

INDIRECT TAX

Weekly Digest

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GOODS & SERVICES TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Additional services provided along with hostel or accommodation services will not constitute a composite supply and shall be treated as a mixed supply

Facts of the case

- M/s. Mody Education Foundation ('Taxpayer' or 'MEF'), having its registered office at New Delhi is providing educational services;
- MEF is running a CBSE affiliated school from class 3rd to 12th. MEF is a GST registered entity and also the sponsoring body of Mody University of Science & Technology (MUST);
- MUST is a university established u/s 2(f) of the UGC Act, 1956 and providing educational services to its students (Girls Students Only). MUST is also registered under GST law;
- MEF has surplus infrastructure facilities after utilization thereof for its activities including running of school. This surplus infrastructure has been let out to MUST for use. The infrastructure given to MUST for use includes academic buildings, certain hostel buildings, office buildings, villas, and dining hall, charging GST at 18%;
- MUST is collecting hostel fees from its students, which includes lodging and boarding in the campus and GST is not charged as it is being exempt under entry no:66 of notification no:12/2017 CT(R) dated 28 June 2017 as amended;
- MUST's management is considering a proposal to discontinue use of dining hall facility and hostel building taken on rent as it is finding it difficult to maintain and operate them. Hence both the facilities shall be returned back to MEF;

- Hostel facility to the students of MUST shall be provided by MEF. Hostel facility shall include lodging and boarding facility wherein food shall be served in dining hall;
- MEF is of the opinion that the hostel facility charges recovered from the students of MUST are not chargeable to GST, basis the exemption notification no:12/2017-CT(R) dated 28 June 2017 as amended time to time;
- The taxpayer is also of opinion that the lodging service in hostel along with boarding wherein food is provided in dining hall form part of principal service of hostel accommodation and therefore exempted from levy of GST under the same exemption entry.

Question before the AAR

Whether the services of providing food to inmates will be considered as a composite supply and whether it would be exempt?

Contention of the Taxpayer

The taxpayer is of opinion that the lodging service in hostel along with boarding wherein foods is provided in dining hall form part of principal service of hostel accommodation and therefore exempt from levy of GST under the same exemption entry.

Observations and ruling by the by AAR

- The AAR noted that naturally bundled services are those services wherein one of the services is the main service and the other services combined with such service are incidental or ancillary services which help in better enjoyment of a main service;
- Provision of hostel accommodation could be a principal supply but ancillary services like food cannot be said to

arise naturally with the principal service of hostel accommodation and therefore, they are not bundled naturally with principal supply. In the present case, the said supply is not a composite supply, therefore, the facts of the case can be examined in respect of mixed supply;

- The services supplied by the taxpayer such as hostel accommodation, food etc. to the student of INR less than 1000/- per day per student is not a composite supply, hence, the services supplied by the taxpayer is mixed supply as per CGST Act, 2017 and the applicable rate of tax is the highest rate applicable to the various services supplied by the taxpayer;
- Since the taxpayer did not make clear that how many students will stay in a room/unit, hence considering non-clarity of tariff of a unit of accommodation, the GST rate as per notification no:11/2017-CT(R) dated 28 June 2017 will be applicable to the taxpayer;
- Further, the taxpayer is providing service of serving of food to students in hostel. The said service is classifiable under HSN 9963 as provided under notification no:11/2017-CT(R) dated 28 June 2017 and GST rate will be applicable as per the above notification. The services supplied by the taxpayer is a mixed supply and highest rate of GST will be applicable amongst services provided by the taxpayer to students in hostel;
- The AAR held that the taxpayer would not be eligible for exemption under entry no:14 of the notification no:12/2017-CT(R) dated 28 June 2017.

[AAR-Rajasthan, M/s. Mody Education Foundation ruling no:RAJ/AAR/2021-22/02 dated 07 July 2021]

Constructed commercial property without any occupancy or completion certificate, is liable to GST on the taxable value prescribed under section 15 of CGST Act, 2017

Facts of the case

M/s. Pankaj Enterprises ('Taxpayer'), is an individual and is not registered under GST, intends to start business as service provider in construction and sale of commercial immovable properties. The taxpayer has sought advance ruling in respect of the following question.

Questions before the AAR

Determination of the taxable value under CGST Act, 2017 of immovable constructed commercial property without any occupancy or completion certificate where the area of the land exceeds 500 square meters or the number of apartments proposed to be developed exceeds 8 inclusive of all phases particularly when the actual guidance value fixed by the competent government authority is more than the value of sale consideration stated in the absolute sale deed registered by the builder in favour of the purchaser.

Observations and ruling by the AAR

- The AAR noted that as per schedule II para 5(b) of section 7 of CGST Act, 2017, construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly except where the entire consideration has been received after issue of completion certification is termed as "supply of service;

- Thus, construction and sale of complex or building or civil structure supplied on receipt of amount/advance before obtaining the completion certification/first occupancy constitute supply of service and the activity is a taxable event under the CGST Act, 2017;
- In the instant case, 'Supply' involves construction and sale of residential complex with more than eight dwelling units or commercial property exceeding the area of 500 sq. meter is taxable under CGST Act, 2017 and the person engaged in supply of the same is required to get registered under section 22 of CGST Act, 2017 and liable for payment of CGST/IGST on the value of supplies under section 15 of CGST Act, 2017;
- Section 15(1) of CGST Act, 2017 contemplates to treat the transaction value as the value of supply unless the same is rejected and the value is determined as per section 15 of the CGST Act, 2017;
- It does not contemplate to consider a guidance value prescribed under another legislation to be deemed to be the value of the supply, unless the transaction value itself is disputed and found not acceptable under section 15 of the CGST Act, 2017;
- In the latter case, the determination of the value of such supply shall be made as per the provisions of section 15 of the CGST Act, 2017.

[AAR-Karnataka, M/s. Pankaj Enterprises, ruling no:KAR ADRG 09/2022 dated 14 March 2022]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

Taxpayer is not entitled to avail ITC in respect of taxes to be paid on its purchase of paver blocks laid on plain surface

Facts of the case

- M/s. Sundharams Private Limited ("Taxpayer") is engaged in the business of providing warehousing, storage, and support services to the Original Equipment Manufacturers (OEMs) in automobile industry. It carries the cars/tractors of various automobile OEMs from their respective plants to their dealers designated regional sales depots;
- Prior to their transit to the respective car dealers, its fleet of carrier cars is stored in its stock yard. On storage rentals of these vehicles, the taxpayer collects and pays the applicable GST at the rate of 18% under the head "stock yard management services";
- The taxpayer has purchased "paver blocks" which is subject to tax at the rate of 18% as per HSN code of 7016 which are laid in the parking area of the land to ensure efficient and safe parking of cars of OEMs during the contract period;
- The taxpayer approached the AAAR on the below stated question and it was held that taxpayer is not entitled to avail ITC in respect of taxes to be paid on the purchase of 'paver blocks' in terms of section 17(5)(d) of the CGST Act, 2017;
- Being aggrieved by the ruling by the AAAR, the taxpayer has preferred appeal before AAAR.

Questions before the AAAR

Whether the taxpayer is entitled to avail ITC under SGST/CGST Acts in respect of taxes to be paid on its purchase of paver blocks laid on surface of the plain land?

Contention of the Taxpayer

- The taxpayer contended that these 'paver blocks' have interlocking facility and gaps therein getting filled with sands, are laid on the surface as movable property, which are capable of being removed, re-laid, and re-used on any other location after the contract period gets over;
- The object of annexation of paver blocks to the land is for a temporary purpose and can be removed and used elsewhere multiple times because it can withstand wear and tear;
- It also relied on the decision of Hon'ble Supreme Court in the case of Sirpur Paper Mills Ltd. vs The Collector of Central Excise [97 ELT 3 (SC)], holding that "just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property;"
- It was further submitted that as per explanation to section 17(5)(d), the prohibition to avail ITC is applicable only in respect of expenditure, which is capitalized as immovable property in the books of accounts and the taxpayer as per the accounting standards treated purchase of paver blocks has as revenue expenditure.

Observations and ruling by the AAAR

- Section no:3 of the General Clauses Act. 1897 defines "immovable property " to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;
- The AAAR also observed that the 'paver blocks' are laid on the surface of the automobiles stock yard with the aid of the filling material, i.e. sand and the outer wall, making it clear that the sands and the outer walls helps the "paver blocks' to remain attached and fixed to the earth making it an immovable property in terms of its definition provided under the General Clauses Act 1897;
- The AAAR further observed that the Sirpur mills case relied by the taxpayer is irrelevant as no comparison can be drawn of paver blocks fixed to the with machines which can function on their own and are embedded just to prevent wobbling;
- AAAR also observed that the paver blocks are intended to be a permanent structure and there is no intention to dismantle it frequently and take it to any other place;
- It was also opined that the explanation of section 17(5)(d) of the CGST Act, 2017 is applicable for reconstruction, renovation, additions, alterations, or repairs activity and not applicable for construction of immovable property in general. Therefore, the condition of capitalization as provided under explanation to section 17(5)(d) to the CGST Act, 2017 is not applicable as the impugned construction is not in the nature of reconstruction, renovation, additions, alterations, or repairs of an immovable property;
- The laying of 'paver blocks' will rather be construed as original construction work of immovable property which in the present case is 'parking system';

- The taxpayer was not entitled to avail ITC in respect of taxes to be paid on the purchase of 'paver blocks' in terms of section 17(5)(d) of the CGST Act, 2017. The AAAR dismissed the taxpayer's contention & concluded 'paver blocks', laid on the land, as part of an immovable property.

*[AAR-Maharsashtra, M/s. Sundharams Private Limited
Order no:MAH/AAAR/RS-SK/29/20-2021, dated 12
November 2020]*

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Amendment in policy condition on export of rice (Basmati and Non-Basmati)

The notification no:60/2015-2020 dated 09 March 2022 is amended to the extent that export of rice (Basmati and Non-Basmati) to EU member states and other European Countries namely United Kingdom, Iceland, Liechtenstein, Norway, and Switzerland only will require certificate of inspection from Export Inspection Agency (EIA)/ Export Inspection Council (EIC). Export to remaining European countries (except United Kingdom, Iceland, Liechtenstein, Norway, and Switzerland) will require certificate of inspection by EIC/ EIA for export from 01 July 2022.

[Notification no:61/2015-20 dated 23 March 2022]

Curbs on exports of hydrofluorocarbons

Export policy of Hydrofluorocarbons (HFCs) has been revised from 'free' to 'restricted' category with immediate effect and export authorisations would be issued based on NOC from Ministry of Environment, Forest, and Climate Change (MoEF&CC).

[Notification no:62/2015-20 dated 23 March 2022]

PUBLIC NOTICE

DGFT extends the timeline for installation and operationalisation of radiation portal monitors

The timelines for installation and operationalisation of radiation portal monitors and container scanners in the designated seaports has been extended from existing 31 March 2022 to 30 September 2022.

[Public notice no:51/2015-20 dated 23 March 2022]

NEWS FLASH

1. “GST – Big gains for small firms”
<https://www.thehindubusinessline.com/opinion/gst-big-gains-for-small-firms/article65244018.ece>
[Source: The Hindu Business Line, 20 March 2022]
2. “States panel may propose a single 15% GST levy by merging 12% and 18% slabs”
<https://economictimes.indiatimes.com/news/economy/finance/states-panel-may-propose-a-single-15-gst-levy-by-merging-12-and-18-slabs/articleshow/90342687.cms>
[Source: Economic Times, 21 March 2022]
3. “CBIC issues scrutiny norms related to GST”
<https://timesofindia.indiatimes.com/business/india-business/cbic-issues-scrutiny-norms-related-to-gst/articleshow/90386377.cms>
[Source: Times of India, 23 March 2022]
4. “Payments received in cryptocurrencies set to face GST complications”
<https://economictimes.indiatimes.com/news/economy/policy/payments-received-in-cryptocurrencies-set-to-face-gst-complications/articleshow/90412297.cms>
[Source: Economic Times, 24 March 2022]
5. “CBIC introduces facility of restoration of cancelled GST registration”
<https://economictimes.indiatimes.com/news/economy/finance/cbic-introduces-facility-of-restoration-of-cancelled-gst-registration/articleshow/90413044.cms>
[Source: Economic Times, 25 March 2022]



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