

COMMUNIQUE

INDIRECT TAX



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CBIC issued Important FAQs on GST applicability on 'pre-packaged and labelled' goods

The CBIC has issued Frequently Asked Questions ("FAQs") vide F. No. 190354/172/2022-TRU dated July 17, 2022 to clarify certain doubts/queries that has been raised regarding the GST levy on 'pre-packaged and labelled' goods which is coming into effect from July 18, 2022. The changes relating to GST rate, in pursuance of recommendations made by the GST Council in its 47th meeting, are coming into effect from July 18, 2022. One such change is moving from imposition of GST on specified goods when bearing a registered brand or brand in respect of which an actionable claim or enforceable right in a court of law is available to imposition of GST on such goods when "pre-packaged and labelled". Certain representations have been received seeking clarification on the scope of this change, particularly in respect of food items like pulses, flour, cereals, etc. (specified items falling under the Chapters 1 to 21 of the Tariff), as has been notified vide notification No. 6/2022-Central Tax (Rate), dated July 13, 2022, and the corresponding notifications for SGST and IGST.

Source: Press Release dt. July 17, 2022



Important Notification, Circulars issued for recommendations made in 47th Council Meeting

Notification and circulars which are pursuant to 47th council meeting have been released in Newsflash Vol 10 & Vol 11.

Vol 10 : CBIC issues Notifications and Circulars pursuant to 47th GST Council Meeting

Vol 11 : Tax rate changes decided by the GST Council to take effect from July 18, 2022



Directorate General of Analytics and Risk Management authorized to withheld the IGST refund for verification purposes

The CBIC vide Order No. 01/2022-GST dated July 21, 2022 has authorised the Principal Director General/ Director General of Directorate General of Analytics and Risk Management ("DGARM"), to withheld the refund of Integrated tax paid on goods or services exported out of India under Rule 96(4)(c) of the CGST Rules where on the basis of data analysis and risk parameters, they are of the opinion that verification of credentials of the exporter, including the availment of Input Tax Credit by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

Source: Order No. 01/2022-GST dated July 21, 2022



ITC is not available on input, input services and capital goods on purchased for the construction of the LNG jetties

Issue

Whether the LNG jetties are in the nature of plant and machinery and can the ITC be availed on input, input services, and capital goods for the purchase of construction of the LNG jetties?

Assessee filed an appeal challenging the ruling passed by the AAR, Gujarat vide Advance Ruling No. GUJ/GAAR/R/46/2020 dated July, 30, 2020 holding that, the LNG jetties proposed to be built by the assessee are not covered within the expression of plant and machinery and the he cannot avail the ITC of the Goods and Services Tax ("GST") paid on input, input services as well as on capital goods procured for the construction of building the LNG jetties as per the Section 17 of the Central Goods and Services Tax Act, 2017 ("the CGST Act").

The assessee contended that as per the Explanation to Section 17(5) of the CGST Act, any foundation built for installation of plant and machinery on it also gets covered under the expression plant and machinery and accordingly, the restriction on availing of the ITC should not be applicable to such foundation. Thus, the ITC of the LNG jetties, which are the foundation of the plant and machinery, should be available.

The AAAR Gujarat in Advance Ruling (Appeal) No. GUJ/GAAAR/APPEAL/2022/06, noted that, allowing the ITC on the construction of foundation cannot be decided in isolation without deciding as to whether items to be fixed on it falls within the definition of plant and machinery and further the same would be used for making outward supply of goods or services or both. Observed that, that, the ITC on construction of foundation is allowed if the same is used for fixing on it the plant and machinery and further the said plant and machinery should be used for making outward supply of goods or services or both. The foundation or structural support needs to be exclusively for fixing the plant and machinery on it. Stated that, the LNG Jetties are nothing but civil structures and civil structures are excluded from the definition of foundation and structural supports. The foundation that is allowed in the definition of plant and machinery is that which fixes the plant and machinery to the earth making it immovable. If a certain portion of the

LNG jetties is used for directly fixing plant and machinery then it will not make jetties foundation for plant and machinery but, they are only in the nature of civil structures. Upheld the ruling passed by the AAR. Held that, the LNG Jetties being built by the assessee are not in the nature of plant and machinery and therefore, the ITC on the LNG, input services and capital goods for the construction of building the LNG Jetties are not admissible.

Source: AAAR, Gujarat, in the case of M/s. Swan LNG Pvt. Ltd dated May 09, 2022



GST is leviable on services provided by the Liaison Office to the Foreign Head Office

Issue

- Whether the activities performed by the assessee shall be treated as supply under the GST?
- Whether the activities undertaken by the assessee at the behest of their Dubai Head Office can be construed as that of an “intermediary”?
- Whether the assessee is required to obtain the GST registration?
- Whether the assessee is required to pay the GST.

This appeal has been filed by the assessee challenging the ruling passed by the AAR, Maharashtra vide Advance Ruling No. GST-ARA-35120 I9-20/B-14 dated May 24, 2021, holding that, that the activities undertaken by him will tantamount to those of “intermediary” as the assessee is arranging and facilitating the supply of goods or services or both between the (Liaison Office) LO and the Head Office by connecting them by way of introductions/references, and therefore such activities will be covered under the ambit of “Supply” as provided under Section 7 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”), and accordingly, the Assessee are required to take GST registration and discharge their GST liability on the amount received from their Head Office. Further, it was held that, the Assessee is receiving consideration from the Head Office in excess of expenses incurred by it, and the assessee cannot be treated as a non-profit organization.

The assessee contended that neither the he nor the Head Office is receiving any sort of consideration in the form of a fee or commission from any company in India for acting as a link between the LO and the Head Office. Further, all the expenses incurred by the assessee (predominantly office rent, salaries, and consultancy services), are to be reimbursed from the Head Office on a cost-to-cost basis. Thus, no consideration is to be charged/ paid for such activities.

The AAAR, Maharashtra in Order No. MAH/AAAR/AM-RM/08/2022-23, Observed that, the assessee is merely acting as a link between the businesses in India and Dubai by sharing the details of the potential business partners of India or Dubai, and the Appellant is not arranging or

facilitating the actual supply of any goods or services between the Indian businesses and Dubai businesses. Analyzed the provision of Section 13(5) of the IGST Act, and noted that the Appellant is organizing various events like seminars, conferences, round table discussions, etc. events in India. Therefore, the place of supply of such services will be in India. Stated that, the Head Office, is providing various services for which fees are charged from the Appellant. Thus, it is clear that Head Office appears to be a profit-making organization, and the activities undertaken are covered under the scope of “Commerce”, “Business” and “Supply”. Further noted that the Appellant is charging a consolidated amount from the Head Office. Thus, the bunch of activities undertaken by the Appellant is nothing but the “mixed supply” according to Section 2(74) of the CGST Act. Thus, GST is payable on the entire amount received from the Head Office for providing the said mixed supply of support services. Opined that the Appellant is providing support services to their Head Office, which attracts the GST at the rate of 18% as per the Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017 (“the Services Rate Notification”). Modified the ruling passed by the AAR, to the extent that the Appellant is not acting as an “intermediary” as per Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (“the IGST Act”). Held that, the activities performed by the Appellant at the behest of their Head Office will come under the ambit of “Supply” in terms of Section 7(1)(a) of the CGST Act and are required to take the GST registration, and discharge their GST liability, on the amount received from their Head Office.

Source: AAAR, Maharashtra in Dubai Chamber of Commerce and Industry dated June 23,2022



IGST is leviable on the interest component of EMI of loan advanced by the Bank through credit card

Issue

- Whether the IGST is leviable on the interest component of EMI of the loan through credit card services provided by the Respondent?
- The assessee contended that the loan granted by the Citi bank squarely fell under the meaning of “supply” as provided in Section 7 of the CGST Act, 2017 and the interest component of the loan which was included in the EMI was the value of such supply of service granted as loan. Such consideration for supply of service by way of granting loan cannot be categorized under credit card service merely because the EMI was mentioned on the credit card statement. Further, the interstate supply of services by way of extending loans for the consideration of payment of interest is exempted from levy of IGST as per Notification No. 09/2017 – Integrated Tax (Rate) dated June 28, 2017 (“N/N 09”).
- Bank contended that the loan was extended to the Petitioner on the basis of the credit card issued and the interest component of EMI is on account of credit card services, and is not exempted under N/N 09.
- The Hon’ble Calcutta High Court in WPO 547 of 2019 dated June 24, 2022 noted that, the offer of loan was not an offer to all intending borrowers but was restricted to a particular category of persons holding the Citi Bank Credit Card. The criteria for processing the loan, the manner in which the EMI of loan is reflected in the Credit Card statements and the charging of interest in case of shortfall in the payment of the amount due as well as the mode of payment, all goes to prove that the service rendered by the Bank in extending the loan is nothing but a service pertaining to the credit card. Observed that, the services rendered by the Respondent by way of extending loans to the Petitioner amounts to credit card services and the interest component of EMI of the loan was nothing but interest involved in credit card services which was not exempted under N/N 09. Analyzed N/N 09, and stated that the interest involved in credit card

services is not exempted. Held that, the services rendered by the Respondent by way of extending loans through credit card to the Petitioner attracts IGST on the interest component of the EMI of the loan.

Source: High Court, Calcutta in the case of Ramesh Kumar Patodia v. Citi Bank NA & Ors. [WPO 547 of 2019 dated June 24, 2022]



IGST exemption withdrawn on research equipments imported by institutions or universities

The CBIC vide Notification No. 42/2022-Customs dated July 13, 2022 has issued amendments in its earlier issued Notification No. 51/96-Customs dated July 23, 1996 (“Exemption Notification”) which provided exemption to research equipment's imported by public funded research institutions or various universities and non-commercial institutions etc., so as to withdraw the exemption of the igst leviable on certain goods specified therein, when imported into India, in a following manner:

- Omitted the words “and from the whole of integrated tax leviable thereon under sub-section (7) of section 3 of the said Customs Tariff Act 1975” from the Exemption Notification.

Source: Notification No. 42/2022-Customs dated July 13, 2022



Deputy DRI or Assistant DRI to act as the proper officer under the Customs

The CBIC vide Notification No. 61/2022-Customs (N.T.) dated July 13, 2022 has issued amendments in its earlier issued Notification No. 26/2022-Customs (N.T.) dated March 31, 2022 (“NN. 26/2022 (Customs)”) which assigned certain officers, in relation to the various functions under the Customs Act, 1962 (“the Customs Act”), in a following manner:

- New Sl. No. 4A has been inserted in NN. 26/2022 (Customs), so as to introduce the Deputy Director of Revenue Intelligence or Assistant Director of Revenue Intelligence as the proper officer under Section 109A (i.e., Power to undertake controlled delivery of any consignment of goods)

Source: Notification No. 61/2022-Customs (N.T.) dated July 13, 2022



GST REVENUE COLLECTION

The gross GST revenue collected in the month of July 2022 is ₹1,48,995 crore of which CGST is ₹ 25,751 crore, SGST is ₹ 32,807 crore, IGST is

₹ 79,518 crore (including ₹ 41,420 crore collected on import of goods) and cess is

₹ 10,920 crore (including ₹ 995 crore collected on import of goods). This is second highest revenue since introduction of GST.

The government has settled ₹ 32,365 crore to CGST and ₹ 26,774 crore to SGST from IGST. The total revenue of Centre and the States in the month of July 2022 after regular settlement is ₹ 58,116 crore for CGST and ₹ 59,581 crore for the SGST.

Source: Press Release dt. August 01, 2022



Let's Connect

+91.135.2743283, +91.135.2747084

3rd Floor, MJ Tower, 55, Rajpur Road, Dehradun - 248001

E: info@vkalra.com | W: vkalra.com

Follow us on   

**For any further assistance contact
our team at kmt@vkalra.com**

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