Chamber of Tax Consultants
Study Circle Meeting on

IMPORTANT ADVANCE RULINGS AND HIGH COURT JUDGMENTS IN GST

Presentation By - Adv. Vinay Jain
15th Jan 2019

CMS INFO SYSTEMS LIMITED [2018-TIOL-21-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

- **FACTS OF THE CASE**

  The assessee is in the business of cash management services and for the transportation of cash, gold, and bullion, it purchases raw motor vehicles with requisite fabrications which it converts to cash carry vans. The assessee discharges Goods and Service Tax (GST) liability under the Central Goods and Service Tax Act, 2017 (CGST Act) on the purchase of the vehicles and on the fabrications. When the same vans cannot be used further, they are sold as scrap.

- **QUESTION BY ASSESSEE**

  Q1. Whether the supply of motor vehicles as scrap after usage can be treated as 'supply' in the course or furtherance of business and thereby attract GST and at what rate?

  Q2. If the transaction attracts GST, whether the assessee is liable to claim Input tac Credit (ITC)?

- **ARGUMENT OF ASSESSEE**

  With respect to Q1., the assessee contented that the activity of selling cash carry vans as scrap is not a 'supply' under the CGST Act since-

  - ✓ The selling of vehicles for scrap cannot be a supply as it is not the business of the assessee.
  - ✓ Stray transactions not covered.
  - ✓ Relied on press noted dated 13.7.2017 –sale of the gold by individual.
  - ✓ Schedule –I entry –I permanent disposal of the business assets where ITC not taken- No ITC taken.

CMS INFO SYSTEMS LIMITED [2018-TIOL-21-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

ARGUMENT OF ASSESSEE

With respect to Q2, the assessee contented that they were eligible to claim ITC if the transaction attracts GST:-

- ✓ Sec. 16, CGST Act and interpretation of Sec. 17(5)(a)(ii), CGST Act- ITC for transportation of goods allowed.
- ✓ Sec. 2, CGST Act *"In this Act, unless context otherwise requires"* Definition of 'goods' U/s 2(52) and 'money' U/s Sec. 2(75) –used as a consideration to settle obligation.
- ✓ Rule 138(14) of the CGST Rules- E-Way Bill not required for transportation of 'currency'. If currency is not goods such stipulation not required.
- ✓ Motor Vehicles Act, 1988- Cash Carry vans classified as 'goods carriage'
- ✓ Ground of Equity- ITC is available on hire of cash carry vans.
- ✓ The vans also carry gold, silver, ingots, coins, etc., which are goods.
- ✓ Notification 2/2017 dated 28.6.2017 Sr no. 117 exempt Rupee note when sold to RBI.

CMS INFO SYSTEMS LIMITED [2018-TIOL-21-AAR-GST]

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CONTENTION BY DEPARTMENT

The department literally interpreted the relevant provisions of the CGST Act to argue that the supply of vehicles as scrap was a 'supply' that would attract GST without the benefit of claiming ITC as on the strict interpretation goods will not include currency.

DECISION OF THE AAR

For Q1, the transaction was a supply in the course and furtherance of business since-

- ✓ Sec. 7 (1) r/w Sec. 2(17)(b) incidental /ancillary. Hence GST will be applicable.

For Q2, the matter was referred to the AAAR since the opinions of the members of the AAR differed. Member (State) –Contextual interpretation. Member (Central)- General understanding money is goods but in GST specifically excluded. Construction business- Car used for deposit of money.

CMS INFO SYSTEMS LIMITED [2018-TIOL-08-AAAR-GST]

Lakshmi Kumaran & Sridharan attorneys

DECISION OF AAAR

The assesse was not eligible to claim ITC for the transaction of selling cash carry vans as scraps since 'money' is not goods due to-

- ✓ Money excluded from the definition of the goods.
- ✓ Press Note dated 21st July 2018 on the 28th meeting of the GST Council.
- ✓ Provisions of the MV Act and the CGST act are different.
- ✓ Act will prevail and not E-way bill entries.
- ✓ Rupee note not converted in to currency and hence goods.
- ✓ General understating will not prevail.

Comments

- ✓ Capital Goods S. 2(19)-No finding.
- ✓ Ex majori Cautela– Beliefs and assumption of the makers of law does not make the law.

COLUMBIA ASIA HOSPITALS PVT. LTD. 2018-TIOL-31-AAAR-GST

Lakshmi Kumaran & Sridharan attorneys

- **FACTS OF THE CASE**

  Assessee in the business of providing health care services with 11 hospitals registered in 6 different states and the corporate, Indian Management Office (IMO) registered at Bangalore, Karnataka. IMO employees discharge functions that are common across all units. Also, the IMO receives certain services the cost of which are allocated to other units in proportion to the turnover of each unit and discharges IGST on the same.

- **QUESTION BY THE ASSESSEE**

  Whether the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act or it shall not be treated as supply of services as per Entry 1 of Schedule III of the CGST Act?

- The Karnataka AAR held that the transaction between the IMO and other units was a 'supply' under Entry 2 of Schedule I. The assessee went on an appeal to the AAAR.

COLUMBIA ASIA HOSPITALS PVT. LTD. 2018-TIOL-31-AAAR-GST

Lakshmi Kumaran & Sridharan attorneys

CONTENTIONS OF THE ASSESSEE

- ✓ Employer-employee relationship between IMO and other units-Entry 1, Schedule III.
- ✓ Employment agreement as a whole and not qua any particular unit.
- ✓ Entry-II of Sch-2 is to be read with Entry-I of Sch-3.
- ✓ Separate Registration only procedural , existence of the company goes beyond the confine of GST law.
- ✓ While registration, details of key managerial persons for all registration to be given.
- ✓ Relied on the Decision of the CESTAT in the case of Franco India and Milind Kulkarni as prevalent in Service Tax regime.
- ✓ Mere allocation of expenses is not a supply of service.

DECISION OF AAAR

The transaction envisaged was covered under Entry 2 Sch-1 .

- ✓ S 25(4) Two units+same entity+different GST registration = distinct entity
- ✓ No employer-employee relationship.
- ✓ In terms of Rule 28 or 30 of the CGST Rules employee costs have to be to be taken in to account.

COLUMBIA ASIA HOSPITALS PVT. LTD. 2018-TIOL-31-AAAR-GST

Lakshmi Kumaran & Sridharan attorneys

- **DECISION OF AAAR**
  - ✓ Expenses to be allocated on cross charge basis and not on the ISD Route.
  - ✓ Decisions rendered in the ST law not applicable as the law is vastly different.
- **Comments**
  - ✓ Employees who travels frequently?
  - ✓ ST decisions discarded without analysis.

BAJAJ FINANCE LIMITED [2018-TIOL-264-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

FACTS OF THE CASE

The assessee is a NBFC that provides various types of loans to customers. In delay in payment of EMI, the bank charges a 'penal interest' for the number of days of delay and is calculated at a fixed percentage at the rate of 2-4% per month, depending on the type of loan.

QUESTION BY ASSESSEE

Whether the Penal Interest is to be treated as interest for the purpose of exemption under Sr. No. 27 of Notification No. 12/2017 Central Tax (Rate) dt. 28.06.2017?

CONTENTION BY ASSESSEE

- ✓ Additional interest on overdue loan instalment- part of interest
- ✓ Any amount paid over and above principal is interest only.
- ✓ It is in nature of liquidated damages. Internationally, damages of breach of contract not taxed.
- ✓ It is in nature of penalty.
- ✓ Sec. 15 (2)(d) Treatment given to main supply is to be accorded. Main supply is exempt from GST.
- ✓ Not a deemed service Sch. II Entry 5 Cl. (e), CGST Act. Non performance of the contract is not an activity.

BAJAJ FINANCE LIMITED [2018-TIOL-264-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

- **CONTENTION BY DEPARTMENT**
  - ✓ Bounce charges on non-performance of contract- supply of service.
  - ✓ Consideration in the form of charges received.

- **HOLDING OF AAR**
  - ✓ Applicant themselves defines penal charges as overdue charges.
  - ✓ Interest generally fixed-Penal interest is not fixed and hence not an additional interest.
  - ✓ Assessee agreed to do an Act- Sch. II Cl. 5(e) applicable- received consideration in form of penal interest.

  Thus, GST chargeable.

BAJAJ FINANCE LIMITED [2018-TIOL-264-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

- MAHARASHTRA STATE POWER GENERATION COMPNAY LIMITED [2018-TIOL-14-AAAR-GST
  - In the aforesaid case also liquidated damages paid for delay in completion of the work in time are held to leviable to GST.

- **COMMENTS**
  - Damages should not be a consideration for the supply.
  - Sch. II Cl. 5(e) presuppose an positive activity.

BEHR HELLA THERMOCONTROL INDIA PVT. LTD. [2018-TIOL-265-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

- **FACTS OF THE CASE**

  The applicant enter into service agreement with overseas group entities to provide testing services. The prototypes are sent from overseas to the applicant for testing and are not usually sent back. A report of the test is sent to the entities through email. Consideration is received in convertible foreign exchange.

- **QUESTION BY ASSESSEE**

  Whether the applicant is liable to pay IGST on the testing services provided to its overseas group entities?

- **CONTENTION BY ASSESSEE**

  - ✓ Sec. 2(14), IGST Act- Recipient of service outside India
  - ✓ Service complete when test reports delivered- actual consumption of service outside India- Sec. 13(2), IGST Act applicable.
  - ✓ No compulsion of the applicant to return the prototypes.
  - ✓ Second proviso to Sec.13(3)(a)-temporary repair also substantiate the Contention.
  - ✓ Relied on the decision of the BOM-HC in the case of SGS India and also Mumbai CESTAT decision in the case of Sai life Sciences .

BEHR HELLA THERMOCONTROL INDIA PVT. LTD. [2018-TIOL-265-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

- **CONTENTION BY DEPARTMENT**
  - ✓ Consumption of services outside India- Sec. 13(3), IGST Act not applicable.
  - ✓ Sec. 2(6), IGST Act- 'export of services' provision satisfied.

  Thus, IGST not applicable
- **HOLDING BY AAR**
  - ✓ Service of testing of prototypes conducted in India- IGST applicable.
  - ✓ Subsequent use of reports not relevant to decide the place of provision of testing services .
  - ✓ Facts of SGS different – Goods supplied by the customers customer in India. Thus, IGST applicable.
- **COMMENTS**
  - ✓ "In respect of goods" ignored.
  - ✓ SGS incorrectly distinguished- Goods can be sent by the recipient or any other personon his behalf.

JOTUN INDIA PVT. LTD. [2018-TIOL-271-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

FACTS OF THE CASE

The applicant is a leading supplier of paints and powder coating mainly for ships. In view of the global group policy, the supply will be made from the country wherever the ship is located irrespective of the location of the customer. A customer in India places order on the applicant for the ship located in Norway. The actual supply will be made by the Jotun group company located in the Norway. Jotun Norway will raise invoice to the applicant and applicant in turn will raise invoice to the customers in India.

QUESTION BY ASSESSEE

1. Whether the supply of goods which are moved from a place located outside taxable territory and are delivered at a place outside taxable territory would be liable to tax in India u/s 7(5)(a) of the IGST Act?
2. If the answer to above question is in positive whether the customer in India will be eligible to avail the Input Tax Credit?

JOTUN INDIA PVT. LTD. [2018-TIOL-271-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

CONTENTION BY ASSESSEE

- ✓ Levy of IGST in this case is beyond the territorial Jurisdiction (Sec. 1(2) of IGST Act)
- ✓ Constitution permits levy of tax only on interstate trade or commerce –A. 269A-Two states not involved.
- ✓ Cross border supply included in the inter state supply only to exclude the same from the purview of the state legislature.
- ✓ Zero rated supply should be interpreted in a liberal manner. Sec. 16 of the IGST Act.
- ✓ Circular issued for High sea sale will be applicable in the present case as well.
- ✓ No state code mentioned in the GST return.
- ✓ No indirect tax was levied in the impugned transaction in the previous regime.
- ✓ UK also kept outside Tax net.
- ✓ If the transaction is held to be taxable then credit to be given to the customer in India.

JOTUN INDIA PVT. LTD. [2018-TIOL-271-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

CONTENTION BY DEPARTMENT

- ✓ Sec. 7(5)-Inter state supply as supplier located in India and place of supply is outside India.
- ✓ Merely because there is no provision in the return does not mean that the statutory provision will be inapplicable.
- ✓ Credit will be available to the recipient in India.

HOLDING BY AAR

- ✓ We are not competent to deal with the argument of the applicant that levy is ultra virus or beyond territorial Jurisdiction.
- ✓ Sec. 7(2) of the IGST Act -Supply of Goods imported in to India till they cross the customs frontier of India will be in the interstate trade and commerce.
- ✓ Proviso to Sec. 5 of the IGST Act –GST on Goods imported in India will be levied and collected in terms of provisions of Sec 3 of the CTA, 1975 on the same value as determined under said act at the point when duties of the customs are levied u/s 12 of the Customs Act, 1962.
- ✓ No such event will arise in the present case.
- ✓ Hence the supply will be non taxable supply – Sec. 2(78).
- ✓ Also relied on Circular No. 3/1/2018 IGST dated 25.5.2018.

CALTECH POLYMERS PVT LTD [2018-TIOL-20-AAAR-GST]

Lakshmi Kumaran & Sridharan attorneys

- **FACTS OF THE CASE**

  The assessee provide canteen services exclusively to their employees, not as a business activity, without any profit margins in adherence with the requirements under the Factories Act, 1948. The employees were charged for the food.

- **QUESTION OF THE ASSESSEE**

  Whether recovery of food expenses from employees for the canteen service comes under the definition of outward supplies and are taxable under Goods& Service Tax Act?

- The AAR held that the transaction was an outward supply of food under Sec. 2(17)(b) transaction incidental or ancillary to the main business.

CALTECH POLYMERS PVT LTD [2018-TIOL-20-AAAR-GST]

Lakshmi Kumaran & Sridharan attorneys

- **CONTENTION OF ASSESSEE**
  - ✓ Supply not in course or furtherance of business-statutory provision
  - ✓ Mega Exemption Notification No. 25/2012 - ST dated 20.06.2012
  - ✓ CBEC Press release – Sale of gold by individual.
  - ✓ Entry I Schedule III- services by employee to employer in the course of in relation to his employment .

- **DECISION OF AAR/AAAR**
  - ✓ Transaction ancillary to main business-Sec. 2(17)(b)
  - ✓ Unlike Notification 25/2012-ST no exemption in GST.
  - ✓ Sec. 2 (31) no profit still consideration is there and hence taxable.
  - ✓ Hence, the transaction will be leviable to GST.

BUILDERS ASSOCIATION OF NAVI MUMBAI v. UOI [2018-TIOL-24-HC-MUM-GST]

Lakshmi Kumaran & Sridharan attorneys

FACTS OF THE CASE

The petitioners challenged an order levying/collecting the Goods and Service Tax (GST) on the one-time lease premium charged by CIDCO while letting plots of land on lease basis.

CONTENTION BY ASSESSEE

- ✓ Long-term lease of 60 years tantamounts to sale of the immovable property
- ✓ Article 36 Schedule I to the Maharashtra Stamp Act, 1958, the present transaction is treated as a conveyance-akin to sale- Sec. 7, CGST Act not applicable
- ✓ CIDCO is a performing statutory function. Relied on CCE Nashik Vs. MIDC-2017-TIOL -2629-HC-MUM-ST.
- ✓ One time lease is different from Rent-Panbari tea. Entry-2 (a) Sch-II activity not specifically mentioned.

CONTENTION BY DEPARTMENT

- ✓ GST- no distinction between governmental or non-governmental agencies.
- ✓ Income tax provisions are different.

DECISION OF HIGH COURT

- ✓ Section 2(84) "person"- CIDCO is a person
- ✓ Leasing of land for a consideration styled as one-time premium- in furtherance of business of CIDCO.
- ✓ No notification traceable to Sec. 7(2) shown.
- ✓ Entry 2(b) Sch-II lease is specifically mentioned . Premium is consideration for such renting.
- ✓ Income tax provisions can not be relied upon.
- ✓ MIDC facts are different. In any case no provision under this act which exclude the statutory obligations from the purview of the present enactment.

JCB INDIA & OTHERS v. UNION OF INDIA [2018-TIOL-23-HC-MUM-GST]

Lakshmi Kumaran & Sridharan attorneys

FACTS OF THE CASE

The petitioners challenged Sec. 140(3)(iv), CGST Act, 2017 on grounds of violation of Art. 14 and Art. 19(1)(g).

JCB –factory in Pune –Depot also in Pune-Excise duty paid on demo vehicle cleared from factory and received at Depot. Earlier from depot sales tax/VAT was paid not GST is to be paid.

Evergreen – First stage dealer.

CONTENTION BY ASSESSEE

- ✓ Inequality among manufacturers and depot/traders-disadvantage to the extent of goods lying in stock prior to 30.06.2016.
- ✓ Burden of double taxation if not allowed to transit credit of central excise duty paid by it at the time of removal from the factory for demo machines.
- ✓ Arbitrary and unreasonable cut-off date-cycle of demo goods is of 2/3years.
- ✓ Accrued /vested right –First stage dealer-Eicher Motors Vs UOI 1999 (106) ELT 3.

JCB INDIA & OTHERS v. UNION OF INDIA [2018-TIOL-23-HC-MUM-GST]

Lakshmi Kumaran & Sridharan attorneys

- **CONTENTION BY DEPARTMENT**
  - ✓ CENVAT credit is a mere concession and it cannot be claimed as a matter of right.
  - ✓ Provision of time limit for smooth and efficient transfer of regime
  - ✓ No concept of equity in tax matters.
  - ✓ Rule 4(7) of the CCR, 04 also imposes the same restriction.
- **DECISION OF HIGH COURT**
  - ✓ Credit on inputs under the existing law itself is not absolute but a restricted or conditional right.
  - ✓ CENVAT credit is a mere concession and it cannot be claimed as a matter of right.
  - ✓ If right to availment of CENVAT credit itself is conditional and not restricted or absolute, then, the right to pass on that credit cannot be claimed in absolute terms.
  - ✓ No arbitrariness in the legislation-date mentioned has sufficient nexus with the objective of transition from one system to another.
  - ✓ Eicher motors case was not concerned with the transitional provisions.
  - ✓ No promissory estoppel – no breach of any absolute or unconditional promise by the executive or by state.

FILCO TRADE CENTRE PVT. LTD. v. UOI [2018-TIOL-120-HC-AHM-GST]

Lakshmi Kumaran & Sridharan attorneys

- **FACTS OF THE CASE**

  The petitioner was a first stage dealer in the business of trading specialised industrial bearings of various types including importation of goods.

- **QUESTION OF THE ASSESSEE**

  Whether Sec. 140(3)(iv), that imposes a limit of 12 months on invoice and other documents to take credit of eligible duties of the finished goods held in stock on appointed day, is required to be declared unconstitutional?

- **CONTENTION BY THE ASSESSEE**

  - ✓ Taxing statutes should be in conformity with Art. 14.
  - ✓ Limit on goods purchased prior to 12 months- disadvantage to first stage dealers.
  - ✓ CENVAT Credit- vested right- cannot be removed by a statute.
  - ✓ Retrospective tax legislation- no rational basis.

FILCO TRADE CENTRE PVT. LTD. v. UOI [2018-TIOL-120-HC-AHM-GST]

Lakshmi Kumaran & Sridharan attorneys

CONTENTION BY THE DEPARTMENT

- ✓ Not a case of hostile discrimination.
- ✓ First Stage dealers- special class-need to correlate goods sold and excise duty paid to claim CENVAT Credit.
- ✓ Necessary - Inhibiting undue advantage by dealers & Administrative convenience.
- ✓ CENVAT Credit- concession with conditions-not vested right.
- ✓ Not possible to correlate duty paid purchases with sales made for indefinite number of years.
- ✓ Relied on the decision of the Bombay High Court in the case of JCB India wherein the Constitutional validity of the aforesaid provision is upheld.

DECISION OF THE HIGH COURT

- ✓ Ordinarily court should uphold the constitutional validity.
- ✓ Parliament had power to legislate retrospectively.
- ✓ Passing on credit of excise duty paid- vested right relied on Eicher motors and other cases.
- ✓ Condition in Sec 140(3)(iv) takes away a vested right and hence retrospective but this itself can not be a reason to hold it unconstitutional .
- ✓ However, no justifiable or plausible reason for such retrospective operation.
- ✓ With due respect JCB India reasoning not agreeable.
- ✓ No hostile discrimination but imposes a burden with retrospective effect without any justification.
- ✓ Hence , Sec. 140(3)(iv) is unconstitutional.

LIONS CLUB OF POONA KOTHRUD [2018-TIOL-299-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

- **FACTS OF THE CASE**

  The club receives fee from members used exclusively for administration and meetings. There is no facility or advantages given to members. There is no furtherance of business or goods being traded or services being rendered.

- **QUESTIONS BY ASSESSEE**

  Whether the assessee is required to be registered under the CGST Act?

- **CONTENTION BY ASSESSEE**
  - ✓ Sec. 7(1)(a)- supplier and recipient must be different
  - ✓ Sec. 2(84)"persons"- cannot deem association and members as different persons
  - ✓ Service tax- In absence of deeming fiction -treat association and member as distinct person -Not applicable in GST regime.
  - ✓ Sec 2(17)(e) business definition requires provision of facilities or benefits to members.
  - ✓ Principle of mutuality
- **CONTENTION BY DEPARTMENT**
  - ✓ "business"- includes services by way of club to its members for subscription or any other consideration.
- **DECISION OF AAR**
  - ✓ Sec. 2(17)(e)- "business" includes provision by a club/association/society/any such body made for a consideration. However, fee collected – not for any supply-no facilities/benefit to members.
  - ✓ The amount is collected to meet the expenditure incurred and for social causes and hence will not be for business.
  - ✓ Hence, registration not required
- **Comments**
  - ✓ Club who are rendering facilities/advantage to their members?

ULTRATECH CEMENT LTD. [2018-TIOL-110-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

- **FACTS OF THE CASE**

  Ultratech is in the business of manufacturing of cement. As a practise of the cement industry, it allows its dealers to reduce the price below the cost price and sell it in the market while the assessee compensates them the 'rate difference'.

- **QUESTIONS BY ASSESSEE**

  Whether amount paid to dealers & stockists as 'rate difference' after supplying goods to them can be considered when arriving at transaction value u/s 15 of CGST Act ?

  Whether such amount paid would be allowed u/s 15(1) r/w Section 34(1) of the CGST Act or u/s 15(3) r/w Section 34(1)?

- **CONTENTION BY ASSESSEE**
  - ✓ Practice followed in the entire industry.
  - ✓ Sec. 15(1)- 'price actually paid/actually payable'
  - ✓ Fulfilled the conditions of Sec. 15(3)(b)
  - ✓ Sec. 34(1), CGST Act is independent to Sec. 15(3)(b) . If it is applied only in case of discount then Sec. 34(1) is redundant.

- **CONTENTION BY DEPARTMENT**

  'rate difference' –cannot be considered as discount.

- **DECISION OF AAR**
  - ✓ No basis/criteria/parameter in agreement to decide quantum of discount- Sec. 15(3)(b)(i) not adhered to.
  - ✓ 'rate difference cannot be considered and allowed as discount for calculating transaction value.

- **Comments**
  - ✓ No finding given whether the benefit u/s 34(1) can be taken independently.

M/S HABUFA MEUBELLEN B. V. [2018-TIOL-97-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

FACTS OF THE CASE

The assessee is established as a liaison office between its HO at Netherlands and its Indian suppliers for the sole reason of quality management with prior permission of RBI. The assessee is not allowed any commercial, trading or industrial activities. The HO was responsible for reimbursement of all expenses and payment of salaries.

QUESTIONS BY THE ASSESSEE

Q1. Whether the reimbursement of all expenses and salaries paid by M/s Habufa Meubelen B. V. (HO) to liaison office established in India is liable to GST as supply of service. Especially when no consideration for any services is charges/paid?

Q2. Whether the applicant is required to get registered under GST?

Q3. If it is assumed that the reimbursement of services and salary claimed by liaison office is a consideration towards a service, then what will be the place of supply of such service?

M/S HABUFA MEUBELLEN B. V. [2018-TIOL-97-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

CONTENTION OF THE ASSESSEE

There was no supply of services since-

- ✓ No commercial/industrial/trading activity or extending business in own name
- ✓ No contracts without permission of RBI
- ✓ No other fee/commission/remuneration charged or earned in India
- ✓ The only amount received from HO is expenses and salary of employees.
- ✓ Sec 2(102)definition of the service "for which a separate consideration is charged"

DECISION OF THE AAR

- ✓ No consideration for any service is being charged by the liaison office.
- ✓ Kind of reimbursement claimed by the applicant from their HO is also falling out of the purview of the supply of service.
- ✓ Hence, the transaction is not liable to GST and hence no need to get registered.

Comments

- ✓ Entry 2 & 4 in Sch-I have any bearing ?

MERIT HOSPITALITY SERVICES PVT. LTD. [2018-TIOL-23-AAAR-GST]

Lakshmi Kumaran & Sridharan attorneys

- **FACTS OF THE CASE**

  The assessee is registered an 'outdoor caterer' under GST Act.

- **QUESTION BY THE ASSESSEE**

  The applicant enquired after four types of situations –

  - ✓ In the first situation, it supplies food items to the recipients based on a contract & in which the menu is pre-decided . Monthly billing is done by applicant & payment is received directly.
  - ✓ In the second situation, it supplies the food and also undertakes to serve it to the recipients . In this case, a separate bill for service of food is raised.
  - ✓ In the third situation, food is supplied to an association of employees, which is engaged in operating a canteen.

  The applicant seeks to know whether in the aforesaid cases the activities classify as Canteen activity & what would be the applicable rate of GST.

  - ✓ In the fourth situation, food is supplied to employees of a company located in an SEZ & payment is directly received from the employees .

  Here, the applicant seeks to know whether the same is treatable as food supplied directly to SEZ and so exempt from GST.

MERIT HOSPITALITY SERVICES PVT. LTD. [2018-TIOL-23-AAAR-GST]

Lakshmi Kumaran & Sridharan attorneys

CONTENTION OF ASSESSEE

- ✓ Notification No. 46/2017 CT (Rate) dt. 14.11.2017- 5% GST in Canteen; 18% for outdoor canteen
- ✓ GST Circular No. 08.01.2018- issue of running canteen for employees by company- 5% GST

DECISION OF AAR

- ✓ Relied on the dictionary meaning of the term Restaurant/Canteen/eating joint and mess.
- ✓ Definition of catering and outdoor catering borrowed from Service tax legislation.
- ✓ Cooks food at one kitchen and then distributed- not restaurant service-5% rate not applicable
- ✓ The AAR was of the view that in the first three situations, the supply would not be canteen activity and hence, not liable to be taxed at 5%. With respect to situation four, the AAR had not provided any ruling due to non availability of factual details.

DECISION OF AAAR

- ✓ Supply of food to employees of unit based on SEZ will not be a zero rated supply.
- ✓ Employees not treated as SEZ developer or SEZ unit-GST applicable.

Comments

- ✓ Facts should be narrated carefully . Authority was prejudiced due to the fact that the assessee was registered as outdoor caterer both under service tax regime and also GST regime.

M/S ERNAKULAM MEDICAL CENTRE PVT. LTD. [2018-TIOL-188-AR-GST]

Lakshmi Kumaran & Sridharan attorneys

- **FACTS OF THE CASE**

  The assessee renders health care services which has been exempted under GST. The hospital also supplies Medicines to inpatients and outpatients.

- **QUESTION BY ASSESSEE**

  What is the liability of the hospital under the GST Act on supply of medicines and allied items through a in house pharmacy?

- **CONTENTION OF ASSESSEE**

  - ✓ Medicines supplied through pharmacy-incidental to health care services.
  - ✓ No medicines sold to the customer who do not consult the doctors either inpatients or outpatients.
  - ✓ No sale of medicine who come with prescription from outside doctors.

- **DECISION OF AAR**

  - ✓ Medicine supplied to inpatients- not taxable- since bundled with health care services.
  - ✓ Medicines supplied to outpatients – taxable- general supply of medicines.
  - ✓ Relied on TRU circular dated 12.2018 –Food supplied to in inpatients exempt rest taxable.

LOYALTY SOLUTIONS AND RESEARCH PVT. LTD. [2018-TIOL-100-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

FACTS OF THE CASE

The applicant is managing the customer loyalty programme for its clients/Partner. On the management fee the applicant is discharging the tax liability. The loyalty programme is based on issuance of reward points called 'payback points' having a value of Rs. 0.25 each and a validity period of 36 months from the date of issuance. Whenever the customer purchase goods the applicant gives credit to concerned seller which in turn give to customer by way of reduction in price. If not redeemed, the reward points are forfeited by the applicant and the amount of Rs. 0.25 is retained.

QUESTION OF THE ASSESSEE

Whether the amount of issuance fee of reward points retained/forfeited by applicant would amount to consideration for actionable claims and not subject to GST?

CONTENTION BY THE ASSESSEE

Transaction is in relation to actionable claim- Exemption under Sch. III Entry 6- no GST applicable.

LOYALTY SOLUTIONS AND RESEARCH PVT. LTD. [2018-TIOL-100-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

CONTENTION BY THE DEPARTMENT

- ✓ Points issued in exchange for issuance fee- consideration- GST applicable.

HOLDING OF AAR

- ✓ Reward points are actionable claim.
- ✓ No legal action can be taken after expiry- element of 'actionable claim' is lost

Thus, Sch. III not applicable.

- ✓ Issuance fee- retained by assessee upon expiry- provides revenue

Thus, amount is liable to be treated as consideration and liable to GST.

M/S ABBOT HEALTHCARE PVT. LTD. [2018-TIOL-186-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

- **FACTS OF THE CASE**

  The assessee places their own medical instruments at hospitals and laboratories along with supplying pharmaceutical products, reagents, diagnostic kits, etc., to be used in the instrument by executing an agreement.

- **QUESTION BY THE ASSESSEE**

  i)Whether the placement of specified medical instruments to unrelated customers like hospitals, labs etc, for their use without any consideration, for a specific period constitute supply?
  ii) Whether such movement of goods constitutes otherwise than by way of supply under GST?

- **DECISION OF THE AAR**
  - ✓ Indivisible Contract-Naturally bundled -Transaction is a composite supply.
  - ✓ Designed modus-operandi to avoid payment of tax. Agreement clearly says" Reagent Supply and instrument use agreement.
  - ✓ Consideration for the TRGU has been deferred.
  - ✓ In case of failure to meet minimum purchase –deficit amount will be charged.
  - ✓ Consideration for product linked with supply of right to use instrument.
  - ✓ Principal supply- right to use the equipment.
  - ✓ Hence the entire transaction will be taxed @18 %

- **Comments**
  - ✓ Ruling is beyond the questions asked by the applicant.
  - ✓ No reasoning why the TRGU is the principle supply.

GLOBAL REACH EDUCATIONAL SERVICES PVT. LTD. [2018-TIOL-02-AAAR-GST]

Lakshmi Kumaran & Sridharan attorneys

- **FACTS OF THE CASE**

  Business of Assessee is promoting foreign university courses among Indian students and consideration is paid in convertible foreign exchange based on performance in recruiting students.

- **QUESTION BY ASSESSEE**

  Whether the service provided to the Universities abroad is to be considered "export" within the meaning of Sec. 2(6) of the Integrated Goods and Services Act, 2017 and therefore, a zero-rated supply under the CGST/WBGST Act, 2017?

- The AAR [2018-TIOL-06-AAR-GST] held that the assessee provided the services as a representative of the Universities and not as an independent service provider thereby, applying the provision of Sec. 13(8)(b), IGST Act.

- **CONTENTIONS OF THE ASSESSEE**
  - ✓ Independent service provider, not intermediary thus Sec 13(2), IGST Act applicable, not Sec. 13(8)(b)
  - ✓ Payment mechanism not relevant.
  - ✓ Not facilitation of recruitment, only promotion of college.

GLOBAL REACH EDUCATIONAL SERVICES PVT. LTD. [2018-TIOL-02-AAAR-GST]

Lakshmi Kumaran & Sridharan attorneys

CONTENTIONS OF THE DEPARTMENT

- ✓ No ruling can be obtained as the ruling relets to Place of supply.

DECISION OF AAR/AAAR

- ✓ Jurisdiction ground overruled- Deciding intermediary and not place of supply.
- ✓ Promotion is incidental- Meet targets.
- ✓ Sec. 13(8)(b) applies since intermediary- fee decided by percentage of students enrolled through assessee, and not for promotional activities.

M/S SAPTHAGIRI HOSPITALITY PVT. LTD. [2018-TIOL-174-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

FACTS OF THE CASE

The assessee is a Co-Developer for providing infrastructure facilities in SEZ and interalia rendering Accommodation services to client located in SEZ as well outside the SEZ

QUESTION BY ASSESSEE

Whether GST will be applicable in both the scenario i.e. services to clients located in SEZ and outside SEZ.

CONTENTION OF ASSESSEE

- ✓ In view of the Provisions of Sec. 16(1)(b) of the IGST Act, 2017 the company running a hotel in SEZ should not be made liable to pay GST considering the services provided by it as 'zero rated supply.'
- ✓ Place of supply in terms of Section 12 of IGST Act shall be the location of the hotel itself i.e. SEZ, Hence, there shall not be the requirement to pay GST either on the services provided to clients located in SEZ or a visitor coming from a territory outside SEZ as place of supply as well as the location of supplier providing the said services is within SEZ only.

M/S SAPTHAGIRI HOSPITALITY PVT. LTD. [2018-TIOL-174-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

DECISION OF AAR

- ✓ Provisions of Section 7 and Section 8 of IGST Act, 2017 read with the definition of SEZ developer given at Section 2(20) of IGST Act, mandate that all the supply of goods or services made by or to SEZ Co-developer would be considered as interstate supply and the levy of IGST is attracted at the applicable rate.
- ✓ A combined reading of Section 16(1) of IGST Act and Section 2(m)(iii) of SEZ Act indicate that supply of services made by the applicant to other units or developers of SEZ would be zero rated supply.
- ✓ Rendering of services from SEZ to DTA does not qualify as Zero rated supply in terms of Section 16 of IGST Act, 2017. Therefore, SEZ Unit/developer making interstate supply to DTA would be liable to pay IGST under IGST Act.

M/S COFFEE DAY GLOBAL LIMITED [2018-TIOL-149-AAR-GST]

Lakshmi Kumaran & Sridharan attorneys

FACTS OF THE CASE

The Assessee runs the business of stand alone restaurants that serve food and non-alcoholic beverages.

QUESTION BY THE ASSESSEE

Whether the applicant is entitled to pay GST @ 18% and claim input tax credit under S. No. 35 Notification No. 11/2017- Central Tax (Rate) dt. 28th June, 2017 (Heading 9997) or compulsorily pay 5% under Notification 46/2017 dt 14.11.2017 without credit ?

CONTENTION OF THE ASSESSEE

- ✓ Right under Sec. 16(1)- cannot be removed by a Notification
- ✓ Notification No. 46/2017-Central tax (Rate) dt. 14th Nov., 2017- "*provided that*"- is subject to condition if the condition not fulfilled tax needs to be discharged at full rate.
- ✓ Violative of Article 14 –Restaurant within five star hotel can claim credit.
- ✓ Will be covered under residuary category.

DECISION OF THE AAR

The assessee shall only be liable to discharge GST @5% under Notification No. 46/2017 since-

- ✓ Services rendered specifically classified under Heading 9963- Heading 9997 for services not specifically classified.
- ✓ Explanation to Notification No. 46/2017- specific provision
- ✓ Sec. 16(1), CGST Act- Right is subject to conditions and restrictions provided.

UOI v. MOHIT MINERALS PVT LTD [2018-TIOL-05-SC-GST]

Lakshmi Kumaran & Sridharan attorneys

FACTS OF THE CASE

FA, 2010 levied Clean Energy Cess. Repealed by Taxation Law (Amendment Act) 2017. Section 18 of the Constitution (101st) Amendment Act, 2016 enabled the parliament to levy a cess for five years to compensate the state for the loss of revenue on account of GST. The petitioners have challenged the validity of the Goods and Services Tax (Compensation to States) Act, 2017 enacted by Parliament as well as the Goods and Services Tax Compensation Cess Rules, 2017, the Rules framed by the Central Government in exercise of power under Section 11 of the Goods and Service Tax (Compensation to States) Act, 2017.

CONTENTION BY ASSESSEE

- ✓ Not falling under any specific entry in VII Schedule of the Constitution.
- ✓ Intention of 101st Constitutional Amendment Act- to abolish all types of cess + Sec. 18- no power vested in Centre to levy cess.
- ✓ 2 levies on same supply- GST and Cess- Double Taxation-same taxable event.
- ✓ At least allow set off of the Cess already paid on the goods lying in stock.

UOI v. MOHIT MINERALS PVT LTD [2018-TIOL-05-SC-GST]

Lakshmi Kumaran & Sridharan attorneys

- **CONTENTION BY DEPARTMENT**
  - ✓ If parliament can levy GST, it can also levy Cess- Art. 246A
  - ✓ Purpose of Clean Energy Cess and Compensation Cess is different

- **DECISION OF SUPREME COURT**
  - ✓ Relied on UOI Vs. Harbhajan Singh Dhillon 1971(2) SCC 779 – Whether covered under List –II or III?
  - ✓ Article 248, r/w 246 and 246A clearly indicate residuary power.
  - ✓ Art. 270- Parliament authorised to levy cess under a law made by it.
  - ✓ Art. 246A- Centre's power to tax goods and services-wide import –power to levy cess as well.
  - ✓ Same taxable event is permissible in law-Justice Krishana Iyer- Arvinder Singh Vs State of Punjab-1979 (1) SCC 137 – Permissible expect prohibition.
  - ✓ Sec.18, 101st Constitutional Amendment Act, 2016-Compensation to States by Centre for loss of revenue upon introduction of GST.
  - ✓ 101st Amendment- subsumes various cesses, but no bar for imposition of new cess.
  - ✓ Thus, Centre can levy cess on supply of goods and services.
  - ✓ Set off Legislative policy – Nature of both the levy are completely different- No set off can be allowed.

Thank You!!

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