

INDIRECT TAX

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GOODS & SERVICES TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Supply between distinct persons is liable to tax under GST

Facts of the case

- M/s Ola Electric Technologies Private Limited (“Taxpayer”) is a manufacturer of electric vehicles and has operations spread all over India;
- Taxpayer’s Tamil Nadu Cost Centre will undertake the manufacturing of the vehicles which will subsequently be sold by the distribution centres situated across the country. Along with the sale of vehicles, the Taxpayer’s Karnataka Cost Centre also offers a performance upgrade (which is an optional accessory for enhancing the battery performance and speed range) directly to the end customer.
- In order to enable the Taxpayer’s Karnataka Cost Centre to offer a performance upgrade, it obtains a right to undertake integration testing, install and market the software on the vehicles manufactured by the Tamil Nadu Cost Centre. For procuring such right, the Karnataka Cost Centre makes periodic payments to the Tamil Nadu Cost Centre.
- In this regard, the Taxpayer filed the Application before the Authority for Advance Ruling to know on applicability of GST on the aforesaid transaction inter se between the Karnataka Cost Centre and the Tamil Nadu Cost Centre.

Questions before the AAR

- Whether transfer of right to do integration testing, install and market software from Tamil Nadu cost centre to Karnataka cost centre is leviable to tax?
- Whether such supply be treated as supply of “goods” or “services”?

Contentions by the Taxpayer

- The Taxpayer submitted that as per Schedule I of the Central Goods and Services Tax Act, 2017 (“CGST Act”), supply of goods or services or both between distinct persons would qualify as supply under GST and trigger a levy of GST. However, when one cost centre is transferring the rights to another cost centre of the same entity, the same shall not qualify as supply;
- The Taxpayer also submitted that the software has no market value till the time the Tamil Nadu Cost Centre agrees to integrate the same with the vehicle and allow the Karnataka Cost Centre to sell, upload and maintain the software on the vehicle manufactured by the Tamil Nadu Cost Centre.
- Since both the cost centres are part of the same entity and do not have a legal recognition of their own, there is no express agreement entered between the cost centres.
- It was also contended that as both the cost centres are part of the same entity, the recoveries made from any cost centre does not amount to profit or income recognized in the books of accounts. Since income of one cost centre forms expense of another, the total amount is netted and the same has no impact on the financial position of the Taxpayer.

- Taxpayer also relied on various judicial pronouncements in support of its contention and stated that GST should not be applicable on this transaction.

Observation & Ruling by the AAR

- The AAR analyzed the scope of “supply” and relevant entry in Schedule I to the CGST Act and observed that the extension of right by the Tamil Nadu Cost Centre to its distinct person as specified in Section 25 (viz., the Karnataka Cost Centre), is in the course of furtherance of business for a pre-determined consideration. Accordingly, such transfer of right is clearly a supply which is leviable to GST.
- Further, the activity will be treated as supply of services as it only involves transfer of rights.

[AAR-Tamil Nadu, M/s. OLA Electric Technologies Private Limited, Ruling no:TN/31/ARA/2022, dated 29 July 2022]

Go-karts supplied neither qualify as 'motor cars' nor as 'motor vehicle' under the Motor Vehicles Act, 1988 since they are not road worthy, taxable at 18%

Facts of the case

- M/s. KNK Karts (P) Limited ('Taxpayer') is engaged in manufacture and supply of 'amusement park ride karts' commonly known as 'Go-Karts';
- As insisted by the jurisdictional Central Excise Department, the taxpayer has been paying GST at the rate of 28% in terms of entry no:165 of notification no:1/2017-CT(R) dated 28 June 2017 by classifying the go-karts under CTH 8703 of the Customs Tariff Act, 1975.

Questions before the AAR

Whether the go-Karts manufactured and supplied by them:

- meant solely for the purpose of amusement or joy riding and designed to operate only on specifically designed tracks are classifiable under CTH 9508 of the First Schedule to the Customs Tariff Act, 1975?
- not being roadworthy and cannot be registered as motor vehicles with the Regional Transport Authority (RTO) are classifiable as 'motor vehicles meant for carrying of passengers/persons' under CTH 8703 of the First Schedule to the Customs Tariff Act, 1975?
- attracts GST at the rate of 18% under entry no:441A of schedule III to notification no:1/2017-CT(R) dated 28 June 2017 as amended by notification no:18/2021-CT(R) dated 28 December 2021 or at the rate of 18% under entry no:453 of schedule III to notification no:1/2017-CT(R), dated 28 June 2017?

Contention by the Taxpayer

The taxpayer established that the 'Go-karts' manufactured and supplied by them are classifiable under CTH 9508 of the Customs Tariff Act, 1975, attracting GST rate @ 18% on the following main grounds:

- Go-karts are not roadworthy. Automotive Research Association of India (ARAI) has rejected the certification of Go-karts as a motor vehicle since Go-karts are not roadworthy and cannot be considered as motor vehicles within the ambit of Motor Vehicles Act;
- It is not designed for transportation of passengers. The expression 'transport of persons' involves transporting a passenger from one place to another. In the case of 'joy

rides' the movement of the Go-kart is within the confines of a 'closed loop circuit'. So, it cannot be classified as a Motor Vehicle under CTH 8703 of the Customs Tariff Act, 1975 (attracting GST rate of 28%);

- Hence, Go-karts are rightly and specifically classifiable as 'amusement park rides' under CTH 9508 of the Customs Tariff Act, 1975 and consequently, attracts GST rate of 18% either under entry no:441A or entry no:453 of schedule-III to notification no:1/2017-CT(R) dated 28 June 2017.

Observations and Ruling by AAR

- Go-karts supplied by the taxpayer neither qualify as 'motor cars' nor as 'motor vehicle' under the Motor Vehicles Act, 1988 since they are not road worthy;
 - It not designed for transport of persons but are meant only for amusement or entertainment for use on a fixed or restricted course. Hence, it is not classifiable under CTH 8703;
 - Since Go-karts are used across the globe as an amusement ride for children & families and can be operated only on specifically designed surfaces, it can be considered as "amusement park rides";
 - Based on the foregoing, the AAR pronounced its ruling addressing to the questions raised by the taxpayer as follows:
 - Go-karts are classifiable under CTH 9508 of the First Schedule to the Customs Tariff Act, 1975;
 - It is not classifiable as 'Motor Vehicles meant for carrying of passengers/persons' under CTH 8703 of the First Schedule to the Customs Tariff Act, 1975;
 - It attracts GST at the rate of 18% as per entry no:441A of schedule III to notification no:1/2017-CT(R) dated 28 June 2017 as amended by notification no:18/2021-CT(R) dated 28 December 2021.
- [AAR-Karnataka, M/s. KNK Karts (P) Limited, Ruling No:KAR ADRG 20/2022 dated 12 August 2022]*

Supply of medicines, drugs and other surgical goods to in-patients during the course of diagnosis and treatment shall be "composite supply"

Facts of the case

- M/s. Kumaran Medical Center ('Taxpayer') is a partnership firm having a multi-speciality hospital providing wide range of services related to health care;
- The Taxpayer maintains three different procurement mechanisms for the patient's needs (viz., General Store, KMC Pharma and Prabhat Pharma) where separate accounting records are maintained by the Taxpayer.

Questions before the AAR

- Whether the supply of medicines, drugs and other surgical goods to in-patients during the course of diagnosis and treatment of disease, illness, injuries, deformities and abnormalities would fall meaning of "composite supply" qualifying for exemption under the category of "health care services"?
- Whether the supply of medicines, drugs and other surgical goods to out-patients during the course of diagnosis and treatment of disease, illness, injuries, deformities and abnormalities would fall meaning of "composite supply" qualifying for exemption under the category of "health care services."?

- Whether the supply of implants, prosthetics and mobility aids during the course of diagnosis and treatment of disease, illness, injuries, deformities and abnormalities would fall meaning of "composite supply" qualifying for exemption under the category of "health care services."?

Contentions by the Taxpayer

- The Taxpayer submitted that in order to provide healthcare services, the taxpayer also maintains Pharmacy, clinical laboratory, X-ray & scanning facility, ambulance services, dietary services, etc. Further, the taxpayer stated that they have categorized the patients as **out-patients** and **in-patients** for the convenience;
- The Taxpayer contended that the medicines, consumables, implants and mobility aids used in the course of providing health care services to patients for diagnosis or treatment in the hospital or clinical establishment is naturally bundled and supplied in conjunction with each other in the ordinary course of the business where health care service is the principal supply;
- With respect to the first question, the taxpayer submitted that, as far as in-patients are concerned, only on administering the medicines, consumables and implants will the treatment be complete in toto. Moreover, these supplies are collectively billed together. On the basis of these relevant facts, the Taxpayer contend that the medicines, consumables and drugs used in the course of providing health care services to in-patients for diagnosis and treatment in the hospital or clinical establishment is naturally bundled and supplied in conjunction with each other in the ordinary course of the business and therefore constitute exempt supply. The taxpayer is of the view that these supplies are exempt vide entry no:74 of notification no:12/2017 CT(R) dated 28 June 2017;
- With respect to the second question, the Taxpayer submitted that the hospital provides diagnosis and treatment to outpatients. The prescribed medicines are provided to the patients from the pharmacy division - "Prabhat Pharma". The patients are expected to undertake supplement of the prescribed medicines and consumables to make such that an appropriate diagnosis and the best possible treatment is provided for. These medicines form an essential part for the patient's recovery for the time being of the illness and the disease and hence, the same should be exempt from the levy of GST vide entry no:74 of notification no:12/2017 CT(R) dated 28 June 2017;
- With respect to the third question, the Taxpayer contended that those are essentially required by the patients to make sure that an appropriate diagnosis or the best possible treatment is given and that the mobility aids form part of the patient(s) body part in itself or a support system of life for the person till due recovery has taken place. Thus, the contention to treat implants, prosthetics and mobility aids provided in the due course of diagnosis and treatment to be treated as a composite supply to facilitate health care services.

Therefore, the Taxpayer is of the view that these supplies are also exempt vide entry no:74 of notification no:12/2017-CT(R) dated 28 June 2017.

Observations and ruling by AAR

- As per the GST law, composite supply means two or more taxable supply of goods or services or combination of goods & services which are naturally bundled and supply in conjunction with each other and one of which is a principal supply;
- For in-patients, once the patient is admitted to hospital and till, they are discharged, the patient generally requires care and treatment in excess of 24 hours. Supply of medicine and services provided to in-patient is a composite supply, provided the consolidated bill raised in the name of patient indicates the supply of medicine and health care services provided by the hospital in para 2(zg) of the notification no:12/2017-CT(R) dated 28 June 2017, and the same is exempted from the levy of GST for the period up to 17 July 2022. The above service is covered under "in patient services" classified under SAC 999311;
- For out-patients visiting the hospital for regular check-up and hospital provide diagnosis and treatment to out-patients. Even out-patient can buy medicine from other pharma, it is clear that supply of medicines and services providing to out-patient are independent supply, they are not naturally bundled. Hence it is taxable;
- As regards the supply of implants, implants such as stents, pacemaker, steel plates etc. are implanted in the human body by way of surgical procedure to in-patient. Such supply is composite supply and hence exempt from the levy of GST;
- However, as regards prosthetics and mobility aids such as wheelchairs, crutches, and walkers etc., the same cannot be considered as composite supply of health-care services. Prosthetics and mobility aids, being in the nature of an independent supply which are capable of being bought and sold separately, are liable to GST as individual supply of goods.

[AAR- Tamil Nadu, M/s Kumaran Medical center, Ruling order No:29/AAR/2022, dated 29 July 2022]

CENTRAL EXCISE

NOTIFICATION

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

Amendment has been made in notification no:04/2022-Central Excise, 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. 4 per litre	INR. 6 per litre

This notification shall come into force on the 19 August 2022.

[Notification no:23/2022 dated 18 August 2022]

Reduction of the SAED on production of Petroleum Crude and Increase of SAED on ATF

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

S. No.	Chapter/ heading/ subheading/ tariff item	Description of goods	Existing Rate	Proposed Rate
1	2709	Petroleum crude	INR 17,750 per tonne	INR 13,000 per tonne
2	2710	Aviation Turbine Fuel	Nil	INR 2 per Litre

This notification shall come into force on the 19 August 2022.

[Notification no:24/2022 dated 18 August 2022]

EXCISE/SERVICE TAX

CUSTOMS

NOTIFICATION

Amendment of Customs (Compounding of Offences) Rules 2005 and simplification for procedure for compounding of offenses

- The CBIC has notified Customs (Compounding of Offences) Amendment Rules, 2022 to amend the Customs (Compounding of Offences) Rules, 2005 and fix the compounding amount for offences covered under section 135AA relating to protection of data;
- The compounding amount shall be INR 1 Mn for the first offence which shall be increased by 100% of this amount for each subsequent offence. It has also been provided that if the offence is punishable only under section 135AA, the immunity from prosecution shall be granted;
- Reference is invited to circular no:54/2005-Customs dated 30 December 2005 on guidelines for compounding of offenses under Customs Act read with para 12 of the circular no:27/2015-Customs dated 23 October 2015. The Central Government has brought further changes in the aforesaid rules vide notification no:69/2022-customs (N.T.) dated 22 August 2022;
- The salient features of the amendment are as follows:
 - Satisfaction of compounding authority has been limited only to verify and be satisfied that the full and true disclosure of facts has been made by the applicant;
 - The offense under section 135AA of the Customs Act has also been made compoundable. Further, the competent authority has been mandated to grant immunity when offense is only of this type.

- While reviewing the provisions, a need was perceived to undertake awareness campaigns for conveying the benefits of compounding provisions which could enhance the use of such provision by concerned persons. Accordingly, Pr. Chief / Chief Commissioners are directed to undertake periodical (say, quarterly) comprehensive and targeted outreach programmes for this purpose.
- It has also been decided that Pr. DG, Director General & Data Management shall incorporate in the reporting, the performance of every zone in terms of receipt and timely disposal within 6 months of compounding applications, as well as for recording of the sums realized as compounding amount, as envisaged in para 7 of the circular no:54/2015-Customs dated 30 December 2005.

[Notification no:69/2022 dated 22 August 2022 & Circular no:15/2022 dated 23 August 2022]

CIRCULARS

Custom duty on display assembly of a cellular mobile phone

- Entry no:5D of notification no:57/2017-Customs dated 30 June 2017 provides for concessional Basic Customs Duty (BCD) of 10% for display assembly for use in manufacture of a cellular mobile phone and 'nil' BCD on inputs or parts used in manufacture of a display assembly for further use in manufacture of a cellular mobile phone;
- There were instances of mis-declaration of display assembly imported as parts. On request, the Ministry of Electronics and Information Technology (MeitY) shared a technical document, vide O.M. No. W-14/2/2020-IPHW dated 23 September 2020 that provided the prominent constituents of a display assembly of cellular mobile phones which was shared with the field formations for ease of assessment;
- Mis-declaration seems to have continued in certain cases, which were intercepted by Directorate of Revenue Intelligence (DRI) and other field formations, with issuance of demand notices in a few cases recently where imports of assemblies consisting of display assembly and other parts of mobiles like mechanics etc. have been made mis-declaring such an assembly as display assembly and claiming BCD rate of 10%;
- MeitY reiterated its earlier technical document and stated that display assembly of a cellular mobile phone if comes merely with a back support frame of metal/plastic and no other additional items, then such assembly may be subjected to BCD as display assembly of a cellular mobile phone at 10% since back support frame of metal/plastic does not add any functional part but is only for support of the display assembly. However, MeitY reiterated that if display assembly comes with additional parts such as mechanics or other items/sub-assemblies, in form of an assembly, the whole assembly is liable to attract BCD at the rate of 15% as general parts of a cellular mobile phone under tariff item 8517 79 90;
- As stated by MeitY, the display assembly of a cellular mobile phone consists of the following:
 - Touch Panel
 - Cover Glass
 - Brightness Enhancement Film

- Indicator Guide Light
- Reflector
- LED Backlight
- Polarizers
- LCD driver mounted on a Flexible Printed Circuit (FPC)
- FPC specifically needed for rendering display functions
- LCM (Liquid Crystal Module or LCD Module) [which consists of LCD (Liquid Crystal Display) Cell/pure Cell, FOG (FPC on Glass), and COG (Chip on Glass)] or OLED Module.

Further, MeitY has stated that display assembly consisting of above items comes merely with a back support frame of metal/plastic alone attached to it [with no other items except the items mentioned above], such an assembly should be treated as a display assembly of a cellular mobile phone, attracting BCD rate of 10%.

- Display assembly of a cellular mobile phone is an assembly of the components and sub-components as mentioned above and are put together to form a single assembly having the principal function of displaying images, text, etc. Display assembly of a cellular mobile phone may come with or without the back support frame of metal/plastic. If display assembly comes with additional parts such as mechanics or any other items, in form of an assembly, the whole assembly is liable to attract BCD at the rate of 15%;
- After the inter-ministerial consultations with MeitY regarding mis-declaration of imports and the recommendation now made by MeitY, the following is brought to the notice of field formations;
 - Display assembly of a cellular mobile phone may be imported with or without the back support frame of metal/plastic fitted in the assembly. Although, back support frame of metal/plastic has no essential function in display and only provides strength, protection and structural stability, the mere attachment of back support frame of metal/plastic on the display assembly does not alter the essential characteristic of display in any manner, and the assembly would continue to be treated as a display assembly of a cellular mobile phone. Therefore, if display assembly of mobile phone is imported with merely a back support frame of metal/plastic attached to it, the assembly continues to be display assembly of a cellular mobile phone and a BCD rate of 10% shall be applied on such assembly consisting of display assembly and only the back support frame of metal/plastic in addition [though Back support frame of metal/plastic, if imported individually, will attract a BCD rate of 15%];
 - However, if any other item like the sim tray, antenna pin, speaker net, power key, slider switch, battery compartment, Flexible Printed Circuits (FPCs) for volume, power, sensors, speakers, fingerprint, etc, come fitted along with a display assembly with or without a back support frame of metal/plastic, then the whole assembly attracts a BCD rate of 15%. Such assembly [consisting of a display assembly of a cellular mobile phone with or without back support

frame, plus any other parts as mentioned herein] is not eligible for the benefit of concessional rate of 10% BCD rate under entry no:5D of notification no:57/2017-Customs;

- An annexure with the illustrative exhibits and pictures of the items listed in para (4) as received from MeitY is enclosed in the circular.

[Circular no:14/2022 dated 18 August 2022]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Amendment in import policy artemia cyst under ITC (HS) code 0511 91 40

The import policy of artemia cyst under ITC (HS) 05119140 is revised from restricted to free.

[Notification No: 28/2015-20 dated 25 August 2022]

PUBLIC NOTICE

Enlistment of an agency under appendix 2E of FTP, 2015-2020 - authorized to issue Certificate of Origin (Non-preferential)

Gem & Jewellery Export Promotion Council (GJEPC), Mumbai is enlisted under appendix 2E of FTP, 2015-20 for issuing Certificate of Origin (Non-Preferential).

[Public notice no:20/2015-20 dated 01 August 2022]

NEWS FLASH

1. “GoM readies report on GST appellate tribunals”
<https://economictimes.indiatimes.com/news/economy/finance/gom-readies-report-on-gst-appellate-tribunals/articleshow/93668932.cms>
[Source: Economic Times, 20 August 2022]
2. “West Bengal: 5% GST sends retail prices of daily staples soaring by 25%”
<https://timesofindia.indiatimes.com/business/india-business/west-bengal-5-gst-sends-retail-prices-of-daily-staples-soaring-by-25/articleshow/93718130.cms>
[Source: Times of India, 23 August 2022]
3. “Centre approaches SC for additional 30 days for opening special window for transitional credit claim under GST”
<https://www.thehindubusinessline.com/economy/centre-approaches-sc-for-additional-30-days-for-opening-special-window-for-transitional-credit-claim-under-gst/article65809841.ece>
[Source: The Hindu Business Line, 25 August 2022]
4. “In relief to tenants, AAR allows tax credit on GST paid on upfront lease premium”
<https://economictimes.indiatimes.com/news/economy/policy/in-relief-to-tenants-aar-allows-tax-credit-on-gst-paid-on-upfront-lease-premium/articleshow/93785718.cms>
[Source: Economic Times, 26 August 2022]
5. “States' revenue growth to slide to 9% despite robust GST collections: Study”
https://www.business-standard.com/article/economy-policy/states-revenue-growth-to-slide-to-9-despite-robust-gst-collections-study-122082400878_1.html
[Source: Business Standard, 24 August 2022]



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