Circular No. 113/32/2019-GST

F.No.354/131/2019-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
Tax Research Unit
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North Block, New Delhi
Dated,11th October, 2019

To,

Principal Chief Commissioners/ Principal Directors General,
Chief Commissioners/ Directors General
Principal Commissioners/ Commissioners
of Central Tax and Customs

Madam/ Sir,

Subject: Clarification regarding GST rates & classification (goods)–reg.

Representations have been received seeking clarification in respect of applicable GST rates on the following items:

(i) Classification of leguminous vegetables such as grams when subjected to mild heat treatment
(ii) Almond Milk
(iii) Applicable GST rate on Mechanical Sprayer
(iv) Taxability of imported stores by the Indian Navy
(v) Taxability of goods imported under lease.
(vi) Applicable GST rate on parts for the manufacture solar water heater and system
(vii) Applicable GST on parts and accessories suitable for use solely or principally with a medical device

2. The issue wise clarifications are discussed below:

3. Classification of leguminous vegetables when subject to mild heat treatment (parching):

3.1. Doubts have been raised whether mild heat treatment of leguminous vegetables (such as gram) would lead to change in classification.

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3.2. Dried leguminous vegetables are classified under HS code 0713. As per the explanatory memorandum to the HS 2017, the heading 0713 covers leguminous vegetables of heading 0708 which have been dried, and shelled, of a kind used for human or animal consumption (e.g., peas, chickpeas etc.). They may have undergone moderate heat treatment designed mainly to ensure better preservation by inactivating the enzymes (the peroxidases in particular) and eliminating part of the moisture.

3.3. Thus, it is clarified that such leguminous vegetables which are subjected to mere heat treatment for removing moisture, or for softening and puffing or removing the skin, and not subjecting to any other processing or addition of any other ingredients such as salt and oil, would be classified under HS code 0713. Such goods if branded and packed in a unit container would attract GST at the rate of 5% [S. No. 25 of notification No. 1/2017- Central Tax (Rate) dated 28.06.2017]. In all other cases such goods would be exempted from GST [S. No. 45 of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017].

3.4. However, if the above dried leguminous vegetable is mixed with other ingredients (such as oil, salt etc) or sold as namkeens then the same would be classified under Sub heading 2106 90 as namkeens, bhujia, chabena and similar edible preparations and attract applicable GST rate.

4. Classification and applicable GST rate on Almond Milk:

4.1. References have been received as to whether "almond milk" would be classified as "Fruit Pulp or fruit juice-based drinks" and attract 12% GST under tariff item 2202 99 20.

4.2. Almond Milk is made by pulverizing almonds in a blender with water and is then strained. As such almond milk neither constitutes any fruit pulp or fruit juice. Therefore, it is not classifiable under tariff item 2202 99 20.

4.3. Almond milk is classified under the residual entry in the tariff item 2202 99 90 and attract GST rate of 18%.

5. Applicable GST rate on Mechanical Sprayer:

5.1 Representations have been received seeking clarification on the scope and applicable GST rate on "mechanical sprayers" of entry No. 195B of the Schedule II to notification No.

1/2017- Central Tax (Rate), dated 28.06.2017. The entry No. 195B was inserted *vide* notification No. 6/2018- Central Tax (Rate), dated 25th January, 2018.

5.2 All goods of heading 8424 i.e. [Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines (other than fire extinguishers, whether or not charged)] attracted GST @18% [S.No.325 of Schedule III] till 25th January, 2018. Subsequently, keeping in view various requests/ representations, the GST Council in its 25th meeting recommended 12% GST on mechanical sprayers. Accordingly, *vide* amending notification No. 6/2018- Central Tax (Rate), dated 25th January, 2018, GST at the rate of 12% was prescribed (entry No. 195B I Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017) Simultaneously, mechanical sprayers were excluded from the ambit of the said S. No. 325 of Schedule III.

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5.3 Accordingly, it is clarified that the S. No. 195B of the Schedule II to notification No. 1/2017- Central Tax (Rate), dated 28.06.2017 covers "mechanical sprayers" of all types whether or not hand operated (like hand operated sprayer, power operated sprayers, battery operated sprayers, foot sprayer, rocker etc.).

6. Clarification regarding taxability of imported stores by the Indian Navy:

6.1 Representation has been received from the Indian Navy seeking clarification on the taxability of imported stores for use of a ship of Indian Navy.

6.2 Briefly stated, in accordance with letter No. 21/31/63-Cus-IV dated 17 Aug 1966 of the then Department of Revenue and Insurance, the Indian Naval ships were treated as "foreign going vessels" for the purposes of Customs Act, 1962, and the naval personnel serving on board these naval ships were entitled to duty-free supplies of imported stores even when the ships were in Indian harbour. However, in the GST era, no such circular has been issued regarding exemption from IGST on purchase of imported stores by Indian Naval ships. The doubt has arisen as there is a no specific exemption, while there is a specific exemption for the Coast Guard (*vide* S. No. 4 of notification No. 37/2017-Customs dated 30.6.2017). Similar exemption has not been specifically provided for Navy.

6.3 Indian Naval ship stores are exempted from import duty in terms of section 90(1) of the Customs Act, 1962. Further, as per section 90(2), goods "taken on board a ship of the Indian Navy" shall be construed as exported to any place outside India. Also, section 90(1) and 90(3) of the Customs Act, 1962 provides that imported stores for the use of a ship of the Indian Navy and stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service will be exempted from duty.

6.4 Accordingly, it is clarified that imported stores for use in navy ships are entitled to exemption from GST.

7. Clarification regarding taxability of goods imported under lease:

7.1 Representations have been received seeking clarification on the taxability of goods imported under lease.

7.2 In respect of goods imported on temporary basis, aircrafts, aircraft engines and other aircraft parts imported into India under a transaction covered by item 1(b) or 5(f) of Schedule II of the Central Goods and Service Tax Act, 2017 are exempted from IGST *vide* S. No. 547A of notification No. 50/2017-Customs dated 30.06.2017, subject to condition No. 102, which reads as under :-

The importer, by the execution of bond, in such form and for such sum as may be specified by the Commissioner of Customs, binds himself, -

(i) to pay integrated tax leviable under section 5(1) of the IGST Act, 2017 on supply of service covered by item 1(b) or 5 (f) of Schedule II of the Central Goods and Services Act, 2017;

(ii) not to sell or part with the goods, without the prior permission of the Commissioner of Customs of the port of importation;

(iii) to re-export the goods within three months of the expiry of the period for which they were supplied under a transaction covered by item 1(b) or 5 (f) of Schedule II of the Central Goods and Services Act, 2017;

(iv) to pay on demand an amount equal to the integrated tax payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions.

7.3 Similarly, rigs and ancillary items imported for oil or gas exploration and production taken on lease by the importer for use after import have also been exempted from IGST *vide* S. No. 557A of the said notification. Subsequently, all goods, vessels, ships (other than motor vehicles) imported under lease, by the importer for use after import, were also exempted from IGST *vide* S. No. 557B of the said notification. Both these entries are subject to the same condition No. 102 of the said notification.

7.4 The intention of S. No. 557 A and 557 B is to exempt from IGST the imports of goods under an arrangement of supply of service covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 so as to avoid double taxation.

7.5 Accordingly, it is hereby clarified that the expression "taken on lease/imported under lease" (in S. No. 557A and 557B respectively of notification No. 50/2017-Customs dated 30.06.2017) covers imports under an arrangement so as to supply services covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 to avoid double taxation. The above clarification holds for such transactions in the past.

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7.6 Further, wordings of S. No. 557A and 557B of notification No. 50/2017-Customs dated 30.6.2017, have been aligned with Condition No. 102 of the said notification [vide notification No. 34/2019-Customs dated 30.09.2019 w.e. f 01.10.2019] to address the concerns raised.

8. Applicability of GST rate on parts for the manufacture solar water heater and system:

8.1 Representations have been received seeking clarification on applicable GST rate on Solar Evacuated Tubes used in manufacture of solar water heater. While 5% GST rate applies to parts used in manufacture of Solar Power based devices (S.No. 234 of Notification No. 1/2017 -Central tax (Rate) dated 28.06.2017), doubts have been raised in respect of parts of Solar water heaters on the ground that Solar Based Devices are being considered only as devices which run on Solar Electricity.

8.2 As per entry No 232, solar water heater and system attracts 5% GST. Further, as per S. No. 234 of the notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, solar power-based devices and parts for their manufacture falling under chapter 84, 85 and 94 attract 5%

concessional GST. Solar Power based devices function on the energy derived from Sun (in form of electricity or heat). Thus, solar water heater and system would also be covered under S. No 234 as solar power device. Thus, Solar Evacuated Tubes which falls under Chapter 84 and other parts falling under chapter 84, 85 and 94, used in manufacture of solar water heater and system would be eligible for 5% GST under S. No. 234.

8.3 Accordingly, it is clarified that parts including Solar Evacuated Tube falling under chapter 84, 85 and 94 for the manufacture of solar water heater and system will attract 5% GST.

9. Applicability of GST on the parts and accessories suitable for use solely or principally with a medical device:

9.1 Representations have been received seeking clarification on applicability of GST on the parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment.

9.2 Briefly stated, medical equipment falling under HS 9018, 9019, 9021 and 9022 attract 12% GST. The imports of parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment, were being assessed at 12% GST by classifying it under heading 9018. However, objection has been raised by Comptroller and Auditor General of India (CAG) on the said practice, suggesting that since such goods were not specifically mentioned in the GST rate notification, they fall under tariff item 9033 00 00 [residual entry] and should be assessed at 18% IGST. In this background, representations have been received from trade and industry, seeking clarification in this matter

9.3 The matter has been examined. As per chapter note 2(b) of the Chapter 90, parts and accessories of the instruments used mainly and principally for the medical instrument of chapter 90 shall be classified with the machine only. Chapter note 2(b) (of Chapter 90) reads as below: -

"2 (b): other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instruments or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;"

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9.4 Thus, as per chapter note 2(b), parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment should be classified with the ophthalmic equipment only and shall attract 12%.

9.5 In view of the above, it is clarified that 12% IGST would be applicable on the parts and accessories suitable for use solely or principally with a medical device falling under heading 9018, 9019, 9021 or 9022 in terms of chapter note 2 (b).

10. Difficulty, if any, may be brought to the notice of the Board immediately. Hindi version shall follow.

Yours faithfully,

(Gunjan Kumar Verma)
Under Secretary to the Government of India

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