode is used for emergency/small volume high value goods required at short notice;
- Any number of consignments can be imported by a single NFMIMS registration within the validity of the registration;
- The information relating to proper QCO description can be treated as optional category in the description filed by importer under NFMIMS;
- Since the QCO information is optional, it is not mandatory for the Custom officer to check QCO description under NFMIMS. However, custom officer has to consider the provisions/rules under the other laws of the land at the time of clearing the Bill of Entries.
- NFMIMS is applicable to imports through Advance Authorization, DFIA and import to SEZs.

[Policy Circular no:42/2015-20 dated 27 July 2022]

#### Relaxation in provision of submission of 'Bill of Export' as an evidence of export obligation discharge for supplies made to SEZ units in case of EPCG Authorization

- The requirement of submitting 'Bill of Export' for supplies made to SEZ is prescribed under the Foreign Trade Policy. Recently, the requirement of submission of Bill of Export for supplies made to SEZ in case of Advance Authorisation has been relaxed vide policy circular no:39 dated 07 June 2022;
- The issue has been examined and in terms of para 2.58 of the FTP 2015-2020 (extended up to 30 September 2022), it has been decided to relax the condition of requirement of submission of 'Bill of Export' in case of exports made to SEZ units under EPCG Authorization, for all such supplies made prior to 01 April 2015;
- Accordingly, for the purpose of discharge of export obligation under EPCG Authorizations, in case of supplies made to SEZ units prior to 01 April 2015, the exporters can submit corroborative evidence in lieu of 'Bill of Exports' such as:
  - ARE-I form duly attested by jurisdictional Central Excise authorities of EPCG authorization holder;
  - Evidence of receipt of the supplies by the recipient in the SEZ;
  - Evidence of payment made by the SEZ unit to the EPCG authorization holder.

[Policy Circular no:42/2015-20 dated 27 July 2022]

### PUBLIC NOTICE

#### Suspension of Standard Input Output Norms (SIONs)

SIONs appearing under C-594, C-791 to C-796 and C-831 are suspended with immediate effect. An exporter desirous of obtaining Advance Authorisation for export of above said products may apply under para 4.07 of Handbook of Procedures 2015-20.

[Public notice no:17/2015-20 dated 27 July 2022]

## NEWS FLASH

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1. “Only GST-registered tenants face 18% tax on rent paid, say experts”  
[https://www.business-standard.com/article/pf/only-gst-registered-tenants-face-18-tax-on-rental-homes-experts-122072501164\\_1.html](https://www.business-standard.com/article/pf/only-gst-registered-tenants-face-18-tax-on-rental-homes-experts-122072501164_1.html)  
[Source: Business Standard, 26 July 2022]
2. “SC dismisses plea seeking GST exemption for Haj via private tour operators”  
[https://www.business-standard.com/article/economy-policy/sc-dismisses-plea-seeking-gst-exemption-for-haj-via-private-tour-operators-122072601415\\_1.html](https://www.business-standard.com/article/economy-policy/sc-dismisses-plea-seeking-gst-exemption-for-haj-via-private-tour-operators-122072601415_1.html)  
[Source: Business Standard, 26 July 2022]
3. “Confusion persists over 5% GST exemption”  
[https://www.thehindu.com/news/national/kerala/confusion-persists-over-5-gst-exemption/article\\_65690743.ece](https://www.thehindu.com/news/national/kerala/confusion-persists-over-5-gst-exemption/article_65690743.ece)  
[Source: The Hindu, 27 July 2022]
4. “Withdraw GST on milk products, implement FRP for milk: DFFI”  
<https://www.thehindu.com/news/national/withdraw-gst-on-milk-products-implement-frp-for-milk-dffi/article65690029.ece>  
[Source: The Hindu, 28 July 2022]
5. “No GST exemption available on renting of land for fish farming”  
<https://timesofindia.indiatimes.com/business/india-business/no-gst-exemption-available-on-renting-of-land-for-fish-farming/articleshow/93182451.cms>  
[Source: Times of India, 28 July 2022]



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