LKS UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

17 JANUARY 2023

INDIRECT TAX

Classification and GST rates of specified goods

UPDATE NO. 6 OF 2023

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

Circular 189/01/2023-GST dated 13 January 2023 has been issued for clarifying the classifications and the GST rates applicable on the supply of various goods, in accordance with the recommendations made by the 48th GST Council Meeting.

CLASSIFICATION OF "RAB" UNDER CTH 1702

- As per the Uttar Pradesh Rab (Movement Control Order), 1967, "Rab" means *"massecuite prepared by concentrating sugarcane juice on open pan furnaces, and includes Rab Galawat and Rab Salawat, but does not include khandsari molasses or lauta gur"*. Although rab is a product of sugarcane, it exists in semi-solid/liquid form, and is not covered under CTH 1701.

- In *Krishi Utpadan Mandi Samiti* v. *Shankar Industries*, 1993 SCR (1) 1037, the Supreme Court has distinguished between molasses and Rab. Accordingly, Rab can also not be classified under CTH 1703.

- Thus, Rab will be classified under CTH 1702, which covers *"Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel"*, and GST rate of 18% will be applicable.

GST ON BY-PRODUCTS OF MILLING OF DAL/PULSES SUCH AS CHILKA, KHANDA AND CHURI/CHUNI

- Due to the confusion as to the GST rate applicable on the by-products of milling of dal/pulses such as Chilka, Khanda and Churi/Chuni, it has been clarified that such goods would be exempt from the levy of GST, irrespective of the end use, with effect from 1 January 2023, in terms of the newly inserted Sl. No. 102C to the Notification No. 2/2017-Central Tax (Rate) dated 28 June 2017 (**"Exemption Notification"**).

- Since the Circular No. 179/11/2022-GST dated 3 August 2022 issued a clarification that the subject goods would be leviable to GST @ 5%, where the same are used as cattle feed ingredients, under Sl. No. 103A of Schedule I of the Notification No. 1/2017-Central Tax (Rate) dated 28 June 2017 (**"Rate Notification"**), the matters that have arisen in the intervening period will be regularized on an "as is" basis, till 1 January 2023.

LKS COMMENTS

- The insertion of Sl. No. 102C to the Exemption Notification read with the clarification under the Circular No. 189/01/2022-GST effectively overrides the clarification issued *vide* the Circular No. 179/11/2022-GST, and thereby, all by-products of milling of dal/pulses such as Chilka, Khanda and Churi/Chuni would be exempt from GST.

- There can be no claim of refund of the GST paid on the supply of the subject goods for the previous tax periods.

GST RATE @ 28% APPLICABLE ON CARBONATED BEVERAGES OF FRUIT DRINK AND CARBONATED BEVERAGES WITH FRUIT DRINK

- The applicable six-digit HS Code for the subject goods is HS 2202 99, and GST is applicable @ 28% thereon, in terms of Sl. No. 12B in Schedule IV of the Rate Notification, along with Compensation Cess @ 12%.

- This entry covers all carbonated beverages that contain carbon dioxide, irrespective of whether carbon dioxide is added as a preservative, additive, etc., and such goods have also been specifically excluded from Sl. No. 48 of Schedule II of the Rate Notification, so as to bring about absolute clarity.

CLASSIFICATION OF SNACK PELLETS MANUFACTURED THROUGH THE PROCESS OF EXTRUSION UNDER TARIFF ITEM 1905 90 30

- Snack pellets which are manufactured through the process of extrusion, such as fryums, etc. are classifiable under Tariff Item 1905 90 30, which covers *"Extruded or expanded products, savoury or salty"*, and GST is applicable @ 18% thereupon.

COMPENSATION CESS @ 22% APPLICABLE TO SUVS

- As per Sl. No. 52B of the Notification No. 1/2017-Compensation Cess (Rate) dated 28 June 2017, Compensation Cess @ 22% is applicable on the supply of SUVs, including utility vehicles.

- It has been clarified that this Compensation Cess rate will be applicable on motor vehicles falling under the CTH 8703, which satisfy all the following conditions: (a) the vehicles are popularly known as SUVs, (b) engine capacity exceeds 1500 cc, (c) the length of the vehicle exceeds 4000 mm, and (d) the ground clearance is 170 mm or more.

APPLICABLE IGST RATES ON GOODS SPECIFIED UNDER NOTIFICATION NO. 3/2017-IT(R)

- The IGST rate applicable on the import of the goods specified in the List appended to the Notification No. 3/2017-Integrated Tax (Rate) dated 28 June 2017, required in connection with petroleum/coal methane bed operations (subject to the conditions prescribed therein) has been increased from 5% to 12%, *vide* the Notification No. 08/2022-Integrated Tax (Rate), dated 13 July 2022 (effective from 18 July 2022).

- It is clarified that where the goods specified therein are eligible for a lower IGST rate of 5% under Schedule I of the Notification No. 1/2017-Central Tax (Rate) dated 28 June 2017, the benefit of the lower GST rate can be availed of by the importer.

LKS COMMENTS

- Whether the benefit of lower rate of 5% can be availed by any inter-State supplier (other than an importer) of the eligible goods specified in the List appended to the Notification No. 3/2017-Integrated Tax (Rate)?

LOCATIONS

NEW DELHI

5 Link Road, Jangpura Extension,
New Delhi 110 014
PHONE: 011-4129 9800

B-6/10, Safdarjung Enclave,
New Delhi 110 029
PHONE: 011-4129 9900
E-MAIL: Lsdel@lakshmisri.com

MUMBAI

2nd Floor, CNERGY IT Park,
Old Standard Mill,
Appa Saheb Marathe Marg,
Prabhadevi,
Mumbai 400 025
PHONE: 022-2439 2500
E-MAIL: Lsbom@lakshmisri.com

CHENNAI

2, Wallace Garden, 2nd Street,
Chennai 600 006
PHONE: 044-2833 4700
E-MAIL: Lsmds@lakshmisri.com

BENGALURU

World Trade Center,
No. 404-406, 4th Floor, South Wing,
Brigade Gateway Campus,
No. 26/1 Dr. Rajkumar Road,
Malleswaram West,
Bengaluru 560 055
PHONE: 080-4933 1800
E-MAIL: Lsblr@lakshmisri.com

HYDERABAD

'Hastigiri', 5-9-163, Chapel Road,
Opp. Methodist Church, Nampally,
Hyderabad 500 001
PHONE: 040-2323 4924
E-MAIL: Lshyd@lakshmisri.com

AHMEDABAD

B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad 380 009
PHONE: 079-4001 4500
E-MAIL: Lsahd@lakshmisri.com

PUNE

607-609, Nucleus,
1 Church Road, Camp
Pune 411 001
PHONE: 020-6680 1900
E-MAIL: Lspune@lakshmisri.com

KOLKATA

2nd Floor, Kanak Building,
41, Chowringhee Road,
Kolkata 700 071
PHONE: 033-4005 5570
E-MAIL: Lskolkata@lakshmisri.com

CHANDIGARH

SCO No. 59, 1st Floor,
Sector 26, Madhya Marg,
Chandigarh 160 026.
PHONE: 0172-492 1700
E-MAIL: Lschd@lakshmisri.com

GURUGRAM

OS2 & OS3, 5th Floor,
Corporate Office Tower,
AMBIENCE Island, Sector 25-A,
Gurugram 122 001
PHONE: 0124-477 1300
E-MAIL: Lsgurgaon@lakshmisri.com

PRAYAGRAJ (ALLAHABAD)

3/1A/3, (Opp. Auto Sales)
Colvin Road, Lohia Marg,
Prayagraj 211 001
PHONE: 0532-242 1037/242 0359
E-MAIL: Lsallahabad@lakshmisri.com

KOCHI

1st Floor, PDR Bhavan,
Palliyil Lane, Foreshore Road,
Ernakulam, Kochi 682016
PHONE: 0484-486 9018/486 7852
E-MAIL: Lskochi@lakshmisri.com

JAIPUR

2nd Floor (Front side),
Unique Destination, Tonk Road,
Near Laxmi Mandir Cinema Crossing,
Jaipur, Rajasthan 302 015
PHONE: 0141-456 1200
E-MAIL: Lsjaipur@lakshmisri.com

NAGPUR

1st Floor, HRM Design Space,
90-A, Next to Ram Mandir,
Ramnagar, Nagpur 440033
PHONE: +91-712-2959038/2959048
E-MAIL: Lsnagpur@lakshmisri.com

www.lakshmisri.com

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985