

INDIRECT TAX

Weekly Digest

08 June 2021
www.bdo.in



GOODS & SERVICES TAX

LEGISLATIVE UPDATES

NOTIFICATION

Retrospective amendment in section 50 of CGST Act, 2017

Retrospective amendment (w.e.f July 1, 2017) of section 50 of the CGST Act, 2017 with respect to the applicability of interest on a net basis (i.e., only on the cash portion deposited) for delayed filing of returns, which was announced through the Finance Act, 2021, is notified. It means that the interest will need to be paid only on the amount debited from Cash Ledger, when a return was delayed for all the tax periods starting from July 2017. This amendment is expected to put an end to all the system-generated notices that are being issued by the tax authority for recovery on gross-basis.

[Notification no:16/2021-Central Tax dated 01 June 2021]

Prescribed the due date for furnishing GSTR-1 for the tax period May 2021

The time limit for furnishing return under section 39(1) in Form GSTR 1 for the tax period May 2021, shall be extended to 26th day of month succeeding the said tax period. (i.e., 26 June 2021)

[Notification no:17/2021-Central Tax dated 01 June 2021]

Relief for large taxpayers (aggregate turnover more than INR 50 Mn)

- A lower rate of interest @ 9% has been prescribed for the first 15 days after the due date of filing Form GSTR-3B for March, April, and May 2021;
- Waiver of late fee for delay in furnishing Form GSTR-3B for March, April, and May 2021 for 15 days from the due date of furnishing return in Form GSTR-3B.

Relief for small taxpayers (aggregate turnover less than INR 50 Mn)

Reduction in interest and waiver of late fees for delayed payment in Form GSTR-3B

Interest	March 2021	April 2021	May 2021
NIL	For the first 15 days from the due date of furnishing the return		
9%	for the next 45 days	for the next 30 days	for the next 15 days

Period	Wavier of late fees for following days from the due date of filing return GSTR-3B
Mar-21	60 days
Apr-21	45 days
May-21	30 days

- Waiver of interest payable on belated payment of taxes in GSTR-3B by composition taxpayers under section 10 to the extent, Nil for the first 15 days from the due date, 9% for the next 45 days (earlier it was 15 days), and 18% thereafter;

- Waiver of late fee payable on belated filing of GSTR-3B for the quarter January-March 2021 for a period of 60 days (earlier it was 30 days) from the due date of furnishing return by taxpayers having an aggregate turnover of up to INR 50 Mn in the preceding financial year, who are furnishing return on quarterly basis.

[Notification no:18 &19/2021-Central Tax dated 01 June 2021]

Amnesty scheme for taxpayers who have failed to furnish returns

- Late fees for non-furnishing of Form GSTR-3B for the tax periods from July 2017 to April 2021 has been reduced/waived as follows:

Taxpayers	Maximum late fee per return (INR)		
	CGST	SGST	Total
NIL Return	250	250	500
Others	500	500	1000

- The above reduced late fee would be applied if Form GSTR-3B returns for the tax period from July 2017 to April 2021 are furnished between June 2021 to August 2021.

Rationalised the late fee for future returns

Returns	Taxpayers category	Maximum late fee per return (INR)		
		CGST	SGST	Total
Form GSTR-1 and GSTR-3B	NIL GST liability	250	250	500
	Annual aggregate turnover (AATO) upto 1.5 crore	1000	1000	2000
	AATO between 1.5 crore to 5 crore	2,500	2,500	5000
FORM GSTR-4	NIL GST liability	250	250	500
	Others	1,000	1,000	2000
FORM GSTR-7	All	25(per day) to max. of 1,000	25(per day) to max. of 1,000	50(per day) to a max. of 2,000

[Notification no:20, 21 & 22/2021-Central Tax dated 01 June 2021]

Others changes

- Exemption from issuance of e-invoicing by 'Government Department' and 'local authority'
- The due date of filing details of outward supplies using Invoice Furnishing Facility(IFF) for the month of May 2021, has been extended by 15 days (by 28th of the succeeding month).
- For composition dealers, the due date for FORM GSTR-4 has been extended from 31 May 2021 to 31 July 2021.
- Extended the due date for filing Form ITC-04 for the quarter ended March 2021 from 31 May 2021 to 30 June 2021.
- Cumulative application of rule 36(4) for availing ITC for tax periods April, May, and June 2021 in the return for the period of June 2021.
- General extension as a COVID relief measure for compliance of any action falling between the period from 15 April 2021 to 29 June 2021, till 30 June 2021.

[Notification no:23, 24, 25, 26, & 27/2021-Central Tax dated 01 June 2021]

Notified the GST rate changes proposed by the GST Council

- CBIC has reduced GST on Diethylcarbazine from 12% to 5%.
- CBIC reduced GST payable on Maintenance, Repair, or Overhaul (MRO) services in respect of ships and other vessels, their engines, and other components or parts from 18% to 5%;
- CBIC has introduced a condition to construction services by amending notification no:11/2017- CT(R) that allows the landowner-promoter to utilise the credit of tax charged to him by the developer-promoter for payment of tax on apartments supplied by the landowner-promoter in such project;
- CBIC has amended the notification no:6/2019-CT(R) dated 29 March 2019 to allow the developer promoter to pay GST relating to such apartments at any time before or at the time of issuance of completion certificate where required, by the competent authority, or the date of its first occupation, whichever is earlier.

[Notification no:01,02&3/2021-Central Tax (Rate) dated 02 June 2021]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Aerobic microorganism/protein derived thereof used as a biological agent to reduce the requirement of cement is classifiable under HSN 3824 40 taxable at 18%

Facts of the case

- M/s. Synthetic Moulders Limited ('the Taxpayer') is engaged in the manufacture and supply of aerobic microorganisms/protein derived thereof. It is submitted that the goods so manufactured by the taxpayer reduces the requirement of cement in all cementitious/concrete application;
- The taxpayer summarised the process of manufacture of the aforementioned product and stated that the cement percentage in the concrete mix can be reduced by increasing the ratio of such cheaper material like fly ash,

stone dust etc. in the concrete mix, which will in turn help in reducing the cost without compromising on the quality of concrete mix;

- Further, the taxpayer stated the use of such isolated bacterium and its protein in concrete technology shall result in reduction in cement consumption and also improve the ecological footprint as production process of cement is second biggest cause of carbon dioxide generation globally.

Questions before the AAR

What shall be the HSN Code and rate of tax applicable on supply of aerobic microorganism/protein derived thereof used as a biological agent to reduce the requirement of cement in all cementitious/ concrete application?

Contention of the taxpayer

- The taxpayer contended that the supply of the impugned goods should be classified under HSN 3101, and supply would attract GST at Nil % or at 5% depending upon the fact whether the goods are put up in unit container and bearing a brand name or not;
- The taxpayer relied upon on the following Advance Rulings in their favour:
 - M/s. Rhizo Organic [Advance Ruling no:RAJ/AAR/2018-19/04 dated 16 June 2018], where the AAR, Rajasthan has observed that bio-fertilizers are made of animals (microorganism) and hence covered within the standard description of the HSN Code 3101;
 - M/s. Elefo Biotech Pvt. Ltd. [Advance Ruling no:18/2018-19 dated 06 February 2019], where the AAR, Uttarakhand has observed that Anaerobic Microbial Inoculums (AMI) manufactured by the taxpayer will be classified under sub-heading 31010099 and accordingly GST will be leviable at 5% on supply of these products.
- Further, the tax authority submitted that the main product is cultured solution of microorganism i.e., cultures of micro-organism which falls under HSN Code 3002 90 30 of the Central Excise Tariff Act, 1985 specifically which is described as "Cultures of micro-organisms (excluding yeast)" and attracts GST at the rate of 12%;
- The taxpayer contended that it does not supply cultured solution of the microorganism as interpreted by the tax authority reiterating that culturing of instant microbes is an intervening process which is used to generate the final product, rather it deals in the microbes itself.

Observations & ruling by the AAR

- The AAR with reference to the aforementioned Advance Rulings clarified that the goods involved cannot be treated as bio-fertilizers or organic manure and the conclusion drawn from the said rulings shall not be applicable in the instant case;
- Further, the AAR referred to the description of the goods that fall under Chapter 30 "Pharmaceutical products" with particular reference to the relevant tariff items thereunder and interpreted that the submission of the tax authority towards classification of the impugned goods cannot be accepted;
- The AAR relying on the nature, characteristics and uses of the impugned goods, as asserted by the taxpayer and apropos to an article of a similar subject on the internet,

identified that the goods involved in the instant case bears the character of an "additive";

- Upon perusal of the chapter heading 3824 40 of the First Schedule to the Customs Tariff Act, 1975 the AAR observed that the aforesaid heading covers preparations of additives for cements, mortars, or concretes;
- Further, the AAR stressed that the taxpayer's contention that the goods manufactured shall be used as an additive in concrete technology for its basic property to enhance strength and durability along with imparting self-healing, and therefore the impugned goods are classifiable under tariff item 3824 40;
- In view of the above, the AAR concluded that aerobic microorganism/protein derived thereof used as a biological agent to reduce the requirement of cement in all cementitious/concrete application as manufactured and supplied by the taxpayer falls under the HSN 3824 40 "prepared additives for cements, mortars or concretes" and GST shall be applicable at the rate of 18%.

[AAR-West Bengal, M/s. Synthetic Moulders Limited, ruling no:03/WBAAR/2021-22, dated 28 May 2021]

Entity setup under the Act of Parliament / State Legislature is a Government Entity

Facts of the Case

- M/s. Damodar Valley Corporation ("Taxpayer") is a statutory body set up under the Damodar Valley Corporation Act, 1948 ("DVC Act") engaged in generation, transmission and distribution of electricity, flood control, irrigation and some connected activities like soil conservation, afforestation etc.; and
- The taxpayer intends to know whether it will be construed as 'government entity' in terms of notification no:11/2017- CT(R) dated 28 June 2017 ("rate notification").

Questions before the AAR

Whether the taxpayer is eligible for concessional rates of GST applicable to a government entity as per the rate notification?

Contention of the Taxpayer

- The taxpayer submitted that, it is constituted under the DVC Act which was passed by the Central Legislature under the conduct of Central Government ("CG") and the State Governments of West Bengal and Jharkhand i.e. the said governments are jointly responsible for constitution of the taxpayer;
- The taxpayer further contended that it is responsible to incur expenditure and discharge functions as instructed by the CG in consultation with the said state governments; and
- In light of the above stated facts, the taxpayer is of the opinion that it gets covered under the definition of government entity provided under the rate notification.

Observations and ruling by the AAR

- The AAR examined the definition of 'government entity' which requires that the entity should be:
 - Either set up by an Act of Parliament / State Legislature or established by any government with atleast 90% control ; and
 - Entitled to carry-out functions entrusted by the CG / State Government / Union Government / Local authority only.

- The AAR held that the taxpayer qualifies to be treated as government entity basis the following grounds:
 - It is set up under the DVC Act passed by Central Legislature;
 - CG enjoys control over the functions of the taxpayer;
 - CG, in consultation with the State Governments, is empowered to appoint / remove any member of the taxpayer; and
 - CG along with the two state governments own 100% equity capital of the taxpayer.

[AAR-West Bengal, M/s. Damodar Valley Corporation, ruling no:01/WBAAR/2021-22 dated 03 May 2021]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

Amount recovered from employees towards car parking charges to be deemed as 'supply of service' and that the value of supply would be 'Nil', subject to the fulfilment of the conditions prescribed for the pure agent

Facts of the case

- M/s. ION Trading India Private limited ('Taxpayer'), is a the wholly owned subsidiary of M/s. ION Trading UK Limited and engaged in the business of software development which is exported to the overseas company;
- The taxpayer entered into a rent agreement with M/s. Shantiniketan Properties Private Limited ('Building Authority') for renting of office premises including certain number of free car parking spaces and certain number of parking spaces on payment of agreed rent per car parking space per month;
- As the aforesaid car parking spaces were not sufficient, and the employees need more parking spaces, the taxpayer facilitates procurement of car parking spaces from the building authority and procures it on payment of agreed lease charges per car parking space per month;
- The taxpayer bears part of the lease charges and the balance amount is equally recovered from all the employees using the parking spaces depending on whether the employee uses the parking space for four-wheeler parking or for two-wheeler parking. The taxpayer does not claim ITC of the lease charges paid to the building authority;
- The taxpayer raised the following questions before the AAR but the AAR refused to give ruling due to absence of requisite documents;
- Aggrieved by the order of AAR, the taxpayer filed an appeal before the AAAR.

Question before the AAR

- Whether amount recovered from the employees towards car parking charges payable to Shantiniketan Properties Private Limited (building authorities), would be deemed as "Supply of service" by the taxpayer to its employees?
- If the first question is answered in affirmative, whether the value of aforesaid supply would be 'Nil', being provided in the capacity of a "Pure Agent"? If valuation is not accepted as 'Nil', what would be the value of such supply?

- If GST is payable on such amount recovered from the employees, whether the GST paid by the taxpayer to building authorities towards car parking charges would be admissible as ITC against supply of car parking services to employees ?

Contention of Taxpayer

- The taxpayer contended that the facilitation of parking spaces between its employees and building authority does not amount to 'supply of services' as per the applicable provisions of CGST Act, 2017. Under GST law, for an activity to qualify as 'supply', it is required to be made in the course or furtherance of business;
- The taxpayer stated that they are engaged in the business of development and export of software to the overseas company. Hence, the term 'business' as envisaged in the definition provided under section 2(17) of CGST Act, 2017 includes primary business activity of software development services for the overseas company;
- The taxpayer further submitted that in their case the said activity is a 'supply' then the value of such supply should be NIL, as the same is being provided in the capacity of a 'pure agent'. The taxpayer also submitted that they are not utilizing the amount recovered from the employees (i.e., parking charges) for their own benefit but the amount collected from the employees is passed on to the building authority;
- The taxpayer claimed that since all the four conditions of rule 33 of CGST Rules are fulfilled, the said activity qualifies as a 'pure agent' of the employees availing parking facility;
- The taxpayer further added that even if the recovery of parking charges is deemed as taxable supply and GST is to be charged by the taxpayer on the same then it follows that the activity is in the course of or furtherance of business. Hence, ITC of GST paid to the building authority should be admissible.

Observations and ruling by the AAR:

- The AAR analysed the definition of 'supply' as per section 7 of CGST Act, 2017 and Schedule-II of the CGST Act, 2017 and noted that as per Schedule-II of CGST Act, 2017 any lease, tenancy, easement, licence to occupy land is a supply of services;
- The AAAR noted that the word "easement", in common parlance is defined as "a right to cross or otherwise use someone else's land for a specified purpose" and in present case the taxpayer is providing right to its employees to use parking facility on the parking space provided by the building authority and collecting certain amount from their employees. Hence, the activity squarely falls under schedule II as a supply of service;
- The AAAR considered the following submissions made by the taxpayer with regard to the claim that they are a 'pure agent' and noted that the taxpayer qualifies as a 'pure agent':
 - Any employee who wants the car parking facility formally requests the taxpayer to facilitate the same with the building authority. The employee also provides email/verbal confirmation for availing the facility and also agrees to pay the charges for the parking space;

- The parking spaces are availed for the sole usage of the employees. This is duly informed by the taxpayer to the employees as well as to the building authority. Further, the taxpayer submitted that in case of surrender of parking space by any employee, it is immediately surrendered back to the building authority;
 - The parking spaces are for the sole usage of the employees. The taxpayer does not own any vehicles and therefore the parking spaces have no relevance for the operations of the taxpayer;
 - The taxpayer recovers the amount of parking charges payable to the building authority from all the employees using the parking facility and nothing more. Further the entire amount recovered from the employees is paid to the building authority towards parking charges.
 - The question as to whether the GST paid by the taxpayer to building authorities towards car parking charges would be admissible as an ITC against supply of car parking services to employees, the AAAR noted that, even though the activity undertaken by the taxpayer is a supply of service, in terms of section 7(1) of the CGST Act, 2017, the value of the service would be nil, as the taxpayer is acting in the capacity of ‘pure agent’ for their employees, subject to the fulfillment of conditions. Accordingly the question becomes redundant;
 - The AAAR answered the three questions raised as follows:
 - the amount recovered from the employees towards car parking charge payable to building authorities, would be deemed as ‘supply of service’ by the taxpayer to its employees;
 - value of the supply would be ‘nil’, subject to the fulfillment of the conditions prescribed for pure agent by the taxpayer;
 - Since the value of the service is ‘nil’, as the taxpayer is acting in the capacity of ‘pure agent’ for their employees, subject to the fulfillment of conditions. Accordingly the third question becomes redundant.
- [AAAR-Uttar Pradesh M/s. ION Trading India Pvt Ltd order no:11/AAAR/16/03/2020, dated 16 March 2020]*

CUSTOMS

NOTIFICATION

Exemption on Customs duty and health cess on import of Amphotericin B and restriction on its export

CBIC has exempted Customs duty and health cess on import of Amphotericin B. On the other hand, DGFT has restricted the export of Amphotericin-B injections.

[Notification no:31/2021-Customs dated 31 May 2021 & Notification no:07/2015-2020 dated 01 June 2021]

Extended the IGST exemption on import of Remdesivir, medical oxygen, Oxygen concentrator etc.

CBIC has extended the IGST exemption given on import of Remdesivir, medical oxygen, Oxygen concentrator etc. received from abroad for free distribution in India, from the present 30 June 2021 to 31 August 2021. Notification no:32/2021-Customs dated 31 May 2021 issued for exempting

IGST on imports of specified COVID-19 relief material subject to the following conditions, up to 31 August 2021.

- The imported goods are donated to the Central Government or State Government or, on recommendation of State authority, to any relief agency, entity or statutory body (hereinafter referred as “relief agency”) for free distribution;
 - Before clearance of the said goods, the importer submits to the Deputy or the Assistant Commissioner of Customs, a certificate from the Central Government, or a nodal authority [including as appointed by a State Government for the purposes of Ad hoc exemption order no:4/2021-Customs, dated the 3 May 2021 {G.S.R. 316(E), dated the 3 May 2021}], that the imported goods are meant for free distribution for COVID relief, as the case may be, by the Central Government, State Government, or a relief agency as recommended by the said nodal authority in such certificate;
 - The importer produces before the Deputy or the Assistant Commissioner of Customs at the port of import, within a period of six months from the date of importation, or within such extended period not exceeding nine months from the said date as that Deputy or Assistant Commissioner of Customs may allow:
 - a certificate from the Central Government or State government, as the case may be, that the imported goods were received by them for free distribution; or
 - in case the imported goods are donated to any relief agency on the recommendation of the nodal authority, a statement containing details of the said goods distributed free of cost, duly certified by the said nodal authority of the State Government.
- [Notification no:32/2021-Customs dated 31 May 2021 & Ad hoc Exemption Order no:5/2021-Customs dated 31 May 2021]*

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

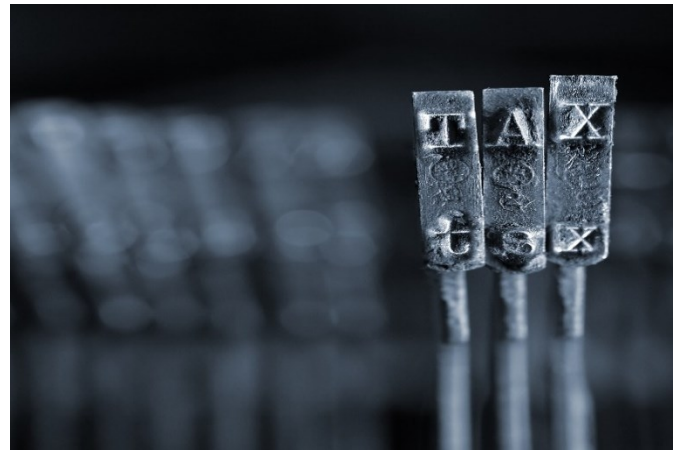
Extension of time for export of red sanders wood by Directorate of Revenue Intelligence

Directorate of Revenue Intelligence has been allowed time upto 31 December 2021 to complete the process of export of allocated quantities of Red Sanders wood.

[Notification no:06/2015-2020 31 May 2021]

NEWS FLASH

1. “GST collection in May slides, but still holds above ₹1 lakh crore-mark”
<https://www.livemint.com/news/india/gst-collection-in-may-slides-but-still-holds-above-rs-1-lakh-croremark-11622890904508.html>
[Source: Livemint, 05 June 2021]
2. “Idea of GST is dead, says Chidambaram”
<https://www.thehindu.com/business/Economy/idea-of-gst-is-dead-says-chidambaram/article34707858.ece>
[Source: The Hindu, 02 June 2021]
3. “GST: End Of The Road For Cooperative Federalism?”
<https://www.bloombergquint.com/gst/gst-end-of-the-road-for-cooperative-federalism>
[Source: BloombergQuint, 05 June 2021]
4. “GST Council sees little revenue impact in further easing tax compliance”
<https://www.livemint.com/news/india/gst-council-sees-little-revenue-impact-in-further-easing-tax-compliance-11622801609117.html>
[Source: Livemint, 04 June 2021]
5. “Restrict bureaucratic excesses in GST rule-making: Punjab”
<https://www.livemint.com/economy/punjab-pushes-for-legal-review-of-bureaucrats-gst-rulemaking-powers-11622614359657.html>
[Source: Livemint, 02 June 2021]



Contact Us

For any content related queries, you may please write to the service line experts at:
taxadvisory@bdo.in

For any other queries, kindly write to:
marketing@bdo.in

BDO Offices

Ahmedabad
The First, Block C - 907
Behind ITC Narmada, Keshavbaug
Vastrapur, Ahmedabad 380015, INDIA
Tel: +91 98 2564 0046

Delhi NCR - Office 1
The Palm Springs Plaza
Office No. 1501-10, Sector-54
Golf Course Road
Gurugram 122001, INDIA
Tel: +91 124 281 9000

Hyderabad
1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA
Tel: +91 40 6814 2999

Mumbai - Office 1
The Ruby, Level 9, North West Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA
Tel: +91 22 6277 1600

Pune - Office 2
Floor 2 & 4, Mantri Sterling, Deep
Bungalow Chowk, Model Colony,
Shivaji Nagar, Pune 411016, INDIA
Tel: +91 20 6723 3800

Bengaluru
SV Tower, No. 27, Floor 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA
Tel: +91 80 6811 1600

Delhi NCR - Office 2
Windsor IT Park
Plot No: A-1, Floor 2
Tower-B, Sector-125
Noida 201301, INDIA
Tel: +91 120 684 8000

Kochi
XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA
Tel: +91 484 675 1600

Mumbai - Office 2
601, Floor 6, Raheja Titanium
Western Express Highway
Geetanjali Railway Colony, Ram Nagar
Goregaon (E), Mumbai 400063, INDIA
+91 22 6831 1600

Chennai
No. 443 & 445, Floor 5, Main Building
Guna Complex, Anna Salai, Teynampet
Chennai 600018, INDIA
Tel: +91 44 6131 0200

Goa
701, Kamat Towers
9, EDC Complex, Patto
Panaji, Goa 403001, INDIA
Tel: +91 832 674 1600

Kolkata
Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA
Tel: +91 33 6766 1600

Pune - Office 1
Floor 6, Building # 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA
Tel: +91 20 6763 3400

Note: This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact BDO India LLP to discuss these matters in the context of your particular circumstances. BDO India LLP and each BDO member firm in India, their partners and/or directors, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

BDO India LLP, a limited liability partnership, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the international BDO network and for each of the BDO Member Firms.
Copyright ©2021 BDO India LLP. All rights reserved.

Visit us at www.bdo.in

