

## Economic Relief Measures

### **One year extension of PLI1 scheme for large scale electronic manufacturing**

**Press release dated June 28, 2021**

PLI Scheme for Large Scale Electronics Manufacturing<sup>2</sup> offers a production linked incentive of 3% to 5% to boost domestic manufacturing and attract large investments in mobile phone manufacturing and specified electronic components, including assembly, testing, marking and packaging units. The tenure of the scheme was 4 years from April 1, 2021.

However, as part of the Economic Relief Measures, the Government has extended the tenure of the PLI scheme launched by one more year i.e., till FY<sup>3</sup> 2025-26, on account of slow sales growth due to the pandemic.

## Notifications

### **Place of supply for MRO4 services to be the location of recipient**

**Notification No. 03/2021 – Integrated Tax dated June 2, 2021**

In line with the recommendation of the GST<sup>5</sup> Council in the 43<sup>rd</sup> meeting, the place of supply for MRO services in respect of ships and other vessels, their engines and other components or parts supplied to a person for use in the course or furtherance of business is notified to be the location of the recipient of service.

The change in place of supply has brought the Indian MRO industry at a level playing field with the global players. With this change in place of supply, the MRO industry will be able to categorise their supplies as export of services and be eligible to claim refund of ITC<sup>6</sup> on inputs/ input services used for providing such services.

Also, the rate of tax has been notified to be 5% for MRO services in respect of ships and other vessels, their engines and other components or parts prescribed vide **Notification No. 02/2021- Central Tax (Rate) dated June 2, 2021**.

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<sup>1</sup> Production Linked Incentive

<sup>2</sup> Notified vide Gazette Notification No.CG-DL-E-01042020-218990 dated April 01, 2020

<sup>3</sup> Financial Year

<sup>4</sup> Maintenance, repair and overhaul services

<sup>5</sup> Goods and Services Tax

<sup>6</sup> Input tax credit

## Availability of ITC for landowner-promoter

### Notification Nos. 2/2021 – Central Tax (Rate) dated June 2, 2021

In order to remove the ambiguity on availability of ITC of tax paid to the developer-promoter by the landowner-promoter, an explanation has been inserted in relation to availability of ITC on construction services, stating that the landowner-promoter is eligible to utilise the credit of tax charged to him by the developer-promoter for payment of tax on apartments sold by the landowner-promoter.

## Time limit for payment of tax by the developer-promoter

### Notification No. 03/2021 – Central Tax dated June 2, 2021

The time limit for payment of tax by the promoter (notified as the registered person<sup>7</sup>) on supply of construction services by him against consideration in the form of development rights or FSI<sup>8</sup> is amended to be the tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier.

## Reduction in rates of covid-19 essentials

### Notification Nos. 5/2021 – Central Tax (Rate) dated June 2, 2021

Rate of GST on covid-19 essentials reduced to 5%/ 0% till September 30, 2021, some of which are outlined below.

Particulars	Rate
Medical grade oxygen	5%
Covid-19 testing kits	5%
Hand Sanitizer	5%
Ventilators	5%
Tocilizumab, Amphotericin B	NIL
Remdesvir	5%
Ambulance	12%

<sup>7</sup> Notification no. 6/2019-Central Tax (Rate) dated March 29, 2019

<sup>8</sup> Floor space index

## Circulars/Instructions/Public Notices

### Annuity (deferred payments) paid for construction of roads taxable

#### Circular No. 150/06/2021-GST dated June 17, 2021

Giving effect to the recommendations made by the GST Council in its 43rd meeting, the CBIC has clarified that exemption is available for services of access to road or bridge, for which consideration is received in the form of toll or annuity. The circular further clarifies that exemption is not available for services of construction of roads (SAC<sup>9</sup> 9954), even if consideration is received in the form of annuity.

**JSA Comments:** The GST Council in its 22nd meeting had recommended granting exemption to annuity paid by NHAI (and State authorities or State-owned development corporations for construction of roads) to concessionaires for construction of public roads. However, instead of notifying the suggested exemption, CBIC has clarified that the exemption is available only for services of access to road or bridge (and not construction services), creating ambiguity.

### Clarifications in relation to QR10 code

#### Circular No. 156/12/2021-GST dated June 21, 2021

Circular is issued to bring clarity to several issues in relation to compliance of QR code, which is mandatory for B2C invoice issued by taxpayers having aggregate turnover more than INR 500 crore, effective December 1, 2020. The key clarifications are as under:

- Issuance of invoice to a person having a UIN<sup>11</sup> is to be considered as invoice issued for a B2C supply and therefore, will require QR Code.
- In case where invoices are issued to a person located outside India, for which place of supply is in India (not export of services) and the payment is received in foreign currency, QR code is not required.

## Recent Rulings by Courts and Authorities

### High Court Rulings

#### Challenging constitutional validity of place of supply of “intermediary services”

In the case of *Dharmendra M. Jani vs. Union of India & others, TS-272-HCBOM-2021-GST-Bom*, the Bombay High Court dealt with the constitutional validity of Section 13(8)(b) and Section 8(2) of IGST Act<sup>12</sup>. The matter was evaluated by a division bench of the Bombay High Court, wherein the two judges have expressed divergent views.

The key observations in favour of Section 13(8)(b) of IGST Act being unconstitutional and *ultra vires* the IGST Act are as below:

1. GST being a destination-based consumption tax, is chargeable from the recipient of service. It is not a charge on the business but on the consumer. Therefore, it is leviable only on the services provided within the country.

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<sup>9</sup> Service Accounting Code

<sup>10</sup> Quick Response code

<sup>11</sup> Unique identification number – a special class of GST registration for any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, consulate or embassy of foreign countries.

<sup>12</sup> Integrated Goods and Services Tax Act, 2017

2. The Constitution of India<sup>13</sup> permits the levy and collection of GST in the course of inter-state trade and commerce, which includes import of goods and services. However, the State is not empowered to levy and collect GST for transactions in the course of inter-state trade or commerce, it is only empowered to formulate principles to determine place of supply and when supply of goods or services or both takes place in the course of inter-state trade or commerce.
3. Section 9 of CGST Act<sup>14</sup> provides for levy and collection of GST on intra-state supplies. Therefore, Section 9 cannot be invoked to levy tax on cross-border transactions i.e., export of services which is an interstate supply.
4. While the supply of services in the present case was an export of services, it was only by way of a special treatment prescribed under Section 13(8)(b) of IGST Act that such export is being taxed under GST. Hence, this is an artificial device created to overcome a Constitutional embargo.

The contradictory view upholding the validity of Section 13(8)(b) and Section 8(2) of the IGST Act, was based on the following rationale:

1. Given that intermediary is a defined term, and a specific treatment has been accorded for determining its place of supply, the question of breach of Section 9 of CGST Act does not arise. Therefore, application of general provision governing export of services would not arise.
2. Section 13(8)(b) of IGST Act is well within the powers accorded by the Constitution of India to formulate principles determining the place of supply.
3. Principles laid down by the Gujarat High Court in the case of Material Recycling Association of India<sup>15</sup> were referred to, wherein it was held that an intermediary cannot be considered as an exporter as, it is only a broker/ agent, facilitating the supply of goods/ services. Further, intermediary services would not qualify as export of services, merely on account of invoices being raised on a recipient located outside of India, or receipt of foreign exchange.

Given the dissenting opinions of the Bench, the matter has been placed before the Hon'ble Chief Justice for his views.

**JSA Comment:** Intermediary services qualifying as taxable services and not fulfilling the conditions of export of services have been a challenge for many Indian subsidiaries of global companies. The favourable view expressed in the ruling is an interesting take on the validity of the provisions governing intermediary services. It will be important to track the progress of this controversy as, a favourable outcome will make India an attractive jurisdiction for setting up marketing entities.

Reliance on tax treatment of such services globally may play an important role in determining the validity of this provision.

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<sup>13</sup> Article 286 (Restrictions on imposition of tax on the sale or purchase of goods) and Article 269A (Levy and collection of goods and services tax in course of inter-State trade or commerce)

<sup>14</sup> Central Goods and Services Tax Act, 2017

<sup>15</sup> Material Recycling Association of India vs. Union of India, TS-586-HC-2020(GUJ)-NT

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