

INDIRECT TAX WEEKLY DIGEST

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GOODS & SERVICES TAX

JUDICIAL UPDATES WRIT PETITION

HIGH COURT SUGGESTED TWO MEASURES TO THE STATE TO REDUCE THE INFLOW OF WRIT PETITIONS DUE TO NON-CONSTITUTION OF THE GST TRIBUNAL

Facts of the case

- M/s. Gulf Oil Lubricants India Ltd, ('Taxpayer'), had received show cause notices ('SCNs') which were adjudicated and Order-in-Original was passed. The taxpayers had filed appeals before the Appellate Authority against the SCNs, but the appeals were dismissed
- Aggrieved by the above, the Taxpayer had filed a petition before the Hon'ble High Court of Bombay invoking Article 226 of the Constitution of India on the grounds that, though the Section 112 of Central Goods and Services Tax Act, 2017 ('CGST Act') provides an appeal to an Appellate Tribunal ('GSTAT'), the same is not constituted yet
- Sections 109, 110 and 112 of the CGST Act, prescribing the constitution and functioning of GSTAT were challenged.

Contentions by the Tax Authorities

- The Tax authorities submitted a circular [Circular No. JC/(HQ)-1/GST/2020/Appeal/ADM-8] issued by the Tax authority, clarifying the reason for non-constitution of the Appellate Tribunal
- Wherein it was clarified that the prescribed time limit to make an application to the Appellate Tribunal will be counted from the date on which the President or the State President enters office.

- Moreover, the Taxpayer shall submit a declaration before the jurisdictional tax officer stating that they are proposing to file an appeal under Section 112(1) against the appeal order. If such declaration is not submitted within fifteen days from the communication of the said order, then it will be presumed that Taxpayer is not willing to file an appeal against the order and recovery proceedings may be initiated as per the provisions of law
- An identical circular with the required modifications has also been issued for CGST Act, 2017.

Observations and Ruling by the Hon'ble High Court of Bombay

- The Hon'ble High Court of Bombay observed that, the fact that if the Taxpayer has filed a declaration, recovery proceedings will not be initiated until the time limit prescribed in the circular. Thus, at present, there is no prejudice to any Taxpayer on the ground of non-constitution of the GSTAT
- It was noted that the Taxpayer has already filed a declaration as per the aforesaid circular. Even if they have not, the Court permitted them to do so within fifteen days from the date of the hearing
- Such a declaration would be considered without prejudice and, in case of any contingency arises as per clause 4.3 of aforesaid said circular, the Taxpayer can file an appeal or Writ petition

- The Hon'ble Court also suggested two measures to Tax authorities to reduce the inflow of petitions due to the non-constitution of GSTAT:
 - Firstly, the Tax authority should refer to clauses 4.3 and 5 of the aforesaid circular in the orders passed by the Appellate Authority
 - Secondly, if a recovery proceeding is being initiated on the failure of the filing declaration, the Tax authorities should allow the Taxpayer once more to submit the declaration within fifteen days.
- Given the above, the Writ Petitions are disposed of.
[High Court of Bombay - M/s. Gulf Oil Lubricants India Ltd Vs Joint & State Commissioner of State Tax and Dinesh Engineers Limited Vs Union of India, Department of Revenue, Ministry of Finance dated 8 February 2023, 2023-VIL-132-BOM]

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

IRRESPECTIVE OF THE PURPOSE OF USE, RESIDENTIAL DWELLING RENTED TO A REGISTERED PERSON TAXABLE UNDER RCM

Facts of the case

- M/s. Indian Metals and Ferro Alloys Limited ('Taxpayer') is a company having its registered office in Odisha and its manufacturing units in other parts of the state
- The Taxpayer has taken on rent certain premises at New Delhi and Jaipur as guest houses. The guest houses are used to provide food and accommodation for their employees who visit those places for official purposes
- Out of the two apartments, one is taken on rent from a registered person and the other one from an unregistered person.

Question before the AAR

- Whether the service received by the Taxpayer by way of renting residential premises used as a guest house of the registered person subject to GST under the Forward Charge Mechanism (FCM) or Reverse Charge Mechanism (RCM)?

Contention by the Taxpayer

- It was stated that CBIC has amended the notification no:13/2017-CT(R) dated 28 June 2017 to insert that service by way of renting of a residential dwelling to a registered person by any other person, will attract GST under RCM
- The Taxpayer contended that renting a residential dwelling to a registered person whether used for residential or any other purpose will fall under RCM.

Observations and Ruling by the AAR

- It was observed that renting a residential dwelling is considered as a supply of service under GST law as per Schedule II of the CGST Act, 2017. Till the amendment, the service by way of renting of residential dwelling for use as a residence was exempted, whereas services by way of renting for commercial use were taxable @ 18%

- However, following the above said amendment, notified with effect from 18 July 2022, the service by way of renting as a residential dwelling to a registered person attracts GST under RCM
- Thus, GST will be applicable even if the residential property is rented out to a registered person w.e.f. 18 July 2022. Liability to pay GST @ 18% under the RCM will arise on the recipient (tenant) if he is a registered person under GST with no other condition
- Further, it may be noted that the type or nature/purpose of use of residential dwelling i.e., for residence or otherwise by the recipient, is not a condition in the said RCM notification. Hence, the service of renting a residential dwelling to a registered person would attract RCM irrespective of the nature of use
- Based on the submission made by the Taxpayer and the rent agreement furnished, it was concluded that the nature of rented properties are residential properties used for a commercial purpose
- Based on the observations it was held that, if the residential dwelling is rented to a registered person under GST, the recipient must discharge the tax liability under RCM.

[AAR-Odisha, M/s. Indian Metals and Ferro Alloys Ltd Ruling no: 04/ODISHA-AAR/2021-22 dated 2 February 2023]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

NO ITC AVAILABLE UNDER GST LAWS ON PROCUREMENT OF VOUCHERS

Facts of the case

- M/s. Myntra Designs Private Limited ('Taxpayer') is engaged in the business of providing fashion and lifestyle products to its customers through an e-commerce portal
- To enhance its sales, Taxpayer plans to run a loyalty programme wherein customers will be awarded loyalty points based on the purchases made by them through the e-commerce portal. The loyalty points earned by customers can be further redeemed against vouchers and subscriptions provided by the Taxpayer
- Taxpayer purchases such vouchers and subscription packages from third-party vendors and intends to avail of Input Tax Credit ('ITC') on such procurement. In order to have clarity on this, Taxpayer filed an application before the AAR questioning the eligibility of ITC
- In this regard, AAR held that the Taxpayer is not eligible to avail of ITC on procurement of vouchers and subscription packages as per Section 17(5)(h) of the CGST Act, 2017 which states that no ITC is available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples
- Aggrieved by the decision of AAR, Taxpayer preferred an appeal before the AAAR.

Question before the AAAR

- Whether the Taxpayer is eligible to avail of ITC on vouchers and subscription packages purchased from third-party vendors?

Contentions by the Taxpayer

- Taxpayer submitted that vouchers and subscription packages are procured for the purpose of business and hence entry under Section 17(5)(h) is not applicable to such procurement. The Taxpayer also contended that ITC shall be available in accordance with Section 16(1) of the CGST Act since it is used in the course of furtherance of business
- Taxpayer further submitted that, since the supplier has classified vouchers and subscription packages as services under SAC code 9983, they cannot be reclassified as goods at the Taxpayer's end. It referred to various judicial pronouncements to substantiate that reclassification cannot be undertaken and hence, section 17(5)(h) which is applicable to 'goods' cannot be invoked

- Taxpayer also stated that vouchers and subscription packages are not provided to the customers as 'gifts' or 'free of cost', but under a contractual obligation against the loyalty points accumulated by them.

Observations and Ruling by the AAAR

- AAAR relied on the decision made by the Hon'ble Karnataka High Court in the case of *M/s Premier Sales Promotions Pvt Ltd Vs. UOI & Ors* [2023-VIL-67-KA] wherein was held that vouchers are neither goods nor services. Therefore, when the vouchers intended to be procured by the taxpayer is neither goods nor service, the question of eligibility of ITC does not arise
- AAAR rejected the Taxpayer's appeal and upheld the advance ruling provided by AAR
[AAAR-Karnataka, M/s. Myntra Designs Private Limited, Ruling no: KAR/AAAR/03/2023 dated 24 February 2023]

CUSTOMS**CIRCULAR****MORE EFFECTIVE DESCRIPTION OF GOODS FALLING UNDER HSN 8517 62 90 AND HSN 8517 69 90**

Notification no:57/2017-Customs dated 30 June 2017 gives descriptions of certain goods that are telecommunication products or equipment.

An amendment has been made in this notification as CBIC was apprised that some of these technology-related descriptions, need to be better understood by all stakeholders for more effective identification of products and equipment which has been attached as an annexure to the circular.

This notification shall be effective from 1 April 2023

[Circular no:08/2023-Customs dated 13 March 2023]

FOREIGN TRADE POLICY (FTP)**PUBLIC NOTICE****AMENDMENT IN POLICY CONDITIONS UNDER ITC HS CODES 2515 AND 6802(MARBLE)**

Import of 10000 MT of marble under ITC(HS) Codes 2515 and 6802 shall be allowed from Bhutan without Minimum Import Price each year, subject to a valid registration certificate issued by the DGFT. The procedure for issuance of the registration certificate shall be notified separately.

[Public Notice no: 60/2015-2020 dated 14 March 2023]

NEWS FLASH

“GST Update: 4-member Appellate Tribunal In States Soon, National Tribunal In Delhi; Check Details”

<https://www.news18.com/business/gst-update-4-member-appellate-tribunal-in-states-soon-national-tribunal-in-delhi-check-details-7304617.html>

[Source: *Economic Times*, 18 February 2023]

“Realtors want govt to rationalise GST on under-construction properties in a bid to encourage sales”

<https://indianexpress.com/article/cities/mumbai/realtors-govt-rationalise-gst-under-construction-properties-sales-8495907/>

[Source: *Indian Express*, 14 March 2023]

“GST wing of CBIC starts probe insurance companies”

<https://www.businesstoday.in/latest/corporate/story/gst-wing-of-cbic-starts-probe-insurance-companies-373452-2023-03-15>

[Source: *Business Today*, 15 March 2023]

“In absence of cogent evidence, mere invoice production, cheque-payment insufficient to claim ITC: Supreme Court”

<https://www.thehindubusinessline.com/economy/mere-invoice-production-cheque-payment-insufficient-to-claim-itc-under-gst-supreme-court/article66617461.ece>

[Source: *Hindu Business Line*, 14 March 2023]

“If states agree, petroleum and gas can be brought under the GST ambit”

<https://economictimes.indiatimes.com/news/economy/policy/if-states-agree-petroleum-and-gas-can-be-brought-under-the-gst-ambit-fm-sitharaman/articleshow/97948037.cms>

[Source: *Economic Times*, 3 March 2023]

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