L&S UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

6 AUGUST 2022

INDIRECT TAX

Clarification regarding GST rates & classification of goods

UPDATE NO. 46 OF 2022

Lakshmikumaran & Sridharan
attorneys

exceeding expectations
SINCE 1985

CBIC CIRCULAR NO. 179/11/2022-GST, DATED 3 AUGUST 2022

Basis the recommendations of the GST Council in its 47th meeting held on 28th – 29th June, 2022 at Chandigarh, following clarifications have been issued *vide* Circular No. 179/11/2022-GST, dated 3 August 2022:

Sl.No	Issue	Clarification
1)	**Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5%:**	• It has been clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply. Thus, GST at the rate of 5% shall apply as per *Entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate).* • Referring to meaning of 'Electrically operated vehicles' given under Notification, it has been observed that electrically operated vehicle including three wheeled electric vehicle means a vehicle that runs ***solely*** on electrical energy derived from an external source or from electrical batteries. Fitting of batteries cannot be considered as a concomitant factor for defining electric vehicle. • Reliance has also been placed upon Note 2(a) of HSN Explanatory Notes to state that batteries cannot be considered as a component, absence of which changes the essential character of an incomplete, unfinished or unassembled vehicle; and HSN explanatory notes for Chapter 87 clearly state that Motor Chassis fitted with cabs falls under 87.02 to 87.04 and not in heading 87.06.

L&S Comment:

- There were contrary rulings of different authorities of advance rulings on availability of concessional rate for electronic vehicles which are supplied without battery packs.
- This clarification seems to put an end to this controversy

2)	**Concessional rate of 5% applicable on stones ready to use and polished in minor ways but not mirror polished**	It has been clarified that building stones, in particular Napa Stones, which are ready to use and polished in ways other than mirror-polished shall attract GST rate of 5% as per Entry 123 of Schedule-I of Notification No. 1/2017-CT Rate which covers 'Ecaussine and other calcareous monumental or building stone; alabaster [other than marble and travertine], other than mirror polished stone which is ready to use.'
3)	**Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate:**	• It has been clarified that on the basis of the recommendation of the GST Council in its 22nd Meeting, the GST rate on 'Mangoes sliced, dried', falling under heading 0804, was reduced from 12% to 5% (Entry 30A of Schedule I of Notification No. 1/2017 CT Rate). However, the GST rate on all forms of dried mangoes (other than sliced and dried mangoes), falling under heading 0804, including mango pulp, was always meant to be at the rate of 12%. • To absolutely clarify the above position, 'mangoes (other than mangoes sliced, dried)' have been specifically covered under Entry 16 of Schedule I of Notification No. 1/2017 CT Rate, w.e.f. 18.07.2022 vide Notification No. 6/2022-CT Rate.

L&S Comments:

- Various authorities of advance rulings had held that mango pulp obtained from mango after carrying out process of cutting, de-stoning, refining and packing is not same as 'Mangoes fresh'. Mango pulp is specifically classified under Tariff Item 08045040 of Customs Tariff Act, 1975 but not under GST Tariff. Thus, it would fall under S. No. 453 of Schedule III to Notification No. 1/2017-CT Rate.

- Due to recent amendment, all mangoes (other than mangoes sliced, dried), including mango pulp shall attract GST rate of 12%. Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [S. No. 51 of notification No. 2/2017-CT Rate.

4) **Treated sewage water attracts Nil rate of GST**	• It has been clarified that 'Water' falling under heading 2201, with certain specified exclusions, is exempt from GST *vide* Entry 99 of Notification No. 2/2017-CT Rate. • Accordingly, the supply of treated sewage water, falling under heading 2201, is exempt under GST. • Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry *vide* Notification No. 7/2022- CT Rate.

L&S Comments:

- The Maharashtra Authority for Advance Ruling had ruled that the 'Treated Water' processed from sewage water qualifies to be 'purified' water falling under S.No. 24 of Schedule III of Notification No. 1/2017-CT Rate and taxable at 18%.

- Through this clarification, this issue seems to have been resolved.

5) **Nicotine Polacrilex Gum attracts a GST rate of 18%**	• Reference has been made to new entry 2404 91 00 introduced under WCO HS Codes 2022 to classify products for oral application containing nicotine and intended to assist tobacco use cessation with effect from 01.01.2022 • It has been clarified that a technical change, without any consequential rate change, was made by inserting S. No. 26B in Schedule III of Notification no. 1/2017 CT Rate, to include products for oral application containing nicotine and intended to assist in cessation of use of tobacco, and falling under tariff item 2404 91 00.

		• Thus, Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18%.

L&S Comments:

- Earlier dispute arose regarding classification of such products.
- Entry 41 under Schedule III of Notification No. 1/2017-CT Rate prescribing GST rate of 18% for 'Nicotine Polacrilex gum' classifiable under Chapter 30 has been omitted.
- CTH 2404 has been specifically inserted under Chapter 24 of Schedule I to Customs Tariff Act, 1975 w.e.f. 1 January 2022 to classify 'Products containing tobacco, reconstituted tobacco, nicotine, or tobacco or nicotine substitutes, intended for inhalation without combustion; other nicotine containing products intended for the intake of nicotine into the human body'.
- GST rate on said goods has been notified as 18% w.e.f. 1 January 2022.

6)	**Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks**	• Reference has been made to recommendations of the GST Council in the 23rd Meeting where it was recommended that the condition of 90% or more fly ash content was applicable only for fly ash aggregate. • It is clarified that the condition of 90 per cent. or more fly ash content applied only to Fly Ash Aggregates and not to fly ash bricks and fly ash blocks. • Changes have been made to various notifications to substitute the entry with 'Fly ash bricks; Fly ash aggregates; Fly ash blocks'.

L&S Comments:

- The condition of 90% fly ash content with respect to fly ash bricks applies only to fly ash aggregate, and not fly ash bricks. As a simplification measure, the condition of 90% content is being omitted.

- The Authorities of Advance Rulings have ruled that fly ash bricks not having 90% or more fly ash content shall be chargeable to GST @ 18% as per residuary S. No. 453 of Schedule III to the NN 1/2017- C.T.R. dated 28 June 2017.
- It is thus a welcome clarification as all the fly ash bricks, irrespective of the fly ash content shall enjoy concessional rate of 6% without ITC and 12% with ITC.

7) Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi:	• It has been clarified that the by-product of milling of pulses/ dal such as Chilka, Khanda and Churi classifiable under CTH 2302, which is used as cattle feed ingredient shall attract GST at the rate of 5% vide Entry 103A of Schedule-I of Notification No. 1/2017-CT Rate. • For the past, in view of the prevailing multiple interpretations and genuine doubts regarding the applicability of GST, the matter would be regularized on as is basis. • It has been observed that the mentioned by-products are required to go through varying degrees of processing in order to customize the color, size, aroma, nutrition, purity, etc., of the cattle feed so produced, depending upon the dietary and nutritional requirement of the cattle and the budget availability of the customer(s). • Reference has been made to ***Indian Standards 2052:2009 -Compounded Feeds for Cattle – Specification,*** issued by the Bureau of Indian Standards wherein grain by-products have been categorized as one of the ingredients of the compounded cattle feed. Accordingly, it has been stated that the subject goods are raw material for cattle feed but not for consumption as cattle feed. Thus, the same cannot be exempted under Entry 102 of Notification No. 2/2017-CT Rate.

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