

INDIRECT TAX

Weekly Digest

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

COMPENSATION CESS

Extension of levy of Compensation cess

The Union government has extended the levy of GST Compensation Cess for a further period of nearly four years i.e. up to 31 March 2026, by the issue of notification no:1/2022-Compensation Cess dated 24 June 2022.

[Notification no:1/2022-Compensation Cess dated 24 June 2022]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Intermediary services by overseas commission agent does not fall under import of service

Facts of the case

- M/s. Dry Blend Foods Pvt. Ltd. (“Taxpayer”) supplies food products such as spices, seasonings, etc., to customers located within and outside India;
- In order to expand its business beyond India, taxpayer hires overseas commission agent who arranges purchase orders and assists in the export of goods;
- The taxpayer intends to know whether the services received from overseas commission agent would qualify as import of service and liable to pay GST under RCM.

Questions before the AAR

- Whether the overseas commission agent falls within ambit of ‘Intermediary’ under section 2(13) of Integrated Goods & Services Tax Act, 2017 (“IGST Act”)?
- Whether services received from overseas commission agent fall within the scope of ‘Import of service’ under section 2(11) of IGST Act?

- Whether taxpayer is required to pay GST under RCM as per section 5(3) of IGST Act?

Contention of the Taxpayer

- The taxpayer submitted that it has executed an agreement with overseas commission agent who is required to facilitate export of goods produced by the taxpayer;
- The taxpayer will pay commission to such agent comprising of fixed and a variable component depending upon the value of exports facilitated by such agent.

Observations and Ruling by the AAR

- The AAR on reviewing the scope of ‘intermediary services’ observed that taxpayer has raised invoices on the foreign buyer for export of goods and not in the name of agent, but paid commission to agent on agreed terms;
- Basis definition of the term ‘intermediary’ under IGST law, read with the agreement executed by the Taxpayer, the AAR opined that the services of commission agent will squarely fall under the scope of ‘intermediary’;
- Further, on the issue of reverse charge applicability on commission, the AAR observed that in order to consider a service as import, it is mandatory that ‘place of supply’ (Pos) of such service is in India;
- On review of provisions of PoS under section 13 of IGST Act, it appears that PoS for intermediary services is the location of supplier of service in this case the location of overseas agent. As the essential condition of a service to qualify as import stands unfulfilled, payments made to overseas commissions agent cannot be considered ‘import’ of service;
- Thus, taxpayer is not liable to pay GST under RCM.
[AAR-Uttarakhand, M/s. Dry Blend Foods, Ruling no:01/AAR/2022-2023, dated 1 April 2022]

GST on services provided to another person for transportation of goods

Facts of the case

- M/s. Vadilal Enterprises Ltd. ("Taxpayer") is engaged in supply of ice-cream and avails facility of refrigerated vehicles from independent parties for transport of goods. While the taxpayer sends goods through refrigerated vehicles to various locations, the vehicles return empty in their return journey;
- In order to optimize costs, taxpayer engaged a third-party agent to locate customers for transporting goods in empty vehicles during return journey. Transportation charges paid by such return journey is collected by taxpayer through said agent;
- Separately, taxpayer has engaged independent transporters for bringing back empty plastic trays to its premises.

Questions before the AAR

- Who is liable to pay GST on transportation charges collected on return journey?
- Who is liable to pay GST in respect of goods transport agency service for return of empty trays to taxpayer's premises?
- Whether taxpayer can avail ITC of GST paid on the transportation, although these vehicles returns without taxpayers goods?

Contention by the Taxpayer

- Taxpayer submitted that either the agent or the customer, who opts for transportation, will be liable to discharge GST under RCM;
- It is liable to pay GST on transportation services availed from a GTA for bringing back empty plastic trays as the taxpayer directly procures the transportation service;
- Taxpayer claimed that ITC of the entire GST paid on the round trip of refrigerated vehicles would be admissible, without reversal of any portion of such credit though the refrigerated vehicle would not carry taxpayer's goods.

Observations and Ruling by the AAR

- Basis agreement executed by taxpayer and agent, it is observed that their relationship is on a principal-to-principal basis and is not considered as a principal-agent relationship;
- Taxpayer supports the agent in transportation of goods and hence, is considered as providing business support services to the agent and cannot be considered as a GTA;
- Taxpayer supplies business support services to the agent on which tax is to be paid under forward charge. Further, the taxpayer has no right to seek a ruling for transactions between the agent and its customers;
- Taxpayer is liable to pay GST under RCM on freight charges paid to its transporter;
- ITC on GST paid on the transaction wherein refrigerated vehicles returned empty during return journey is admissible.

[AAR-Gujrat, M/s. Vadilal Enterprises Limited, Ruling no:GUJ/GAAR/R/2022/35, dated 7 June 2022]

Food served in canteen for a nominal cost is a 'supply' liable to GST

Facts of the case

- M/s. Kothari Sugars and Chemicals Limited ("Taxpayer"), engaged in the manufacture of sugar, molasses, Denatured ethyl alcohol, and ethyl alcohol. They have stated that

they have two manufacturing units located at Kattur and Sathamangalam, wherein around 300 workers are employed;

- Section 46 of the Factories Act, 1948, prescribes for the operation and maintenance of canteen for the use of the workers, where more than 250 workers are ordinarily employed. Accordingly, they had set up canteen facility at both the units, for the benefit of its employees and workers;
- Taxpayer recovers a concessional rate of INR 35/- from each employees for serving food in the canteen. The balance cost per meal is borne by Taxpayer as an employer. In respect of the recoveries, they are currently discharging GST as an abundant caution.

Questions before the AAR

Whether recovery of nominal amount from the employees for making payment to the third-party service provider, providing food in canteen as mandated in the Factories Act, 1948 would attract GST?

Contention by the Taxpayer

- The taxpayer has stated that since the provision of food in canteen is as per the employment contract and the same is on account of the mandate under Factories Act, 1948, it would be covered under entry 1 in Schedule III of the CGST Act, 2017;
- The taxpayer is of the view that the amount collected from the employees for provision of canteen facility, would not be taxed under GST for the following reasons:
 - There is no supply between them and the employees and they are not engaged in the business of provision of canteen services;
 - The amount received from the employees is in the nature of recovery and not consideration. The recovered amount is directly paid to the third-party vendor without any profit element in their hands;
 - The provision of canteen facility is as per the employment contract and therefore covered under entry 1 of Schedule III of the CGST Act, 2017.
- Further, section 46(1) of the Factories Act, 1948 mandates that every factory has to maintain canteen facility for the use of the workers in the factory. In order to comply with this obligation, they have established a canteen facility for the benefit of the workers. They have outsourced the operation of canteen to a third-party vendor and are not engaged in the provision of canteen services;
- For any transaction to be taxed under GST, the same should fall within the scope of supply as envisaged in section 7 of the CGST Act, 2017. As per section 7(1) of the CGST Act, 2017 any transaction to be covered within the scope of supply should satisfy the following conditions: There should be supply of goods or services or both; There should be consideration; It should be in the course or furtherance of business;
- In the instant case, there is no aspect of supply between them and the employee in respect of canteen services. They have engaged a third-party vendor for the provision of canteen services and the canteen service is actually provided by the third-party vendor. They merely facilitate the provision of such service by the third-party vendor for the use of the employees. Therefore, there is no scope for supply of services between them and their employees in the instant case;

- The taxpayer also placed reliance on the following rulings:
 - In the case of POSCO INDIA PUNE PROCESSING CENTER PRIVATE LIMITED [2019 (21) G.S.T.L. 351 (A.A.R. - GST)].
 - M/S. JOTUN INDIA PVT. LTD. [2019-TIOL-312-AAR-GST]
 - ION TRADING INDIA PRIVATE LIMITED [2020 (32) G.S.T.L. 608 (A.A.R.-GST-U.P.)]
- The recoveries made from the employees is paid to the third-party vendor and the balance portion is borne by them as part of their employee cost. They do not retain any profit margin in this activity of collecting employee's portion of canteen charges. The taxpayer placed reliance on the following rulings:
 - TATA MOTORS LIMITED [2020 (41) G.S.T.L. 35 (A.A.R. - GST - MAH.)]
 - BHIMAS HOTELS PVT. LTD. [2017 (3) G.S.T.L. 30 (A.P.)]

Contention by the tax authority

- The tax authority has stated that the taxpayer has arranged a canteen for the employees, which is run by the third party canteen service provider. As per their arrangement, part of the canteen charges is borne by the taxpayer whereas the remaining part is borne by the employees. The said employees' portion canteen charges is collected by the taxpayer and paid to the canteen service provider;
- Press Release issued dated 10 July 2017 makes it clear that any benefit provided to the employees as part of employment contract would not be subjected to tax under GST. In the instant case, the taxpayer is facilitating the provision of canteen facility for the benefit of the employees. Hence, it is felt that as per entry no: (1) of Schedule III attached to CGST Act, 2017 only services by an employee to the employer in the course of or in relation to his employment are neither a supply of goods nor a supply of services;
- But in this case services are provided by the employer to the employees and a nominal amount is recovered from the employees for making payment to the third party service provider for providing food in canteen as mandated in the Factories Act, 1948. In view of the above, GST has to be discharged by the employer for the recovered amount.

Observations and Ruling by the AAR

- The AAR noted that as per entry no:(1) of Schedule III of CGST Act, 2017, only services by an employee to the employer in the course of or in relation to his employment are neither a supply of goods nor supply of service. But in this case supplies are provided by the employer to the employees for a consideration, though nominal;
- Further CBIC vide the press Release issued dated 10 July 2017 having description "GST on gifts", has clarified that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods nor supply of services). It follows that supply by the employer to the employee in terms of contractual agreement of employment (part of salary/CTC) is not subject to GST;
- The above press release makes it clear that any benefit provided to the employees as part of employment contract would not be subjected to tax under GST. In the instant case, the canteen facility is provided by the taxpayer in

both their units in accordance with the mandate under the Factories Act, 1948. The taxpayer collects a nominal amount fixed as employee cost in respect of the food consumed by such employee. Therefore, the contention that the activity of supply of food for a nominal charge by them is neither a supply of goods nor a supply of service is not legally tenable;

- Supply made by a taxable person in the course or furtherance of business is an 'outward supply'. Establishing canteen supply as furtherance of business of the taxpayer and supply of food to the employees when the same is not contractually agreed, is not an allowance as a part of the employment. Thus, the provision of food in the canteen for a nominal cost is a 'supply' for the purposes of GST;
- The taxpayer has referred to the rulings of various advance ruling authorities and appellate authorities, wherein it is held that the collection of employees share and paying to canteen service provider without profit is not a supply;
- The AAR held that the canteen facilities as mandated under section 46 of the Factories Act, 1948 and supplies food at a nominal cost either directly or through third party-vendor. The supply of food by the taxpayer is 'supply of service' by the taxpayer to their employees as the same is not a part of the employment contract and the canteen facility is provided as mandated under Factories Act. The nominal cost, which is recovered from the salary as deferred payment is 'consideration' for the supply and GST is liable to be paid;

[AAR-Tamil Nadu, M/s. Kothari Sugars And Chemicals Limited, Ruling no: 20/AAR/2022, dated 31 May 2022]

CUSTOMS

INSTRUCTIONS

Instructions regarding restrictions on import of products made of plastic

Reference to letter no:B-17011/7/UPC-II-PWM (MLP)/2021/12900 dated 01 February 2022 received from Ministry of Environment, Forest & Climate Change (MoEFCC) bringing into attention the changes in Plastic Waste Management Rules notified vide its notification dated 12 August 2021 (G.S.R. 571(E)) and Plastic Waste Management (Amendment) Rules, 2022 notified vide notification dated 16 February 2022.

The key changes in the notification dated 12 August 2021, relating to import are listed below:

- Rule 4(1)(c): Carry bag made of virgin or recycled plastic, shall not be less than seventy-five microns in thickness with effect from 30 September 2021 and one hundred and twenty (120) microns in thickness with effect from the 31 December 2022;
- Rule 4(2): The manufacture, import, stocking, distribution, sale and use of following single use plastic (SUP), including polystyrene and expanded polystyrene, commodities shall be prohibited with effect from 01 July 2022:
 - Ear buds with plastic sticks, plastic sticks for balloons, plastic flags, candy sticks, ice-cream sticks, polystyrene [Thermocol] for decoration;
 - Plates, cups, glasses, cutlery such as forks, spoons, knives, straw, trays, wrapping or packing films around sweet boxes, invitation cards, and cigarette packets, plastic or PVC banners less than 100 micron, stirrers.

- Rule 4(3): The provisions of sub-rule (2)(b) shall not apply to commodities made of compostable plastic.

Further, rule 6 of the Plastic Waste Management (Amendment) Rules, 2022 prescribes registration of importers of plastic packaging product or products with plastic packaging or carry bags or multi-layered packaging or plastic sheets, on a centralized portal developed by CPCB and rule 7.3 prescribes extended producer responsibility and obligations of Importers.

It is requested that necessary action may be taken to sensitize officers under your jurisdiction regarding the above-mentioned prohibitions and restrictions with respect to import of items made of plastic.

[Instruction no:09/2022 dated 22 June 2022]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Amendment in import policy condition of water melon seeds

Import of water melon seeds falling under ITC (HS) code 12077090 is free till 30 September 2022. Given import shall be allowed from Kandla (INIXYI) and Mundra (INMUNI) ports only.

[Notification no:13/2015-20 dated 21 June 2022]



NEWS FLASH

1. “States to seek 3 year extension of GST compensation in next council meet: Sources”
<https://economictimes.indiatimes.com/news/economy/finance/states-to-seek-3-year-extension-of-gst-compensation-in-next-council-meet-sources/videoshow/92297445.cms>
[Source: Economic Times, 18 June 2022]
2. “GoM proposes removal of many GST exemptions”
<https://www.financialexpress.com/economy/gom-proposes-removal-of-many-gst-exemptions/2568581/>
[Source: Financial Express, 22 June 2022]
3. “GST Council to consider lowering tax on ostomy and orthopedic items”
<https://www.financialexpress.com/economy/gst-council-to-consider-lowering-tax-on-ostomy-and-orthopedic-items/2569726/>
[Source: Financial Express, 23 June 2022]
4. “Relief for the moment: Proposal for GST on crypto related activities may be deferred”
<https://www.thehindubusinessline.com/money-and-banking/cryptocurrency/relief-for-the-moment-proposal-for-gst-on-crypto-related-activities-may-be-deferred/article65557995.ece>
[Source: The Hindu Business Line, 23 June 2022]
5. “Mandatory e-way bills for gold set to be on GST Council table”
<https://indianexpress.com/article/business/mandatory-e-way-bills-for-gold-set-to-be-on-gst-council-table-7987487/>
[Source: Indian Express, 24 June 2022]

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