



Dimensions – 62nd Edition

Rulings under GST era

M/s Satyaja Infratech – Gujarat¹

Issues

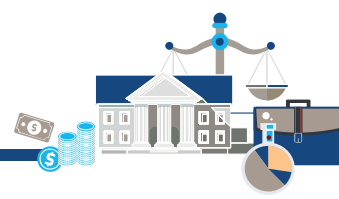
- Whether the activity of selling of land by converting it into integrated residential sub plots of varying sizes along with basic facilities is liable to GST?
- If yes, what would be the category of supply and rate of GST?

Discussion

- Applicant is engaged in purchase of land and thereafter selling such land by converting it into integrated residential sub plots of varying sizes with basic facilities like compound wall, main entry gate, internal plot separation walls, internal road, drainage system, bore-well, children play area, club house, water supply and electricity connection to each plot etc.
- Some of the above-mentioned facilities such as drainage system, internal roads etc. are required to be provided for the purpose of sale of plots for residential purposes as per the regulations of the Gujarat Government.

- After development of the infrastructure facilities discussed above, the Applicant sells the residential sub-plots without any construction of building on such sub-plots.
- The Applicant approached the Authority and contended as follows:
 - present activity would be covered under the sl. no. 5 of Schedule III of CGST Act, 2017, which provides that sale of land and sale of building, subject to sl. no. 5(b) of Schedule II of CGST Act, 2017, is neither a supply of goods nor services;
 - further, sl. no. 5(b) of Schedule II of CGST Act, 2017 provides that construction of complex, building etc. intended for sale to buyer where the entire consideration is received before completion certificate is issued would be a supply of services.
- The Authority after perusing certain clauses of the agreement of sale of plots observed that-
 - the activity of the Applicant falls under sl. no. 5(b) of Schedule II of CGST Act, 2017 discussed above;

¹ Order no. GUJ/GAAR/R/2019/21 dated September 19, 2019



- the activity of the Applicant should attract GST at the rate of 18% as per sl. no. 3 of notification no. 11/2017-Central tax (Rate) dated June 28, 2017 which provides rate for construction of complex, building etc. including residential apartment in an ongoing project.

Ruling

- The activity of purchase and sale of land by converting it into integrated residential sub-plots of varying sizes with basic facilities is liable to GST.
- The said activity would attract 18% GST.

Dhruva Comments:

The Authority has passed the ruling without discussing any provisions under GST law pertaining to the sale of land / construction activity.

There has been no deliberation as to whether the sale of land along with certain developmental activities can essentially be regarded as a sale of land or not.

M/s Moksh Agarbatti Co. – Gujarat²

Issues

- Whether input tax credit (ITC) can be availed on the following:
 - inputs used in manufacture of Dhoop or procured from third party vendor, which is given free of cost along with supply of final product i.e. Agarbatti?
 - target based non-monetary discounts (pressure cooker) given to distributors as a part of sales promotion campaign?
 - one free unit of Agarbatti given to customers to encourage purchase of full carton?
 - premium paid on insurance / maintenance of motor vehicles used for transport of director and employees?
- Whether supply of pressure cooker would amount to supply of goods to the distributor?

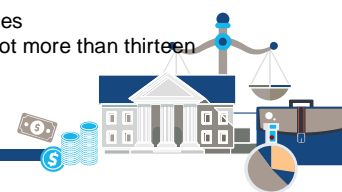
Discussion

- The Applicant is engaged in the manufacture of Agarbatti.
- In order to increase sales and given that the product market is price sensitive, the Applicant offers freebies and gifts to distributors / end customers.
- The Applicant approached the Authority to contend that the restrictions to avail the ITC in terms of section 17(5)(h)³ and 17(5)(a)⁴ of the CGST Act, 2017, would not be applicable since -
 - instead of reducing the price of Agarbatti and to ensure that value discounts are passed on to the end customers, Dhoop is offered free of cost. Further, there is a direct link between the Agarbatti purchased and Dhoop offered free of cost. Therefore, ITC on Dhoop should be available, irrespective of whether these are manufactured or procured from a third party;
 - target based non-monetary discounts are not fresh supplies but are obligations arising out of a predetermined commitment (i.e. promotional schemes floated in advance). Hence, these are not gifts, but contractual obligations and accordingly credit should be allowed on the same. Further, such products given to dealers does not amount to 'supply' as such offerings does not involve any fresh consideration;
 - non-monetary discounts have a lasting impact as compared to monetary discounts;
 - one unit of Agarbatti is supplied free to encourage purchase of full carton boxes. Further, it helps in saving cost of packing material and other admin overhead costs are avoided;
 - section 17(5)(a) does not restrict credit on car insurance / servicing charges. Further, the premium paid on motor vehicle is not expressly disallowed and there is an obligation under the law which does not permit usage of motor vehicle unless insurance is obtained.

² Order no. GUJ/GAAR/R/14/2019 dated August 23, 2019

³ Section 17(5)(h) disallows the ITC on goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

⁴ Section 17(5)(a) disallows the ITC on motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons except in certain circumstances



- The Authority after analysing the provisions of section 17(5)(a) and 17(5)(h) of the CGST Act, 2017 rejected the contentions of the Applicant.

Ruling

- The ITC in relation to issue no. (i), (ii) and (iii) (*supra*) shall not be available to the Applicant in terms of section 17(5)(h) of the CGST Act, 2017.
- The ITC in relation to question no. (iv) (*supra*) shall not be available in terms of section 17(5)(a) of the CGST Act, 2017.
- The Authority did not comment on the question as to whether supplying pressure cooker qualified as supply of goods to the distributor.

Dhruva Comments:

The ruling does not refer to the CBIC circular⁵ which has clarified the eligibility on ITC in case of sales promotional schemes. The issue of ITC in case of promotional schemes has been a subject matter of debate and it is critical to examine each such arrangement / schemes formulated by businesses to examine the GST implications.

Circulars under Customs law

Electronic sealing – Deposit in and removal from Customs bonded warehouse⁶

- Customs Circular No. 10/2020 dated February 7, 2020 provided for specifications, data points and procedure to be used for deposit and removal of goods from Customs bonded warehouse after electronic sealing. This move to electronic sealing was to make sure integrity of cargo during transit.
- Representations were received from electronic-seal vendors for deferment of implementation of Customs Circular No. 10/2020 dated February 7, 2020.
- In view of such representations, the date of implementation of Circular No. 10/2020 dated February 7, 2020 is deferred to July 1, 2020.

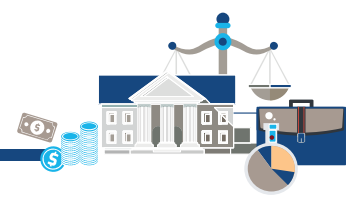
Extension of measures to facilitate trade during lockdown period⁷

- Central Board of Indirect Taxes and Customs (Board) *vide* Customs Circular No. 17/2020 dated April 3, 2020 had approved relaxation of submission of bonds prescribed under section 18, section 59, section 143, and under notifications issued in terms of section 25 of the Customs Act, 1962, citing the reason that during lockdown the importers / exporters / customs brokers etc. are not able to get stamp papers, as well as get the bond notarized due to non-availability of vendors and notary.
- Considering the initial phase of lockdown was announced till April 14, 2020 and in view of the difficulties faced by the trade, relaxation was provided till April 30, 2020. Further, it was directed that during the abovementioned period, Customs field formations may accept request for submission of an undertaking from the importer / exporter in lieu of a bond prescribed under the above-mentioned provisions. This relaxation was applicable to the following categories:
 - Government / Public Sector Undertakings (Central / State / UT Governments or Administrations and their undertakings);
 - Manufacturer / Actual User importer;
 - Authorised Economic Operators;
 - Status holder;
 - All importers availing warehouse facility in terms of section 59 of the Customs Act, 1962.
- Pursuant to extension of the lockdown announced till May 3, 2020, relaxations with respect to submission of undertaking in lieu of notarized bonds has been extended till May 15, 2020. Similarly, the date of submission of proper bond (in lieu of which the undertaking is being temporarily accepted) was extended to May 30, 2020.
- In addition to the requirement of submission of the undertaking via registered e-mail id of the IEC holder or the customs broker, customs zones may prescribe uploading of undertaking on e-sanchit.

⁵ Circular no. 92/11/2019-GST dated March 7, 2019

⁶ Circular no. 20/2020-Customs dated April 21, 2020

⁷ Circular no. 21/2020-Customs dated April 21, 2020



Dhruva Comments:

Such extension of relaxation is a timely measure to cope up with the situation due to COVID 19 lockdown. Facility for uploading the undertaking on e-Sanchit is an appropriate measure to reduce physical interface between Customs departmental officials and clearing agents as will also reduce import clearance time by uploading digitally signed documents.

Extension of facility for correction of SB005 error⁸

- In the early days of GST, various issues were faced by exporters in respect of GST refunds for export of goods on payment of IGST. One of the more common error hampering the payment of refund claims was mismatch of invoice number, taxable value and IGST paid in the shipping bill vis-à-vis the details mentioned in Table 6A of GSTR 1 (technically referred as 'SB005' error). The reason for such error was due to the fact that exporters often used two sets of invoices, i.e. one invoice for GST purposes and another invoice for Customs purposes which resulted in mismatch of invoice numbers, including mismatch in taxable value and IGST paid in those invoices.
- To resolve this issue an alternate mechanism was provided *vide* Customs Circular No. 5/2018 dated February 23, 2018 to give exporters an opportunity to rectify such errors, in the initial stages. This envisaged an officer interface on the Customs EDI system through which a Customs officer can verify the information furnished in the GSTN and Customs EDI system, and sanction refund in those cases where invoice details provided in GSTR 1 / Table 6A are correct though the said details provided in the shipping bill were at variance.
- Considering the nascent stages of GST implementation, this alternate mechanism was initially made available for shipping bills with date up to December 31, 2017. Keeping in view the difficulties faced by exporters regarding

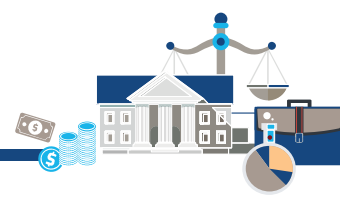
continuation of SB005 error, such alternate mechanism was extended from time to time.

- Customs Circular No. 22/2020 dated April 21, 2020 extends the officer interface facility of SB005 error correction in the Customs EDI system for shipping bills with date up to December 31, 2019 citing the following reasons:
 - representations received in respect of numerous shipping bills continue having invoice mismatches between the GST returns data and the customs data presented along with the shipping bills resulting the exporters continue to face genuine hardships due to the SB005 errors;
 - entire country is facing unprecedented challenges due to the COVID 19 pandemic.

Dhruva Comments:

The present extension of alternative facility is a welcome step and aimed at mitigating the hardships faced by exporters. As the mechanism envisaged an officer interface, it will be interesting to see how practical difficulties due to the lockdown and social distancing norms will be adhered to ensure that refunds are disbursed without hurdles or delay.

⁸ Circular no. 22/2020-Customs dated April 21, 2020





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