

INDIRECT TAX

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GOODS & SERVICES TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Any kind of reimbursement to service provider not explicitly mentioned in agreement is leviable to tax

Facts of the Case

- M/s. Lucknow Producers Cooperative Milk Union Ltd. (“Taxpayer”) is engaged in the business of supply of milk products for which it had procured manpower services from various service providers by way of agreement;
- As per the agreement, taxpayer reimburses any amount deposited by the service providers under Employee Provided Fund (“EPF”) and Employee State Insurance (“ESI”).

Questions Before the AAR

Whether the taxpayer is liable to pay tax on reimbursement of EPF and ESI?

Contention of the Taxpayer

- The taxpayer contended that as per rule 33 of CGST Rules, 2017 expenditure or cost incurred by supplier as a pure agent of the recipient of supply shall be excluded from the value of supply. Hence, reimbursement of EPF and ESI should not form part of the value of supply;
- Further, the taxpayer stated that the service provider raises separate bill for reimbursement of EPF and ESI. Hence, all the conditions as specified under rule 33 of CGST Rules, 2017 are satisfied.

Observations and Ruling by the AAR

- The AAR noted that consideration is defined to include any payment made or the monetary value of any act or forbearance. Further as per section 15 of CGST Act, 2017, value of supply shall be the transaction value which is the price actually paid or payable for the said supply. Hence, consideration would include the entire payment received by the supplier;
- Further, AAR stated that in the present case all the conditions of rule 33 of CGST Rules, 2017 are not satisfied as the service provider is not procuring any additional services from the third party and there is no contractual agreement with the recipient of supply to act as his pure agent. Hence, reimbursement of EPF and ESI contribution is liable to be included in the value of supply.

[AAR-Uttar Pradesh, M/s. Lucknow Producers Cooperative Milk Union Ltd., Advance Ruling no:UP ADRG 76/2021 dated 16 April 2021]

Centage & Labour cess incurred for administrative expenditure on the construction works included in the value of supply

Facts of the case

- M/s. UP State Bridge Corporation Limited (“Taxpayer”) is incorporated under Companies Act, 2017 in Uttar Pradesh, engaged in construction of bridges and civil engineering works assigned by the Public Works Department (PWD). The same is called as ‘Deposit Work’;

- The taxpayer provides an estimate of cost for construction of bridges to the PWD and the PWD gives a fixed percentage on that amount commonly known as centage for incurring administrative expenditure on the construction of such bridges;
- The taxpayer is paying GST on centage and labour cess in compliance with section 15(2) of the CGST Act, 2017. However, the department does not reimburse the same to the taxpayer.

Questions before the AAR

- Whether the centage received by the taxpayer to be included in total value of work done and whether taxable or not under the CGST Act, 2017?
- Whether Labour Cess is taxable or not under the CGST Act, 2017?

Contention of the tax authority

- The tax authority had submitted that the centage received by the taxpayer was nothing but consultancy charges in respect of the consultancy provided in terms of providing estimate of cost for construction of bridges to the PWD;
- In relation to pure services provided to State Government by way of activity in relation to function entrusted to a Panchayat/Municipality under 243G/243W of Constitution of India is exempt from GST as per entry no:3 of notification no:12/2017-CT(R) dated 28 June 2017;
- It was further submitted that in the instant case the said activity of the taxpayer, along with the labour cess did not fall under 243G/243W of the Constitution of India and appeared to be taxable at the rate of 18%.

Observations & Ruling by the AAR

- The AAR perused the submissions made with respect to undertaking deposit work of construction of bridges assigned by PWD and received a certain percentage of the cost of construction as centage;
- The AAR observed that the 'deposit work' was execution of work against funds from other Government agencies or Ministries and the consideration received by the taxpayer from the deposit work was cost of construction plus centage;
- In order to find the value of supply, the AAR referred the definition of the term "consideration" under GST vide section 2(31) of CGST Act, 2017. Further, the AAR referred section 15 of CGST Act, 2017 for the valuation of supply, basis which the AAR concluded that the taxable supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force;
- The AAR ruled that the centage received by the taxpayer will be included in the value of supply and the same is taxable under the CGST Act, 2017;
- In respect of labour cess, the same will be included in the value of supply and the same is taxable under the CGST Act, 2017.

[AAR-Uttar Pradesh, M/s. UP State Bridge Corporation Limited, Ruling No:UP ADRG 78/2021, dated 27 May 2021]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

GST is leviable on residential land provided on the lease basis and also on maintenance charges and lease rent received on such residential land

Facts of the case

- M/s. Uttar Pradesh Avas Evam Vikas works ('Taxpayer') is engaged in housing and improvement schemes in the state either by itself or on request of any local authority. Further, the taxpayer may also undertake the execution of any housing or other building project at the request of the State Government, which is commonly known as "deposit work";
- The taxpayer receives funds, in advance, for said "deposit Work", with certain prefixed conditions:
 - All the money should be used for execution of particular project only and not for any other purpose;
 - If any interest is earned on the money received for execution of the project, the same will be transferred back in the head of account from which it was drawn.

Questions before the AAR

- What is the time of supply in case of 'deposit works' being executed by the taxpayer? Whether it is the time of receipt of funds from the client government department or the time when expenditure incurred towards execution of the work is debited to 'deposit works account'?
- What shall be the value of supply in aforementioned two alternatives?

Ruling by the AAR

- The AAR vide order no:45 dated 13 December 2019 Held as follows:
 - As regard to the first question, it was ruled by the AAR that the time of supply in case of 'deposit works' being executed by the taxpayer will be the time of receipt of funds from the client government department.
 - With reference to the value of the supply it was ruled that the value of the supply, on the advance payment received by the taxpayer, will be the amount of advance received by the taxpayer towards that particular work/supply.
- Being aggrieved by the AAR ruling taxpayer filed an appeal before AAAR.

Contention of the taxpayer

- Funds received for execution of "deposit Work" is wrongly classified as advance payment by the AAR;
- It was argued that the amount given to a person with restricted right to spend it is either a loan or deposit;
- The term "deposit", mentioned in the said section, refers to an amount given to the supplier which can be adjusted against the consideration receivable later on;

- The funds required for execution of such projects are provided entirely by Government, generally in lump sum before the start of the work, with conditions that funds cannot be diverted for any other work/project and any interest earned on the said amount are to be paid back to the Government. Accordingly, the "time of supply" in this case would be the date on which the taxpayer utilizes the funds.

Observations & Ruling by the AAAR

The AAAR noted that the law is crystal clear in this regard that once any advance amount is received towards provision of any service that will be treated as the time of supply. Therefore, the AAR has rightly ruled that the time of receiving of advance payment will be time of supply with reference to discharge of GST liability. AAAR upheld the ruling of AAR.

[AAAR-Uttar Pradesh, M/s. Uttar Pradesh Avas Evam Vikas works, order no:12/AAAR dated 29 June 2020]

LEGISLATIVE UPDATES

INSTRUCTIONS

Testing of coumarin in imported Cinnamon

- Central Board of Indirect Taxes and Customs (CBIC) issued instructions regarding testing of coumarin in imported Cinnamon;
- It refers to letter F.No.1-1403/FSSAI/Imports/2015 (part 1) dated 30 November 2021 issued by Food Safety and Standards Authority of India, New Delhi;
- CBIC has requested that necessary action may be taken to sensitize officers under their jurisdiction hereby to ensure that all imported consignments of cinnamon get tested for coumarin content (on dry basis), which should not be more than 0.3% by weight.

[Instruction no:28/2021-Customs dated 09 November 2021]

FOREIGN TRADE POLICY (FTP)

PUBLIC NOTICE

Import of watermelon seeds

Directorate General of Foreign Trade (DGFT) has invited applications for import authorisation for Watermelon Seeds-Other (ITC(HS) 12077090) for the period of 01 January 2022 to 31 March 2022. The last date for submission of online applications is 13 December 2021.

[Public notice no:41/2015-2020 dated 06 December 2021]

Enlistment of Agencies under Appendix 2E

DGFT has enlisted two new agencies under Appendix 2E of FTP, 2015-2020 for issuing Certificate of Origin (Non-Preferential).

[Public notice no:42/2015-2020 dated 08 December 2021]



NEWS FLASH

1. "GST Council to consider clarifying GST issue on ice cream parlour"
<https://www.thehindubusinessline.com/economy/policy/gst-council-to-consider-clarifying-gst-issue-on-ice-cream-parlour/article37910539.ece>
[Source: Business Line, 09 December 2021]
2. "Unbound kids' picture books to face 5% GST"
<https://timesofindia.indiatimes.com/business/india-business/unbound-kids-picture-books-to-face-5-gst/articleshow/88173556.cms>
[Source: Times of India, 09 December 2021]
3. "Fitment panel's GST recommendations may cause immediate spike in inflation"
https://www.business-standard.com/article/economy-policy/fitment-panel-s-gst-recommendations-may-cause-immediate-spike-in-inflation-121120801132_1.html
[Source: Business Standard, 08 December 2021]
4. "Centre clears over half of pending GST dues to states"
<https://www.financialexpress.com/economy/centre-clears-over-half-of-pending-gst-dues-to-states/2384915/>
[Source: Financial Express, 09 December 2021]
5. "Mumbai: Pay GST on full sum if society maintenance over Rs 7,500 a month"
<https://timesofindia.indiatimes.com/city/mumbai/for-chs-if-maintenance-charges-exceed-rs-7500/month-gst-applies-on-entire-sum-in-mumbai-gst-bench/articleshow/88153655.cms>
[Source: Times of India, 08 December 2021]

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