

INDIRECT TAX

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GOODS & SERVICES TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

ITC is not available on vouchers and subscription packages procured for a loyalty program

Facts of the case

- M/s. Myntra Designs Private Limited (Taxpayer) is a major Indian fashion e-commerce company and owns an e-commerce portal (www.myntra.com). The Taxpayer engaged in the business of selling of fashion and lifestyle products through the portal
- The suppliers of such products use the Taxpayer's portal to list and sell their products to the customers. Once an order is placed by the customer, the Taxpayer collects money from them towards the purchase of the said order through its portal in its capacity as an e-commerce operator and settles the amount payable with the supplier within a specified period
- With an intent to increase the customer base on its portal which will directly increase the sales and commission, the Taxpayer proposes to run a loyalty program by way of issuing points to the customers on the basis of purchases made by them from various sellers on the Taxpayer's portal
- The eligibility for the proposed loyalty program will be subject to the pre-defined criteria and the terms and conditions laid down by the Taxpayer

Question before the AAR

Whether the Taxpayer would be eligible to claim the ITC under Section 16 of the Central Goods and Services Tax Act, 2017 (CGST Act) on the vouchers and subscription packages procured from third-party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned/accumulated by the said customers?

Contention by the Taxpayer

- The Taxpayer contended that they procure the vouchers and subscription packages from third-party vendors, who raise GST invoices on the Taxpayer by classifying their outward supply under SAC 9983 as **'other professional, technical and business services'**
- The Taxpayer wanted more customers to visit its platform and undertake purchases to enable it to earn a commission for rendering services to the suppliers of products
- They are entitled to claim credit of GST charged by the vendors on the said vouchers/subscription packages, which are used for running the loyalty program on account of the following
 - Procurement of voucher and subscription packages is for the 'business' of the Taxpayer
 - Procurement and provision of voucher and subscription packages are **'in the course of and furtherance of business'**
 - ITC is neither restricted nor blocked under Section 17 of the CGST Act

- A credit of GST paid on such purchases for business was available under the erstwhile regime

Observations & Ruling by the AAR

- AAR referred to the provisions for eligibility of ITC and noted that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person
- In view of the above, the AAR observed that ITC is an entitlement to a registered person which can be taken subject to the prescribed conditions and restrictions. In this regard, it was seen that Section 17(5) of the CGST Act prescribes that ITC shall not be available in respect of certain supplies. Section 17(5)(h) is relevant to the issue under consideration, and is reproduced below
Section 17(5)(h) “goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples”\
- Thus, the issue to be decided by the AAR was whether the voucher merits classification as 'goods' or 'service', and if they are goods, whether they have been disposed of, by way of gift or otherwise
- The AAR referred to the following definition of 'voucher' under Section 2(118) of the CGST Act “voucher” means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument
- AAR further referred to Section 2(52) of CGST Act wherein the term 'goods' has been defined to mean every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply
- From the aforesaid definitions, it is observed that the meaning of the term 'goods' is not restricted to tangible property and instead refers to every kind of movable property which is capable of being transmitted or supplied. Vouchers, being movable property are capable of being transmitted electronically or supplied physically and hence, they qualify as 'goods'
- AAR also referred to the case of **Tata Consultancy Services Vs the State of Andhra Pradesh (2004) & Vikas Sales Corporation Vs CCE (1996)** and observed that the term 'voucher' had all the capabilities of getting covered under the purview of goods, irrespective of being tangible or intangible
- A voucher is a moveable property and is covered as intangible goods. Further, as per Schedule II of the CGST Act, any transfer of the title in goods is a supply of goods. The transaction of supply of vouchers in the instant case involves the transfer of the title, and hence, they are covered under supply of goods
- AAR further observed that the loyalty program allows the customer to earn loyalty points on the basis of a particular transaction/purchase by the customer through the Taxpayer's e-commerce platform. The eligibility for the program is subject to the customer's acceptance of the terms and conditions stipulated by the Taxpayer

- The Taxpayer in the initial transaction/purchase recovers the full amount from the customer and gives the loyalty points on a 'free of cost' basis. The Taxpayer admitted that the said loyalty points do not have any monetary value, are non-transferable and cannot be converted to cash. The redemption of loyalty points admittedly involves no flow of consideration from the customer. Thus, the redemption of loyalty points by the customer for receiving vouchers from the Taxpayer implies that the vouchers are issued 'free of cost' to the customer and amount to disposal of vouchers (goods) by way of gift and are squarely covered under Section 17(5)(h) of the CGST Act
- The AAR held that the Taxpayer is not eligible to avail the ITC, in terms of Section 16 of the CGST Act, on the vouchers and subscription packages procured by the Taxpayer from third-party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned/accumulated by the said customers, as the ITC is not available in terms of Section 17(5)(h) of the CGST Act
[AAR-Karnataka, M/s. Myntra Designs Private Limited, Ruling no:KAR ADRG 33/2022, dated 14 September 2022]

Sale of land is not taxable under GST Act, 2017

Facts of the case

- M/s. Rabia Khanum (Taxpayer) is an individual who owns the land and is planning to convert that land into small residential plots and sell them to individuals for the construction of houses
- The sale deed will be executed after receipt of full consideration and completion of development works related to basic necessities on such land. In this regard, Taxpayer intends to know the applicability of the CGST Act to the transaction

Questions before the AAR

- Whether GST is leviable on the consideration and advance amounts received on the sale of plots? If yes, what would be the applicable GST rate and the value of supply for discharging GST liability?
- If GST is chargeable, whether the Taxpayer can collect GST from prospective buyers and claim ITC on development expenses paid by them?

Contention by the Taxpayer

The Taxpayer submitted that the sale of land is neither supply of goods nor services and hence, such transaction will be outside the ambit of GST in view of Schedule III to CGST Act.

Observations and Ruling by the AAR

- AAR after examining Schedule III to CGST Act, 2017 concluded that the sale of land does not attract GST even if it is sold after providing basic development services. However, services provided for the development of land are taxable under GST as per circular no:177 dated 3 August 22 issued by CBIC
- Hence the question of admissibility of ITC becomes redundant
[AAR-Karnataka, M/s. Rabia Khanum, Ruling no:KAR ADRG 31/2022, dated 8 September 2022]

ITC available on upfront lease premium subject to Sections 16 and 17 of CGST Act, 2017

Facts of the case

- M/s. Kamarajar Port Limited (Taxpayer), a CPSE under the Ministry of Ports, Shipping & Waterways, Government

of India functions on the “Landlord Port Mode” basis, whereby the port provides the basic infrastructure facilities like breakwaters, capital dredging, maintenance of port channels, dredged basin/channel, road and rail infrastructure for connectivity to hinterland, aids to navigation, firefighting facilities, utilities, water and power supply and manage the resources apart from regulatory functions and overall port planning and development. Operating functions such as planning, safety, pilotage, mooring, navigation and overall coordination are done by the port

- The Taxpayer has stated that Chennai Port Trust has allotted covered space to an extent of 267 sq. m. at the ground floor, North Wing of Jawahar building on upfront premium for long term lease basis to the taxpayer till 31 August 2045 from the date of handing over of the premises by Chennai Port Trust. The space is intended to be used by the taxpayer as an extended corporate office

Question before the AAR

Whether ITC can be claimed on the upfront lease premium paid?

Observations and Ruling by the AAR

- The Taxpayer has stated that the contract is a simple lease contract of building and does not envisage any construction activity. Hence, ITC should not be restricted/blocked under Section 17 of the CGST Act
- As per Section 16(1) of CGST Act, a registered person can take ITC of GST paid on supply of such goods or services which are used or intended to be used in the course or furtherance of his business
- In the instant case, the Taxpayer has procured space from Chennai Port Trust which is intended to be used by them as an extended corporate office for the accommodation of record/documentation room till 31 August 2045. In respect of such rights, the Taxpayer has stated that the right-to-use asset that has to be capitalized includes the initial direct cost incurred by them
- On perusal of the tax invoice, it was observed that the license fee paid by the Taxpayer is leviable to GST. The upfront lease premium is paid by the Taxpayer for the allotment covered space to be used on an as-is basis as an extended corporate office
- On perusal of the lease allotment letter, it was observed that the arrangement does not envisage undertaking construction activity by the Taxpayer. The upfront premium paid by the Taxpayer can be construed towards lease rentals for the services of ‘renting of immovable property’ for business purposes. Since the procurement of such premises is not related to any construction activity, the restriction to claim ITC provided under Section 17(5)(d) of the CGST Act would not apply to the instant case
- In view of the above, the AAR held that ITC of GST paid on the upfront lease premium is available to the taxpayer subject to provisions of Sections 16 and 17 of the CGST Act, 2017

[AAR-Tamil Nadu, m/s. Kamarajar Port Limited Ruling no:32/AAR/2022 dated 29 July 2022]

CENTRAL EXCISE

NOTIFICATION

Reduction of the Special Additional Excise Duty (SAED) on Petroleum Crude and Aviation Turbine Fuel(ATF)

Amendment has been made in notification no:18/2022-CE, dated 19 July 2022 which prescribes reduction of the SAED on the production of petroleum crude and export of ATF. In the said notification following amendment is made in the table

S. No.	Chapter or heading or subheading or tariff item	Description of goods	Existing Rate	Proposed Rate
1	2709	Petroleum crude	INR 13,300 per tonne	INR 10,500 per tonne
2	2710	Aviation Turbine Fuel	INR 9 per Litre	INR 5 per Litre

This notification shall come into force on 17 September 2022.

[Notification no:29/2022 dated 16 September 2022]

Reduction of the Special Additional Excise Duty (SAED) on High Speed Diesel oil

Amendment has been made in notification no:04/2022-CE, dated 30 June 2022 which prescribed the rate of SAED for exports of petrol and diesel. In the said notification following amendment is made in the table

S. No.	Chapter or heading or subheading or tariff item	Description of goods	Existing Rate	Proposed Rate
2	2710	High speed diesel oil	INR 12 per litre	INR 8.50 per litre

This notification shall come into force on 17 September 2022.

[Notification no:30/2022 dated 16 September 2022]

CUSTOMS

NOTIFICATION

Extension of the validity of e-scrips under the Electronic Duty Credit Ledger Regulations, 2021

The e-scrip shall be valid for a period of two years [which was earlier one year] from the date of its creation in the ledger and any duty credit in the said e-scrip remaining unutilised at the end of this period shall lapse. The validity of two years shall not change on account of the transfer of e-scrip.

[Notification no:79/2022 dated 15 September 2022]

Inland Container Depots(ICD) for loading and unloading of goods

Amendment has been made in notification no:12/97-Customs (N.T.), dated 2 April 1997 which prescribes ICDs for loading and unloading of goods. In the state of Gujarat, Taluka Manaba, Distt. Morbi has been added for the purpose of unloading of imported goods and loading of export goods.

[Notification no:80/2022 dated 21 September 2022]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Allows International trade invoicing, payment, and settlement in INR

According to RBI's A.P. (DIR Series) circular no:10 issued by RBI on 11 July 2022, DGFT has amended the Foreign Trade Policy to enable the settlement of trade transactions in INR through Special Rupee Vostro Accounts opened by Authorised Dealer ('AD') banks in India through the following procedure

- Indian importers undertaking imports through this mechanism shall make payment in INR which will be credited into the special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas supplier/seller
- Indian exporters undertaking exports of goods and services through this mechanism shall be paid the export proceeds in INR from the balances in the designated special Vostro account of the correspondent bank of the partner country

[Notification no:33/2015-20 dated 16 September 2022]

Extension for the period of exports of broken rice (HS code 1006 40 00)

Export of consignments of broken rice (ITC HS code 1006 40 00) as permissible under notification no:31 dated 8 September 2022 has been extended till 30 September 2022.

[Notification no:34/2015-20 dated 20 September 2022]



NEWS FLASH

1. "Key GST related issues MSMEs must convey to govt for resolution"
<https://www.financialexpress.com/industry/sme/cafesme/msme-eodb-key-gst-related-issues-msmes-must-convey-to-govt-for-resolution/2671304/>
 [Source: Financial Express, 17 September 2022]
2. "Govt working on GST on crypto transactions, defining legal framework"
https://www.business-standard.com/article/economy-policy/govt-working-on-crypto-transactions-gst-finmin-to-define-legal-framework-122091900382_1.html
 [Source: Business Standard, 19 September 2022]
3. "GST Council meet may be postponed to October"
<https://www.financialexpress.com/economy/gst-council-meet-may-be-postponed-to-october/2675462/>
 [Source: Financial Express, 20 September 2022]
4. "Cosmetic ayurved products face higher 18% GST: AAR"
<https://timesofindia.indiatimes.com/business/india-business/cosmetic-ayurved-products-face-higher-18-gst-aar/articleshow/94311538.cms>
 [Source: Times of India, 20 September 2022]
5. "Non-alcoholic beer to face 28% GST, 12% cess: AAR"
<https://timesofindia.indiatimes.com/business/india-business/non-alcoholic-beer-to-face-28-gst-12-cess-aar/articleshow/94338465.cms>
 [Source: Times of India, 21 September 2022]

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