



ADVANCE RULINGS

Presented By

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No GST exemption on goods and service supply to Duty Free Shops (DFSs) at international Airports in India

FACTS

- The petitioner is a manufacturer and exporter of garments in India and specializes in manufacturing of high quality products for children with customer base in Middle East, South Africa and USA. He intends to supply goods to Duty Free Shops (DFSs) situated in the duty free area at international airports. The petitioner is aggrieved by the fact that the benefit available to him under the erstwhile central excise regime of removing goods from his factory to DFS located in the international airports without payment of duty is not available to him under the GST regime.

HELD

- Undisputedly, in light of the definition as contained under the IGST Act, 2017 a Duty Free Shop situated at the airport cannot be treated as territory out of India. The petitioner is not exporting the goods out of India. He is selling to a supplier, who is within India and the point of sale is also at Indore as the petitioner is receiving price of goods at Indore.
- The petitioner cannot escape the liability to pay GST. It is true that our taxes cannot be exported but the facts remains that it is not the petitioner, who is exporting the goods or taking goods out of India. He is selling to a person, who is having Duty Free Shop (to a Duty Free Operator), which is located in India as per the definition clause as contained under the GST Act. In light of the aforesaid, there is no reason to issue writ of mandamus directing the respondents not to charge GST on the petitioner or to legislate on the subject granting exemptions as prayed by the petitioner.

Supply of goods on a 'Bill to Ship to' mode is permissible under IGST Act: AAR

- **CGST** : Where applicant engaged in manufacturing of TMT Steel Bars is supplying goods directly to customers which are registered, it is held that supply on a 'Bill to Ship to' mode as per provisions of section 10(1)(b) of IGST Act, 2017 is permissible. In sale of manufactured goods by applicant to RSE which sells same to Goyal which in turn will be selling said products to various customers, applicant can issue an e-way bill in which the 'bill to' will be mentioned in name of RSE whereas 'ship to' would be in name of final customer. Provisions of section 15 of the CGST Act, 2017 read with Rule 28 of CGST Rules, 2017 and in particular second proviso to Rule 28 would apply for value of supply for transactions between applicant and RSE with availability of full Input Tax Credit. Transactions between Goyal and ultimate customer would be covered under provisions of section 15 as both are unrelated persons

Classification of services - Collection of membership fees for corpus fund

The activities carried out by applicant were to plan, evolve, prepare, develop, promote and publish voluntary comprehensive codes and standards for Banks, for providing for fair treatment to their customers; to function as an independent and autonomous watchdog to monitor and to ensure that the banking codes and standards voluntarily adopted by banks were adhered to in true spirit by banks in delivering the services, as promised, to their customers; to conduct and undertake research of the codes and standards currently in vogue in and outside India; to enter into covenants with banks on observance of the codes and standards and for that purpose to train employees of such banks about the banking codes; to advertise and publish promotional literature in newspapers and otherwise about the codes and standards for the guidance and knowledge of the public through Web site, advertisements in the newspapers, magazines, journals, TV/Radio, hoardings or any other mode which the society deems fit; to take up specific assignments, if any, in the areas coming under the society's objects as projects, turnkey solutions or on any other terms of contracts with in-house resources or with the participation of outside agencies in order to fully implement the code; to organize teaching and training courses, conferences, seminars, lectures and similar other activities relating to the codes and standards or implementation of the said codes and standards.

- In view of the foregoing we find that the applicant is supplying services to their Member Banks, against a consideration received from them in the form of annual Membership fees and Registration fees and their supply is in furtherance of Business as defined under section 2(17) (e) of the Act. (*“provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its member”*).

Procedure to raise invoice from Mumbai Head Office for imports received at Haldia Port, Kolkata where applicant-importers do not have any separate GST Registration in State of West Bengal and Charge IGST from Mumbai to their Customers, is correct.

- Procedure to raise invoice from Mumbai Head Office for imports received at Haldia Port, Kolkata where applicant-importers do not have any separate GST Registration in State of West Bengal and Charge IGST from Mumbai to their Customers, is correct. For this transaction, no separate registration in State of West Bengal is required. Since as an importer place of supply for applicant will be Mumbai, and goods also will be cleared on name of Mumbai registered address while paying IGST at time of Customs Clearance, it would follow that they can do further transaction mentioning GSTIN of their Mumbai office. Hence, they can do transaction on Mumbai Head Office GSTIN and can mention GSTIN of Mumbai Head Office in E-way Bill and dispatch place as Customs Warehouse, Kolkata

Applicant's direction to seller for slump sale of business as going concern to related party qualifies as supply

- **CGST** : Where applicant has entered into a Business Transfer Agreement with seller wherein seller has agreed to sell, transfer, convey, assign and delivery to affiliates as directed by applicant BP business and PM business which would be transferred as a slump sale on a going concern basis, role of applicant is clearly a service covered in para 5(e) of Schedule-II of section 7 of CGST Act, wherein applicant is doing act of giving direction to seller for transfer of BP and PM businesses to its affiliates respectively as per his directions and terms and conditions agreeable to him due to special authority vested in him through agreement between him and seller; even in absence of actual consideration, applicant have to attribute a notional consideration and value is to be determined in terms of rule 28 of CGST Rules, 2017

Person who maintained website was liable to GST on commission from website users or Pundits: AAR

- CGST : As per section 15 (1) the value of supply of services shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. Applicant is engaged into the business of assisting believers, followers and devotees to book pundits/Brahmins online for their religious ceremonies like pujas, abhisheks etc. The said service is being provided through applicant's own website. Applicant and recipient are not related persons and price received is sole consideration. These services are given by the applicant in his business models to choose the type of model. In all the three business models consideration is first received by him on online as a whole and thereafter major part of it, is given to Pundits who are having an agreement with the applicant to provide their services as and when it is requisitioned but they are not the applicant's employees but are providing their services independently. The actual basic services like puja, abhishek etc. are performed by the pundits or Brahmins which are exempted by nature of notification issued under GST ACT. The commission portion is received by the applicant out of total consideration received online from the service recipient. As per the provisions of law, the commission is the supply of service and it would be the value on which he would be liable for GST and, thus, the Applicant would be liable to pay GST on the value of commission received from website users not for on total amount received

Membership fee for convenience of club members is not for furtherance of business: AAR

- **CGST** : Applicant (Lions Club) a non profit organisation, pursues its charitable objective in multifarious ways by building/running hospitals, clinics, schools, playgrounds, etc., other health care, charitable activities. The AAR noted that the amount collected by Lions clubs is for convenience of Lion members and pooled together only for paying Meeting expenses & communication expenses and the same is deposited in single Bank account and the club is not formed to provide any supply of goods or services to its members qua the fees received from them. The AAR held that as there is no furtherance of business in this activity and neither any services are rendered nor any goods are being traded, there being no supply qua the fees received, the applicant club does not render any 'Supply' for the purposes of the GST Act

No GST on supply of goods by dealer through its UK based principal directly to vessel at Singapore: AAR

- **GST : Applicant engaged in the business of the trading in marine fuel additives is an authorized dealer of UK company Innospec selling the marine fuel additive chemicals of Innospec to shipping lines in and outside India. An Indian Shipping Company 'AZA Shipping', placed a purchase order on the applicant for fuel additive for vessel M T CHAFA and was to be delivered at Singapore Port. The applicant placed purchase order on the Innospec UK which delivered the goods through its Singapore Logistics Partner to the vessel MT Chafa at Singapore Port.**
- • *Held that*, the applicant would not be liable to pay GST on supply of goods located outside India to customers within India without physically bringing goods to India. Further, the 'out & out' supplies would be "non-taxable supply" as per Section 2(78) of the CGST Act, 2017 which means a supply of goods or services or both which is not leviable to tax under CGST or IGST Act.

Supply of pure food items from sweetshop-cum-restaurant treated as supply of service: AAR

- GST : In case of sweet shop cum restaurant, services from restaurant is a principal supply which provides a bundled supply of preparation and sale of food and serving same and, therefore, it constitutes a composite supply**

FACTS

- The applicant is primarily engaged in the business of supplying goods and services both and seeks an advance ruling on the question, as to whether supply of pure food items such as sweets, namkeens, cold drink and other edible items from a sweet shop which also runs a restaurant is a transaction of supply of goods or a supply of service.
- It also sought advance ruling about the nature and rate of tax applicable to the items supplied from ground floor of a sweet shop in which restaurant is also located on the first floor and whether the applicant is entitled to claim benefit of input tax credit with respect to the same.

HELD

- The applicant has a sweet shop in the ground floor and a restaurant in the first floor of the same building. It is observed that if one looks at the market strategy, it will be noticed very often, two or more goods, or a combination of goods and services, are supplied together. This could be due to either of the following reasons : (i) A sales-strategy - to attract more customers, (ii) The nature or type of goods or services, which requires them to be bundled or supplied together.

- Under Service Tax, this mechanism is called Bundled Service - which is the rendering of a service or services with another element of service of services. The service tax law was dealing with pure services and not with goods *per se*. Now the concept introduced is for goods also and is linked with the concept of Principal Supply. Under GST law, supplies which are bundled with two or more supplies of goods or services or combination of goods and services are classified, with distinct characteristics, as : (i) Composite supply, (ii) Mixed Supply. Composite supply is one where two or more goods or services or both are supplied together, in a natural bundle and in a normal course of business, provided one of which is a principal supply. However, principal supply will be that supply which is predominant over other supplies. This means that the goods and services are bundled owing to natural necessities. The composite supply is taxed at the rate applicable to the principal supply whereas a Mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. It means each of these items can be supplied separately and is not dependent on any other. In Mixed supply, the combination of goods and/or services is not bundled due to natural necessities, and they can be supplied individually in the ordinary course of business.

- In the instant case the nature of restaurant services is such that it may be treated as the main supply and the other supplies combined with such main supply are in the nature of incidental or ancillary services. Thus, restaurant services get the character of predominant supply over other supplies. Therefore in the instant case the supply shall be treated as supply of service and the sweet shop shall be treated as extension of the restaurant in as much as the said activity covered under Schedule II of the Act. [Para 5.1]
- Since the activity of the applicant come under the purview of 'restaurant services', the same falls under Heading 9963 of GST rates on services under Notification No. 11/2017 - Central Rate (Tax) dated 28-6-2017 (as amended time to time). The rate of GST on aforesaid activity shall be 5 per cent as on date. As regard to the issue of admissibility of ITC credit, it is found that the applicant cannot avail credit on the GST paid on the goods and services used in their said activity in term of aforesaid notification. [Para 5.2]



HIGH COURT
KERALA

Kun Motor Co. (P.) Ltd.
v.
Assistant State Tax Officer

6th DECEMBER - 2018

FACTS

- In instant case e-way bill was not uploaded in respect of motor vehicle purchased by a resident of Thiruvananthapuram and transported by dealer located in Puthuchery on behalf of buyer .

HELD

- Supply of new vehicle by its authorised dealer terminated on being purchased by buyer in Puthuchery and subsequent movement of goods to Thiruvananthapuram was not occasioned by reason of transaction of supply. Goods having come into possession of purchaser, and vehicle having been used, however negligible distance run, it is his 'used personal effect', hence there was no taxable transaction in so far as movement of goods from Puthuchery to Thiruvananthapuram, especially since car had been registered in name of purchaser
- Temporary registration was obtained at Puthuchery, and insurance cover taken in registered owner's name establishes that sale was completed at Puthuchery itself. An intra-State sale cannot be converted to an inter-State sale merely for reason of it being transported in a carriage . Incidence of tax is on supply and not on nature of transport.



AAAR
MAHARASHTRA

Nutan Warehousing Company Pvt. Ltd

10th DECEMBER - 2018

FACTS

- Tea procured by applicant from public tea auctions or manufacturers of tea in 50 kg bags, after undergoing various stages of processing, for storage in warehouse

HELD

- Tea procured by applicant from public tea auctions or manufacturers of tea in 50 kg bags, after undergoing various stages of processing, for storage in warehouse, is not 'agricultural produce', hence services of warehousing, loading, unloading, packing and storage in relation thereto is not exempt



AAR
KARNATAKA

Columbia Asia Hospitals (P.) Ltd

13th NOVEMBER - 2018

FACTS

- The applicant company is engaged in providing health care services categorizing them as In-patient (IP) and Out-patient (OP) services. The company is also engaged in supply of medicines (pharmacy) to in-patients and out-patients. It also operates restaurant/canteen services in its premises which is used for supplying food and other eatable items to its patients and their attendants.

HELD

- It is clear that the two or more supplies of goods or services or both which are naturally bundled in which the principal supply is exempt and others are taxable can be treated as a composite supply of the principal supply if such principal supply is not a non-taxable supply as per sub-section (78) of section 2 and such composite supply with the principal supply being exempt supply would be treated as an exempt composite supply
- The applicant is eligible to claim credit of input tax credit only on for such taxes paid on the inputs, input services and capital goods which Are attributable to the supplies of goods or services which are taxable and not attributable to exempt supplies of goods or services.

GST: Applicability of GST on separate contracts for supply of goods and services in case of Solar Plant.

Applicant sought for advance ruling on whether in case of separate contracts for supply of goods and services for a solar power plant, there would be separate taxability of goods as solar power generating system at 5 per cent and services at 18 per cent. However impugned agreement contended to be for supply of goods was actually a works contract involving engineering, design, procurement and commissioning of solar power plant. Further, contract contended to be for supply of services was also one for executing a works contract involving a provision of goods as well as services. Thus, depending upon nature of supply, intra state or inter-state, rate of tax would be governed by entry no. 3(ii) of the Notification No. 8/2017 - Integrated Tax(Rate under the Intergrated Goods and Services Tax Act, 2017(IGST Act) or the Notification No. 11/2017 - Central Tax/State Tax (Rate) under the CGST Act and MGST Acts. The rate of tax would be 18 per cent under the IGST Act and 9 per cent each under the CGST Act and the MGST Act.

Interest charged by Del Credere agent on short term loan exempt from GST

- Service provided by applicant, Del Credere Agent by way of extending short term loans insofar as consideration is represented by way of interest, is covered under Sl. No. 27 of Notification 12/2017-CT(R) dated 28-6-2017 and Notification No. 12/2017 – ST(R) dated 30-6-2017 and hence exempted from payment of GST.
- The applicant reiterated that the role of the DCA is limited to order booking and guaranteeing payment. Supply of material is directly by the principal to the customer. Any delay in supply or any quality issue, it is principal who directly compensates the customer. DCA does not buy, store or sale any material of principal to any customer and therefore there is no transaction of any purchase or sale of goods in his books.
- when the buyer is not in a position to pay to principal on the due date, he approaches DCA to extend short term loan and the loan is extended by the DCA by making payment to the principal on behalf of the customer.

- Section 15(2)(d) of the CGST Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 provides as follows:-
- *(d) interest or late fee or penalty for delayed payment of any consideration for any supply.*

It was observed that the interest received by the applicant is consideration towards loan extended to the customers and such interest is not towards the payment of consideration for supply of goods by the principal to the customers.

GST : Receipt of penal charges by finance companies on delayed payment of EMIs would be receipt of amounts for tolerating act of their customers for having delayed/defaulted on their EMI payments within due dates and, same would be taxable as supply as per Sr. No. 5(e) of Schedule II of CGST Act

- Classification of services - Penal interest - Section 7, read with Schedule II of the Central Goods And Services Tax Act, 2017/Section 7, read with Schedule II of the Maharashtra Goods and Services Tax Act, 2017 - Supply - Scope of - Applicant-BajajFinance a non-banking financial company is providing various types of loan such as auto loans/loan against property, personal loans, consumer durable goods loans, etc. to its customers and charges interest on such loans disbursed, for which it enters into agreements with borrower/customers - Agreements provide for repayment of loan in form of Equated Monthly Instalments (EMI) vide cheque/Electronic Clearing System (ECS), etc. - EMI paid by customers is a fixed amount payable at a specified date, which includes both interest and principal amount - In cases of delay in repayment of such EMI by customers, applicant collects penal/default interest ('penal interest'), in terms of agreements executed by customers - Whether receipt of penal charges on delayed payment of EMIs by applicant would be receipt of amounts for tolerating act of their customers for having delayed/defaulted on their EMI payments within due dates and, therefore, same would be taxable as supply of services as per Sr. No. 5(e) of Schedule II of CGST Act - Held, yes - Whether thus, penal interest is not to be treated as interest for purpose of exemption under Sr. No. 27 of Notification No. 12/2017 Central Tax (Rate), dated 28-6-2017/Sr. No. 27 of Maharashtra State Notification No. 12/2017 - Maharashtra State Tax (Rate), dated 29-6-2017, and Sr. No. 28 of Notification No. 9/2017 Integrated Tax (Rate), dated 28-6-2017 - Held, yes [Paras 5 and 6]



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