

INDIRECT TAX WEEKLY DIGEST

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GOODS & SERVICES TAX

JUDICIAL UPDATES WRIT PETITION

TAXPAYER HAS TO BE ALLOWED TO RECTIFY FORM GST 1 RETURNS WHERE B2B SUPPLIES DISCLOSED AS B2C

Facts of the case

- During January 2020, M/s. Odisha Construction Corporation Limited (OCCL), the principal contractor of M/s. Shiva Jyoti Construction (Taxpayer) pointed out that the Taxpayer had wrongly disclosed the outward supplies made to OCCL under B2C supplies instead of B2B supplies in their GSTR-1 returns, for the tax periods September 2017 and March 2018.
- Thereafter, the Taxpayer has been making requests to the Tax Authority for carrying out the necessary rectifications in their relevant GSTR-1 returns, in order to enable OCCL to avail ITC in respect of such supplies. However, these requests were not resolved by the Tax Authority.
- Being aggrieved by the above circumstance, the Taxpayer has filed a Writ petition before the Hon'ble Orissa High Court.

Submissions before the High Court of Orissa

- The Taxpayer averred that OCCL has informed about the aforesaid error after examining the Running Bill amount of the Taxpayer on 21 January 2020.
- On the other hand, the Tax Authority argued that once the deadline (being 13 April 2019) for rectification of the forms was crossed, then no further indulgence could be granted to the Taxpayer.

Observations and ruling by the High Court

- There will neither be an escapement of tax liability nor loss of revenue if the Taxpayer is permitted to rectify the aforesaid error in its GSTR 1 returns.
- The rectifications sought by the Taxpayer would only enable OCCL to claim ITC, which if permitted, would not prejudice the interest of the revenue.
- Accordingly, the action of the Tax authority rejecting the Taxpayers plea was set aside and the Taxpayer was permitted to resubmit the corrected Forms for the aforementioned periods.
- The Tax authority was further directed to receive the corrected Forms manually and to facilitate uploading of those details in the web portal.

[High Court of Orissa, Shiva Jyoti Construction, W.P.(C) No. 18216 of 2017 dated 12 January 2023]

HON'BLE HIGH COURT ISSUES INTERIM ORDER ALLOWING REFUND OF TAX PAID ON INTER-STATE SUPPLY (IGST) AGAINST PAYMENT OF APPLICABLE TAXES ON INTRA-STATE SUPPLY (CGST+SGST)

Facts of the case

- M/s. Skylark Infra Engineering Pvt. Ltd. (Taxpayer) having its registered office in Delhi primarily engaged in the business of supplying manpower to various entities.

- For the periods 2017-18, 2018-19, 2019-20, the Taxpayer had supplied manpower service to M/s. GVK Jaipur Expressway Pvt. Ltd. (situated in Rajasthan) from its Delhi GSTIN, on which, it had deposited 18% IGST by treating the supply of manpower as an inter-state supply of services with the place of supply as Rajasthan (being the location of the recipient of service).
- The Taxpayer was served with a Show-Cause-Notice dated 03 July 2020 by the Rajasthan GST authorities requiring the Taxpayer to show cause as to why the aforesaid services would not be treated as an intra-state supply of service made by the Taxpayers Rajasthan GSTIN to the recipient. Accordingly, the Tax Authority had sought the demand of CGST & SGST under Section 74 of the CGST Act, 2017 along with interest and penalty.
- The Tax authority confirmed the aforesaid demand which was also affirmed by the first Appellate Authority viz. Joint Commissioner (Appeals).
- Since the Appellate Tribunal has not been constituted, the Taxpayer has preferred a Writ petition challenging the assessment order dated 20 October 2020 passed by the assessing authority and the order dated 23 September 2022 passed by the Appellate authority.

Contention by the Taxpayer

- The Taxpayer submitted that the service of supply of manpower to an entity in Rajasthan by the Taxpayer is an inter-state transaction as the said supply has been undertaken by the Taxpayer its Delhi office for which registration was obtained in Delhi.
- Accordingly, in respect of such supply, the Taxpayer has duly discharged the IGST liability and deposited 18% IGST and any attempt to recover CGST & SGST duties at 9% each is unjustified and amounts to double taxation.
- The Taxpayer also argued that it was compelled to obtain GST registration in the State of Rajasthan and that registration was obtained with effect from 25 February 2020 and that the said registration will not affect the supplies made by it during the preceding financial years i.e. FY 2017-18, FY 2018-19 & FY 2019-20.

Contention by the Tax authority

- The Tax Authorities have argued that the Taxpayer has got himself registered with the GST in Rajasthan and in the application for such registration, he has disclosed his place of business in Rajasthan itself, it is incorrect on part of the Taxpayer to allege that manpower was supplied by it from a place outside Rajasthan.
- The Tax Authority has referred to the provisions of Section 2(71) and Section 2(85) of the CGST Act, 2017 which defines the 'location of the supplier of the services' and 'place of business' to demonstrate that the services were rendered from Rajasthan (and not Delhi) and hence, qualifies as an intra-state supply leviable to CGST & SGST.

Observations & Ruling by High Court

- The issue of inter-state transaction/intra-state transaction is a legal issue, depending upon the facts of the case and as such, requires deeper consideration and as the validity of certain provisions is also under challenge, the Hon'ble High Court called upon the State of Rajasthan and the Union of India to submit their response to the Writ Petition within a period of one month, so that the matter may be heard finally immediately thereafter.
- The Honorable High Court also observed that the Taxpayer cannot be compelled to pay tax on the services rendered by it twice, and therefore, in the interest of justice, the Taxpayer may apply for a refund of the IGST which shall be granted by the Tax Authority on an appropriate application within 2 months of receipt of application. The Hon'ble High Court also directed the Taxpayer to deposit the CGST & SGST within a period of three months from today. Further, its accounts attached for the purposes of realising the disputed amount shall also stand released.

[High Court of Judicature for Rajasthan, M/s. Skylark Infra Engineering Pvt. Ltd. Vs. Union Of India & ORS, 2023-VIL-16-RAJ dated 05 January 2023]

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

HEALTHCARE SERVICES & OTHER SOCIAL CARE SERVICES PROVIDED TO SENIOR CITIZENS AT THEIR DOORSTEP ARE NOT EXEMPTED UNDER GST LAW

Facts of the case

- M/s. Snehador Social & Health Care Support LLP (Taxpayer) is engaged in providing healthcare services to senior citizens which include a gamut of services for health facilitation for senior citizens. The Taxpayer provides a membership programme for senior citizens to avail such services. Further, certain services are also provided at doorstep of such senior citizens.
- Members are required to pay a fixed amount of registration fees along with a refundable security deposit to enrol as a member and avail such services. In this regard, Taxpayer seeks clarity as to whether such services would be taxable under GST or would be exempt.

Questions before the AAR

- Whether the healthcare services to senior citizens at their doorstep qualify for exemption under CGST Act, 2017
- What is the rate of tax applicable and classification of service, if such services are taxable

Submissions made by Taxpayer

- The Taxpayer submitted that the services provided by them cover medical arrangements, counselling, etc. and in addition to that they provide logistic support such as assistance with bank work, bill payments, medicine and grocery delivery, etc.
- The Taxpayer added that such services when provided on an individual basis or through a clinical establishment are exempt under the GST laws. Accordingly, the similar nature of services provided by them at the doorstep of senior citizens would fall under the exemption category and would be exempt from the levy of GST.

Observations and Ruling by the AAR

- On perusal of submissions, AAR observed that the aforesaid services may qualify for exemption if they are provided by a clinical establishment, authorised medical practitioner or paramedics as per Notification no:12/2017-CT(R) dated 28 June 2017. Since the services provided by the Taxpayer do not fall under any of these categories, exemption from levy of GST is not available.
- AAR also observed that services provided by the Taxpayer can be termed as 'human health and social care services' and is taxable at the rate of 18% as per applicable rate notification.
[AAR-West Bengal, M/s. Snehador Social & Health Care Support LLP, AAR Ruling no:18/WBAAR/2022-23, dated 22 December 2022]

CUSTOMS**NOTIFICATION****EXEMPTION ON IMPORT OF COVID-19 VACCINE**

CBIC has exempted customs duty on the import of COVID-19 vaccine by the Central Government or State Government.
[Notification no:01/2023-Customs dated 13 January 2021]

FOREIGN TRADE POLICY (FTP)**PUBLIC NOTICE****AMENDMENTS IN PARA 2.79A OF HANDBOOK OF PROCEDURES [HBP] FOR THE ISSUE OF EXPORT AUTHORIZATION FOR 'STOCK AND SALE' OF SCOMET ITEMS**

The existing 'Stock and Sale' policy under Paragraph 2.79A of the HBP of the Foreign Trade Policy (FTP) 2015-20 has been amended to revise the applicability of the policy for export from the Indian subsidiary of a foreign company (applicant exporter) to its foreign parent/another subsidiary of a foreign parent company and allow repeat order authorization under the stock and sale policy.
[Public notice no:51/2015-2020 dated 17 January 2023]

ONE-TIME RELAXATION FROM MAINTENANCE OF AVERAGE EXPORT OBLIGATION AND EXTENSION IN EXPORT OBLIGATION PERIOD FOR SPECIFIED EPCG AUTHORISATIONS

One-time relaxation from maintaining average export obligation and option to avail extension in export obligation period for specified EPCG authorisations has been provided on account of the COVID-19 pandemic, subject to fulfillment of conditions. This is in addition to the Export Obligation extensions facility (upon payment of the composition fees) already provided in FTP/HBP.
[Public notice no:53/2015-2020 dated 20 January 2023]

AMENDMENTS IN PARA 4.42 [DUTY EXEMPTION/REMISSION SCHEME] OF THE HANDBOOK OF PROCEDURES 2015-2020

Para 4.42 of the Handbook of Procedures 2015-2020 has been amended to simplify the process of levying composition fees in case of extension of the export obligation period under the Advance Authorization scheme and for higher IT enablement of DGFT.
[Public notice no:52/2015-2020 dated 20 January 2023]

NEWS FLASH

“18% GST Payable On The Forest Permit Fee: Telangana AAR”

<https://www.livelaw.in/news-updates/18-gst-forest-permit-fee-telangana-aar-219618>

[Source: Live Law, 22 January 2023]

“International Road Federation seeks removal of GST on helmets”

<https://economictimes.indiatimes.com/industry/auto/auto-news/international-road-federation-seeks-removal-of-gst-on-helmets/articleshow/97131990.cms>

[Source: The Economic Times, 19 January 2023]

“GST Intelligence gets centre's nod to set up five digital forensic labs to foil tax evaders”

<https://www.newindianexpress.com/business/2023/jan/21/gstintelligencegets-centres-nod-to-setup-fivedigital-forensic-labs-to-foil-tax-evaders-2540036.html>

[Source: The New Indian Express, 21 January 2023]

“Infra status, rationalisation of GST on hospitality sector's Budget 2023 wish list”

<https://economictimes.indiatimes.com/industry/services/travel/infra-status-rationalisation-of-gst-on-hospitality-sectors-budget-wish-list/articleshow/97193475.cms>

[Source: The Economic Times, 21 January 2023]

“Longer wait for GST tribunals with Council yet to clear proposals”

<https://www.livemint.com/news/india/longer-wait-for-gst-tribunals-with-council-yet-to-clear-proposals-11674150136634.html>

[Source: Live Mint, 19 January 2023]

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