

# INDIRECT TAX WEEKLY DIGEST

23 May 2023  
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## GOODS & SERVICES TAX

### JUDICIAL UPDATES

#### WRIT PETITION

##### UPHOLDS VALIDITY OF INSPECTION CONDUCTED BY VIGILANCE DEPARTMENT

##### Facts of the Case

- M/s. Sudhakar Traders (Taxpayer), a registered dealer under the GST law, is inter alia engaged in trading iron and steel products.
- The Taxpayer's business premises were inspected by the Vigilance & Enforcement Department of the Home Ministry (VED) wherein stock variation and sales without proper invoices or bills were observed. Consequently, VED obtained a statement from the Taxpayer and forwarded an alert note to the Tax Authorities, urging them to take necessary action against tax evasion/ suppression of turnover.
- Subsequently, the Tax Authorities verified the returns furnished by the Taxpayer and identified suppression of turnover in the returns. Accordingly, the Tax Authorities issued notices in Form GST ASMT-10 (Impugned notices) highlighting discrepancies in the periodical GST returns and sought reasons for such differences.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Andhra Pradesh High Court.

##### Contentions by the Taxpayer

- There is no provision which authorises VED to conduct an inspection of the Taxpayer's business premises under the GST law. Thus, the Impugned Notices issued on the strength of the alert issued by VED violate provisions of the GST law.
- Without prejudice to the above, VED cannot issue any alert notes to the Tax Authorities because the Government is mandatorily required to issue notification empowering a class of officers other than those mentioned under

Section 72(1) of Andhra Pradesh Goods and Services Tax Act, 2017 (APGST Act) for providing assistance to the Tax Authorities in enforcing the law.

- In the present case, there is no evidence to establish that:
  - The Tax Authorities have issued any requisition to the Government seeking assistance from VED
  - The Government has issued a notification for the same.
- Further, the Impugned Notices also lack authorisation by the proper officer to conduct inspection or issue such notices as required under Section 67 of the APGST Act and hence, are unsustainable.
- The Taxpayer's request to the Tax Authorities for providing a copy of the inspection report and other material forwarded by the VED was not considered. Thus, depriving the Taxpayer, of an opportunity to effectively respond to and provide explanation in respect of the Impugned Notices.

##### Contentions by Tax Authorities

- The Impugned Notices are issued as per the procedure provided under Rule 99(1) of the Andhra Pradesh Goods and Services Tax Rules, 2017 (APGST Rules) read with Section 61 of the APGST Act and not under Section 67(1) / 67(2) of the APGST Act (which applies on contravention of the provisions of the APGST Act to evade taxes). Thus, the proper officer mentioned in Section 67 of the APGST Act may authorise the Tax Authorities to inspect the premises of the Taxpayer.
- After the self-assessment of periodical GST returns, the Tax Authorities are empowered to scrutinise the said GST returns and related particulars, to verify their correctness and inform the Taxpayer of any discrepancies and seek requisite explanation in respect of the same.

- The Tax Authorities have issued the Impugned Notices based on the alert note from VED and hence, have acted within their powers and jurisdiction in issuing the Impugned Notices.
- As per Government Order no.504, dated 25 November 1997, the role of the VED inter alia includes preventing revenue leakage for the Government. Accordingly, VED conducted an inspection of the Taxpayer's premises and discovered stock variation and sales without proper invoices or bills. Subsequently, VED obtained a statement from the Taxpayer and forwarded an alert note to the Tax Authorities, urging them to take necessary action against tax evasion. Thus, the VED's actions are legally justified.

#### Observation and ruling by the Hon'ble High Court

- The enforcement functions of VED inter alia include safeguarding Government revenues. Thus, VED has the authority to conduct inspections at the Taxpayer's business premises and exchange information with other statutory authorities to protect the Government's revenue. Therefore, the Taxpayer's claim that VED lacks the legal right to conduct inspections or forward alert notes is incorrect.
- The notices issued by the Tax Authorities are based on Rule 99(1) of the APGST Rules read with Section 61 of the APGST Act, not under Section 67 of the APGST Act. As per Section 61 of the APGST Act, if discrepancies are found during the scrutiny of returns and related particulars, the Tax Authorities may seek an explanation from the Taxpayer. If the explanation is satisfactory, no further action is required but appropriate action may be initiated otherwise.
- The officers working in VED have jurisdiction and powers throughout the State of Andhra Pradesh in respect of matters to which the Executive Authority of the State extends and would also extend to all departments of the State Government. Thus, VED is empowered to make inspections in the Taxpayer's premises for safeguarding the interests of revenue due to the Government. Further, the issuance of alert notes is merely an exchange of information between two statutory authorities for protecting the revenue due to the Government.
- In the present case, the Tax Authorities have issued the Impugned Notices based on the alert issued by VED and provided an option to either pay differential tax or provide objections where the differential tax was not acceptable. However, no action was intended to inspect the Taxpayer's premises or to search or seize the goods/books of accounts as provided under Section 67 of the APGST Act. Therefore, the Tax Authorities are not required to obtain authorization under Section 67 of the APGST Act. Hence, the Taxpayer's contention that the notices are illegal due to lack of authorisation under Section 67 of the APGST Act is untenable.
- The notices were issued by the Deputy Commissioner and not the Chief Commissioner. However, the Tax Authorities would require authorisation of the Chief Commissioner to

issue the Impugned Notices as per Rule 99 of the APGST Rules read with Section 61 of the APGST Act, which has not been done in the present case. As a result, the Impugned Notices lack necessary authorisation from the Chief Commissioner and hence deserve to be set aside.

- Given the above, the Writ Petition is partly allowed while allowing the Tax Authorities to issue fresh notices with proper authorisation.

*[M/s. Sudhakar Traders Vs State of Andhra Pradesh, [TS-180-HC(AP)-2023-GST], dated 10 May 2023]*

#### ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

##### GENERAL POWER OF ATTORNEY (GPA) HOLDER IS LIABLE TO PAY GST ON RENTING IMMOVABLE PROPERTY

#### Facts of the case

- Shri Nagabhushana Narayana (Taxpayer), a non-resident Indian residing outside India, owns a property in Bangalore.
- Since the Taxpayer does not have a fixed establishment/place of business in India, the aforesaid property is rented through the Taxpayer's mother i.e., Smt. G Prabhavathi, holding a General Power of Attorney (GPA holder) inter alia authorised to induct the tenant, create a tenancy, and execute necessary deeds or documents.
- The income from the aforesaid property is received and retained by the GPA holder.
- The Taxpayer filed an application for Advance Ruling to determine his liability to obtain GST registration and discharge applicable GST on the aforesaid rental income.

#### Contentions by the Taxpayer

- The Taxpayer does not have a 'fixed establishment' or any 'place of business' in India. Consequently, the location of the supplier of service will be the usual place of residence of the supplier i.e., outside India.
- The service supplied by the Taxpayer can be construed as an import of services as defined under Section 2(11) of the Integrated Goods & Services Tax Act, 2017 (IGST Act). Consequently, applying the provisions of Section 24(i) of the Central Goods & Services Tax Act, 2017 (CGST Act), the recipient of service (i.e., the lessee) is liable to obtain GST registration & discharge applicable GST in terms of Sl. No. 1 Notification no:10/2017-IGST (Rate) dated 28 June 2017.
- In view of the above, the Taxpayer is not liable to obtain GST registration and discharge GST on the supply of services by way of renting immovable property.

#### Observations and Ruling by the AAR

- A General Power of Attorney, governed by the provisions of the Power of Attorney Act, 1882, empowers a person to act for and in the name of the person executing it. The salient features of the General Power of Attorney are as under:
  - It is a legal document authorising a person to act on behalf of another.

- The person granting such authority is known as the 'principal', whereas the person receiving the authority is called the 'agent'.
- The actions undertaken by the agent under the General Power of the Attorney are legally binding on the principal.
- The Taxpayer has appointed the GPA holder to manage the property inter alia including induction of tenants, creating a tenancy, executing other deeds or documents, and receiving profits, rents, lease advance money, etc. in connection with the renting of immovable property.
- As per Section 7 of the CGST Act read with Entry 2(b) of Schedule II to the CGST Act, the activity of leasing or letting out a building, including commercial, industrial, or residential complexes, for business or commercial purposes is considered as a supply of services.
- Further, the term 'supplier' defined under Section 2(105) of the CGST Act includes an agent acting on behalf of the supplier in relation to the goods or services supplied.
- As per the settled principles highlighted above, the GPA holder is an agent of the Taxpayer and hence, will be considered as the supplier of service.
- Accordingly, the GPA holder would be liable to obtain GST registration and discharge applicable GST on renting immovable property. Further, since the location of the supplier of service (i.e., GPA holder) and the place of supply of service (i.e., location of supplier of service as per Section 12(3) of the IGST Act) is in the same State, such supply would be treated as an intra-state supply leviable to applicable GST.

[AAR-Karnataka, Shri Nagabhushana Narayana, [KAR ADRG 17/2023], dated 13 April 2023]

#### BONUS RECEIVED BY CANTEEN SUPPLIER FOR ONWARD PAYMENT TO ITS EMPLOYEES TO BE TREATED AS CONSIDERATION FOR SUPPLYING 'CANTEEN SERVICES'

##### Facts of the case

- M/s. Foodsutra Art of Spices Pvt. Ltd. (Taxpayer) inter alia provides canteen services to ITC Ltd. on payment of GST @ 5%.
- In addition to the consideration for providing canteen services, the Taxpayer also receives a lumpsum bonus from ITC Ltd. for its onward payment to the Taxpayer's employees.
- The Taxpayer was of the view that the lumpsum bonus would be treated as a supply of intermediary services on which, the Taxpayer would be liable to discharge GST @ 18%. However, ITC Ltd. opined that such payment would be leviable to GST @ 5% as canteen services.
- As a result, the Taxpayer filed an application for Advance Ruling to determine the rate of GST on the aforesaid bonus recoveries.

##### Contentions by the Taxpayer

- The term 'consideration' defined under Section 2(32) of the CGST Act inter alia includes any payment made or to be made in respect of, in response to, or for the inducement of the supply of services whether by the recipient or any other person.

- As per the aforesaid provision, ITC Ltd contends that payment of bonus is not towards a separate service. Instead, the same is to be considered as a part of canteen services and hence, leviable to GST @ 5%.
- However, the Taxpayer is of the opinion that a bonus is received by the Taxpayer for making payments to the employees and hence, such activity ought to be classified as an 'intermediary service'. Consequently, the Taxpayer would be liable to discharge GST @ 18%

##### Observations and Ruling by the AAR

- While both the members of the AAR (i.e., State Tax and Central Tax) have given the same conclusions in respect of the question raised before them, separate observations were made by them.
- **Observations of the State Tax member:**
  - The Taxpayer is receiving regular amounts for supplying canteen services and is also entitled to receive an additional amount with the nomenclature of bonus.
  - On perusal of Section 15 read with Section 2(31) of the CGST Act, it can be construed that all payments made in respect of a supply are included in the value of supply on which applicable GST must be discharged.
  - The Taxpayer provides canteen services to ITC Ltd and does not provide any other ancillary or incidental services. Therefore, such amounts are in relation to the supply of canteen service. Hence, the same is required to be included in the value of supply on which GST @ 5% would be payable.
- **Observations of the Central Tax member:**
  - On perusal of Section 15 read with Section 2(31) of the CGST Act, it can be construed that all payments made in respect of a supply are included in the value of supply on which applicable GST must be discharged.
  - If the Taxpayer retains a portion of the bonus received from ITC Ltd., then the same would be leviable to discharge GST as under:
    - Amount retained and not distributed to the employees: Such amounts would be treated as consideration for supplying 'intermediary services' and hence, leviable to GST @ 18%.
    - Amount distributed to the employees: Such amounts would be treated as consideration for supplying canteen services and hence, leviable to GST @ 5%.
  - However, if the Taxpayer does not retain any portion of the bonus received from ITC Ltd., then the entire quantum of bonus would be treated as consideration for supplying canteen services and hence, leviable to GST @ 5%.

[AAR - Telangana, M/s. Foodsutra Art of Spices Pvt. Ltd., (TSAAR Order No. 07/2023), dated 12 April 2023]

## CUSTOMS

### CIRCULARS

#### AMNESTY SCHEME FOR DEFAULT IN EXPORT OBLIGATION SETTLEMENT BY ADVANCE AUTHORISATION (AA) AND EPCG AUTHORISATION HOLDERS

- CBIC has issued a circular in respect of the amnesty scheme for default in Export Obligation (EO) which inter alia clarifies the following:
    - Notification No. 32/2023-Customs dated 26 April 2023 provides that in case of default in EO, when the duty on the goods is paid to regularise the default in terms of Public Notice No. 02/2023 dated 1 April 2023 notified by DGFT, the amount of interest payable by the importer shall be as per the aforesaid Public Notice.
    - Cases pertaining to calculation mistakes are to be dealt with on merits.
- [Circular no:11/2023-Customs, dated 17 May 2023]*

## DGTR - FINAL FINDINGS - ANTI-DUMPING INVESTIGATION

#### RECOMMENDATION FOR THE IMPOSITION OF ANTI-DUMPING DUTY (ADD) ON THE IMPORT OF SINGLE-MODE OPTICAL FIBER

- The Designated Authority, Directorate General of Trade Remedies, has recommended imposition of ADD on the import of Single-Mode Optical Fiber (including Dispersion Unshifted Fiber (G.652) and Bend insensitive Single-Mode Fiber (G.657)), classifiable under HSN code 9001 10 00 when exported or originating from specified countries/producers.
  - However, the imposition of ADD is not recommended for the import of Dispersion Shifted Fiber (G.653), Cut-off Shifted Single-Mode Optical Fiber (G.654) and Non-Zero Dispersion Shifted fibre (G.655 and G.656).
  - Pursuant to the aforesaid recommendations, the Central Government may notify the imposition of ADD on the aforesaid products, post to protect the domestic industry from further injury.
- [DGTR Final Findings - Case No. A.D (OI)-01/2022, dated 5 May 2023]*

## NEWS FLASH

#### “GST Dept Seeks Access to Banking Transactions to Detect Fake Invoices”

<https://www.businessworld.in/article/GST-Dept-Seeks-Access-To-Banking-Transactions-To-Detect-Fake-Invoices-/15-05-2023-476532/>

*[Source: Business World, 15 May 2023]*

#### “Special drive to check fake GST registrations”

<https://timesofindia.indiatimes.com/city/chandigarh/special-drive-to-check-fake-gst-registrations/articleshow/100264589.cms>

*[Source: Times of India, 16 May 2023]*

#### “To boost GST compliance, Govt lowers B2B e-invoice threshold”

<https://indianexpress.com/article/business/boost-gst-compliance-govt-lowers-b2b-e-invoice-threshold-8604647/>

*[Source: Indian Express, 11 May 2023]*

#### “Automated return scrutiny rolled out”

<https://www.financialexpress.com/economy/automated-return-scrutiny-rolled-out/3083882/>

*[Source: Financial Express, 12 May 2023]*

#### “GST e-invoicing threshold to be lowered to Rs 5 crore”

<https://www.financialexpress.com/economy/gst-e-invoicing-threshold-to-be-lowered-to-rs-5-crore/3083870/>

*[Source: Financial Express, 12 May 2023]*

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