LKS UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

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INDIRECT TAX

GST Update on CBIC Circulars issued on 31 October 2023

UPDATE NO. 42 OF 2023

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

The update covers the clarifications given by Circular No. 206/18/2023-GST and Circular No. 205/17/2023-GST, both dated 31 October 2023.

Basis the recommendations of the GST Council in its 52nd meeting held on 7 October 2023, following clarifications have been issued by Circular No. 206/18/2023-GST, dated 31 October 2023:

1. **Whether 'same line of business' in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicle without operators?**

    - Same line of business as stated in service rate notification [Notification No. 11/2017-Central Tax (Rate), dated 28th June 2017] means "*service procured from another service provider of transporting passengers in a motor vehicle or renting of motor vehicle*".

    - In view of the above, the Circular clarifies that input services in the same line of business includes transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles with operator (SAC 9973) which attract GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.

2. **Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.**

    - The Circular clarifies that when electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premises and the supply of electricity is an ancillary supply. Even if electricity is billed separately, the supply will constitute a composite supply and therefore, the rate of principal supply i.e., GST rate on renting of immovable property and/or maintenance of premises, as the case may be, would be applicable.

    - However, when the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of their value of supply. Further, where they charge for electricity on actual basis i.e., they charge the same

[1] *2023 (10) TMI 981 - Supreme Court*

amount of electricity from their lessees or occupants as charged by the state electricity board or DISCOMs from them, they would be deemed to be acting as a pure agent for this supply.

LKS Comments:

- The Circular states that when electricity is being supplied bundled with renting of immovable property or maintenance service, supply of electricity would be deemed to be ancillary to principal supply of renting of immovable property/maintenance service.

- The Circular seems to validate the views being taken by the Authorities of Advance Rulings in GST [In re: ***E-Square Leisure Private Limited***[1] and others]. However, there are rulings from the erstwhile regime of service tax holding that supply of electricity qualifies to be an independent supply and thus not includible in the value of rental services.

- The Circular provides sigh of relief to the suppliers who supply electricity on cost-to-cost basis (without adding margin) along with supply of renting of immovable property or maintenance service where they have been deemed to be pure agent and hence, not obliged to pay tax on supply of electricity.

- The Circular has not deemed that supply of electricity is always bundled with renting of immoveable property/maintenance services. Hence, the issue arises whether in cases where charges for electricity is collected on a metered basis and it is optional for the recipient to avail or not to avail electricity from the supplier, whether it can be said that such supply is not bundled with the principal supply and qualifies to be an independent supply?

3. District Mineral Foundation Trusts ('DMFT') set up in mineral mining areas by the State Governments are Government Authorities and hence, supplies to such trusts will be eligible for exemptions from GST as available to Government Authorities

- The activities undertaken by DMFTs which include services related to drinking water supply, environmental protection, health care facilities, education, welfare of women and children, supply of medical equipment, etc. are similar to activities that are enlisted in the Eleventh and Twelfth Schedule of the Indian Constitution.

[1] 2019 (23) G.S.T.L. 514 (A.A.R. - GST).

The services are provided out of DMF Fund and no consideration is realized from the beneficiaries by DMFT.

- In light of the above, the circular clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

LKS Comments:

- The above circular has been issued pursuant to the recommendations made in the 52nd GST Council meeting on 7 October 2023.

- The Circular clarifies that DMFT set up by the State Governments across the country in mineral mining areas are Governmental Authorities and thus supplies to such trusts are eligible for the same exemptions from GST as available to any other Governmental Authority.

- It needs to be analysed if the said clarification can be linked to Entry 3B of Notification No. 12/2017- Central Tax (Rate) dated 28 June 2017 which provides an exemption from payment of GST on services provided to a Governmental Authority by way of (a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management; and (e) slum improvement and upgradation.

4. Pure services and composite supplies by way of horticulture/ horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are exempt under N. No. 12/2017

- Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution.

- Accordingly, it has been clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28 June 2017.

5. **GST on job work for processing of "Barley" into "Malted Barley"**

- The circular provides that job work for processing of "Barley" into " Malted Barley" shall attract 5% GST.

- The circular clarifies that the said job work would fall under "job work in relation to all food products" falling under Chapters 1 to 22 of the Customs Tariff irrespective of the end use, whether it is used as an ingredient in food product or used in manufacture of beer or liquor.

LKS Comments:

- The Circular is issued in pursuance of the recommendations made by 52nd GST Council.

- This is a welcome clarification providing huge relief to liquor industry.

Circular No. 205/17/2023-GST dated 31 October 2023 has provided clarification regarding GST rate on imitation Zari thread or yarn thread based on recommendation of 52nd GST council meeting. These are as follows:

6. **GST rate on imitation zari thread or yarn known by any name in trade parlance has been reduced to 5% after inserting the same by serial no. 218AA in Schedule I of Notification no. 1/2017 – Central Tax (Rate) dated 28.06.2017**

- Doubts have been raised on whether metal coated plastic film converted to metallised yarn and twisted with nylon, cotton, polyester or any other yarn to make imitation zari thread will get covered under s.no. 218 AA of Schedule I attracting GST rate of 5% or under s.no. 137 of Schedule III covering other metallised yarn attracting GST rate of 12%.

- It has been clarified that imitation zari thread or yarn made from metallised polyester film/ plastic film falling under HS 5605 are covered under S.no. 218AA of Schedule I attracting GST rate of 5%. The GST Council has also recommended that no refund will be permitted on polyester film (metallised)/plastic film on account of inversion of tax rate. Accordingly, necessary changes have been made in notification no.5/2017-Central Tax (Rate) *vide* Notification no 20/223-Central Tax (Rate) dated 19 October 2023.

LKS Comments:

- As per Circular No. 52/26/2018-GST dated 9 August 2019, all types of metallised yarns/kasab or threads classifiable under HSN 5605 attract 12% GST.

- The said change has been brought to correct the taxation structure where embroidery articles including imitation zari embroidery articles are taxed at 5% but the input thread is taxed at 12%.

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