

# INDIRECT TAX WEEKLY DIGEST

07 February 2023  
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## GOODS & SERVICES TAX

### JUDICIAL UPDATES WRIT PETITION

#### **BENEFIT OF CIRCULAR NO:183/15/2022 TO BE EXTENDED TO BONAFIDE MISTAKES MADE IN FORM GSTR-1 FOR FY 2017-18, 2018-19 AND 2019-20**

##### Facts of the case

- M/s. Wipro Limited India (Taxpayer) had wrongly disclosed the GSTIN of M/s ABB India Limited instead of M/s. ABB Global Industries and Services Private Limited (the recipient) in their Form GSTR-1 for FY 2017-18, 2018-19 and 2019-20.
- Thereafter, the Taxpayer has been making requests to the Tax Authority for carrying out the necessary rectifications in their relevant Form GSTR-1 returns, to enable the recipient to avail of Input Tax Credit (ITC) in respect of such supplies.
- The Taxpayer has filed a Writ petition before the Honorable Karnataka High Court seeking relief in the form of direction being given to the tax authorities allowing the amendment of Form GSTR-1.

##### Submissions by the Taxpayer

- The Taxpayer averred that they are entitled to claim the benefit of Circular no:183/15/2022-GST dated 27 December 2022 for bonafide mistakes made in furnishing details of outward supplies in FY 2017-18 and FY 2018-19
- Further, the Taxpayer also seeks to claim the aforesaid benefit in respect of the transaction pertaining to FY 2019-20 as the same was an inadvertent error that had occurred due to bonafide reasons, unavoidable circumstances and

sufficient cause. Consequently, the aforesaid circular may also be applicable qua FY 2019-20.

- In addition to the above, the recipient had filed a statement of objections setting out the facts admitting, accepting and re-enforcing the Taxpayer's claim with regard to the mismatch in mentioning of incorrect GSTIN.

##### Submissions by the Tax Authority

- The Tax Authority argued that the benefit of the aforesaid Circular is not available to the Taxpayer in the present case.
- Tax Authority also submitted that there is no merit in the present petition and the same is liable to be dismissed.

##### Observations & Ruling by the Honorable High Court

- The aforesaid Circular provides for clarification to deal with the difference in ITC availed in FORM GSTR-3B vis-à-vis FORM GSTR-2A for FY 2017-18 and 2018-19.
- There are various scenarios mentioned in the Circular and one such scenario as applicable to the instant case was 'Where the supplier has filed GSTR-1 as well GSTR-3B for a tax period, but he has declared the supply with the wrong GSTIN of the recipient in FORM GSTR-1'.
- Under these circumstances, having regard to the language employed in the aforesaid Circular which contemplates rectification of the bonafide and inadvertent mistakes committed by the suppliers at the time of filing of forms and submitting returns.

- Accordingly, the Honorable High Court opined that the error committed by the Taxpayer in showing the wrong GSTIN for the invoices is clearly an inadvertent error, which occurred due to bonafide reasons, unavoidable circumstances and sufficient cause. Consequently, the aforesaid Circular would be applicable to the facts of the instant case.
- The Honorable High Court also observed that there are identical errors in relation to FY 2019-20 in respect of which, a justice-oriented approach must be adopted. Accordingly, it was concluded that the Taxpayer would be entitled to claim the benefit of the aforesaid circular for FY 2019-20 too.
- In view of the above, the Tax Authorities were directed to follow the procedure mentioned in the aforesaid Circular as expeditiously as possible.  
*[High Court of Karnataka, M/s Wipro Limited India, W.P. No. 16175 of 2022(T-RES) dated 06 January 2023]*

#### PREPAID PAYMENT INSTRUMENTS (PPI)/VOUCHERS ARE NEITHER 'GOODS' NOR 'SERVICES', AND HENCE, NOT LEVIABLE TO GST

##### Facts of the case

- M/s. Premier Sales Promotion Pvt Limited (Taxpayer) is engaged in the business of procuring PPI of gift vouchers, cashback vouchers, and e-vouchers for its onward supply to its clients.
- These vouchers are used by the clients as incentives for employees or promotional schemes for supplying of 'goods' or 'services'.
- The Taxpayer had applied to the Authority for Advance Ruling, Karnataka (AAR) to determine whether the supply of PPIs would be leviable to GST as supply of goods. The AAR ruled that the supply of vouchers is taxable as goods and the time of supply will be governed by Section 12(5) of the Central Goods and Services Tax Act, 2017 (CGST Act). The rate of GST will be as per entry no:453 of Schedule 3 of notification no:1/2017-CT(R) dated 28 June 2017.
- On an appeal made by the Taxpayer before the Appellate Authority for Advance Ruling, Karnataka (AAAR), the aforesaid ruling was confirmed by AAAR.
- Aggrieved by the above, the Taxpayer has filed the Writ Petition before the Honorable Karnataka High Court.

##### Submissions by the Taxpayer

- The Reserve Bank of India (RBI) issued a master direction DPSS.CO.PD.No.1164 /02.14.006 /2017-18 on the issuance and operation of PPIs. Para 9.1(i)(g) of the direction specifically recognises that PPIs are for the purchase of goods and services. The vouchers involved in this case are PPIs that do not disclose the goods and services at the time of issuance.

- Since the goods are not identifiable at the time of issuance, as per Section 12(4)(b) of the CGST Act, the time of supply shall be the date of redemption of vouchers.
- The voucher would remain only as an instrument till the time it is used for discharging an obligation towards the supply of 'goods' or 'services'. Till the time of redemption, the voucher can be considered as an actionable claim as defined under Section 2(1) of the CGST Act, which are neither treated as 'goods' nor 'services' (Schedule-III of the CGST Act).
- Therefore, the impugned order passed by the AAR & AAAR is contrary to the law.

##### Observations and Ruling by the Honorable High Court

- It is undisputed that the vouchers involved in the present case are semi-closed PPIs in which, the nature of 'goods' or 'services' that can be redeemed is not identifiable at the time of issuance.
- Vouchers are distributed by the clients to their employees/customers. These PPIs do not permit cash withdrawals, irrespective of whether they are issued by banking or non-banking companies, and they can be issued only with the prior approval of the RBI.
- In substance, the transaction between the Taxpayer and his clients is for procurement of printed forms (which are like currency) and their onward delivery. The value printed on the form can be transacted only at the time of redemption of the vouchers and not at the time of its delivery. Therefore, the issuance of vouchers is similar to a pre-deposit and not for the supply of 'goods' or 'services'. Hence, vouchers can be covered under the purview of the term 'money' which are neither 'goods' nor 'services'. Consequently, such vouchers cannot be leviable to GST.
- In view of the above facts, the Writ petition filed by the Taxpayer is allowed and the Order passed by the AAR/AAAR is quashed.  
*[High Court of Karnataka, M/s. Premier Sales Promotion Pvt Limited Writ petition no.5569 OF 2022 (T-RES) date 16 January 2023]*

##### ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

#### ASSISTANCE IN DESIGNING AND DEVELOPMENT OF TOOLS IS THE SUPPLY OF 'GOODS'

##### Facts of the case

- M/s. Precision Camshafts Limited (Taxpayer) is engaged in the business of manufacturing camshafts used in vehicle engines. The camshafts manufactured are sold to both domestic and overseas customers. Such camshafts are manufactured based on the specifications of the customer using specific patterns and tools provided by them.

- The Taxpayer provides assistance in designing and process planning for the development of tools, which constitutes the major component of supply. However, the machining of tools is done by third party vendors hired by the Taxpayer. The Taxpayer supplies both camshafts and assistance in designing and process planning to its customers.
- According to the Taxpayer, designing and development of patterns is a composite supply consisting of the provision of designs or drawing of patterns, hiring of a third party for machining of tools and assistance to customers.
- The Taxpayer filed an application before the Authority for Advance Ruling, Maharashtra (AAR) for determining whether such supply would be treated as a composite supply of services.
- The AAR held that the services supplied by the Taxpayer are intermediary services.
- Aggrieved by the aforesaid ruling, the Taxpayer filed an appeal before Appellate Authority for Advance Ruling, (AAAR).

#### Questions before the AAAR

- Whether the supply of assistance in the design and development of patterns used for the manufacture of a camshaft is a composite supply where the principal supply is the supply of services

#### Contention by the Taxpayer

- The Taxpayer contended that designing and development of patterns is a composite supply consisting of the provision of designs or drawing of patterns, hiring of a third party for machining of tools and assistance to customers which is supplied as a package for a single price.
- The Taxpayer also submitted that designing of patterns constitutes the principal supply as it is unique for every customer and forms a major component of such supply.
- It was also contended that assistance in the design and development of patterns do not qualify as intermediary services since such supply is undertaken on a principal-to-principal basis.

- The Taxpayer also submitted that separate invoices were raised for all transactions on a principal-to-principal basis and that no commission was charged from the customers for engaging third party vendors. Hence, the Taxpayer is not facilitating any service between its customers and third party vendors.
- Taxpayers also claimed that the ruling of the AAR is a non-speaking order which is passed without adhering to the principles of natural justice.

#### Contentions by the Tax Authority

- The Tax Authority contended that assistance in designing and development of tools is incorporated in the value of goods itself. Such a pattern or tool is necessary to manufacture camshafts. Hence, a pattern or tool (goods) constitutes the principal supply in the present transaction.
- Further, the Tax Authority is of the opinion that since the dominant intention of the customers is to procure the manufactured pattern or tools as per the specification, it is clear that the principal supply is that of goods.
- The Tax Authority further contended that since the tools or patterns developed for the overseas customers are in possession with the Taxpayer and are not taken outside India, they cannot be treated as exports. Hence, the Taxpayer is required to raise tax invoices to its overseas customers and collect tax amounts wherever applicable.

#### Observations and Ruling by the AAAR

- On perusal of documents and submissions, AAAR held the transaction in the present case is for the supply of goods i.e. patterns or tools on a principal-to-principal basis and does not qualify as an intermediary service. Hence, the findings of the AAR are erroneous and not acceptable.
- AAAR also concluded that the transaction between the Taxpayer and its customers cannot be treated as a composite supply of services.

*[AAAR-Maharashtra, M/s. Precision Camshafts Limited, order no:MAH/AAAR/DS-RM/16/2022-23, dated 20 January 2023]*

## FOREIGN TRADE POLICY (FTP)

### PUBLIC NOTICE

#### AMENDMENT IN APPENDIX 2T (LIST OF EXPORT PROMOTION COUNCILS/COMMODITY BOARDS/ EXPORT DEVELOPMENT AUTHORITIES) OF FOREIGN TRADE POLICY 2015-2020

Nutraceutical products have been included in the jurisdiction of the Shellac & Forest Products Export Promotion Council (SHEFEXIL) in Appendix 2T of FTP 2015-2020.

*[Public notice no:55/2015-2020]*

## NEWS FLASH

### “GST Council meet likely this month”

<https://www.financialexpress.com/economy/gst-council-meet-likely-this-month/2969781/>

[Source: Financial Express, 03 February 2023]

### “Know 9 Legislative GST Changes In Budget 2023-24”

<https://www.livelaw.in/news-updates/gst-changes-budget-2023-goods-and-services-tax-220448>

[Source: Live Law, 01 February 2023]

### “System error: How automated notices under GST is leading to proliferation of disputes and litigations”

<https://economictimes.indiatimes.com/small-biz/gst/system-error-how-automated-notices-under-gst-is-leading-to-proliferation-of-disputes-and-litigations/articleshow/97571173.cms>

[Source: The Economic Times, 03 February 2023]

### “GST revenue of ₹1.50 lakh cr monthly to be new normal next fiscal: CBIC chief”

<https://www.livemint.com/news/india/gst-revenue-of-rs-1-50-lakh-cr-monthly-to-be-new-normal-next-fiscal-cbic-chief-11675349015408.html>

[Source: Livemint, 02 February 2023]

### “Budgetary Support Under GST Regime Can't Be Denied To Eligible Unit: Delhi High Court”

<https://www.livelaw.in/news-updates/budgetary-support-under-gst-regime-cant-be-denied-to-eligible-unit-delhi-high-court-220687>

[Source: Livelaw, 04 February 2023]

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