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1. JUDICIAL PRONOUNCEMENTS

a) Courts are not permitted to redraw the boundaries or expand the provisions of refund beyond what is provided in the legislature

(Vedanta Limited Vs. UOI, 2022–VIL–12-ORI)

Facts:

- The Petitioner is engaged in manufacture of aluminium products, having three units in DTA have made exports and supplied output(s) of respective units to unit located in Special Economic Zone.
- Further, the petitioner applied for refund of unutilized input tax credit in respect of zero-rated supplies including compensation cess in Form RFD-01 made by all the units taken together.
- Thereafter, the department allowed the refund, but quantum of refund allowed by taking into consideration all units together was found to be much less. Therefore, relying on Circulars No. 125/44/2019-GST, dated 18.11.2019 and 128/47/2019-GST, dated 23.12.2019 read with Rule 97A of the GST Rules, the petitioner manually applied for grant of supplementary refund by setting up claim on the basis of supplies made unit-wise.
- The respondent declined to entertain such manually submitted application for grant of supplementary refund on the ground that neither provisions of Section 54 of CGST Act, 2017 nor Circular No. 125/44/2019-GST provide for filing of supplementary refund claim after filing original refund claim for the same period.
- Being aggrieved, the petitioner has filed the present writ petition.

Held:

- The Hon'ble High Court observed that the sub-section (1) of Section 54 without any ambiguity admits that three units of the petitioner having common GSTIN they are to be treated as one "person" in terms of Section 25 read with clauses (84) and (94) of Section 2 of the CGST Act.

- Therefore, the petitioner having applied for refund clubbing transactions of the three units together, which was duly considered, and the petitioner having availed the benefit, subsequently, could not turn around and ask for more refund by filing further application for supplementary refund by computing the amount of refund taking into account transactions of individual unit.
- Further, supplementary refund application is furnished for fresh consideration based on unit-wise figures, after original refund application being disposed of, is not supported by any statutory provision.
- It is argued by the petitioner that refund of unutilized input tax being substantive statutory right and therefore, cannot be denied on a procedural requirement i.e. registration which was rejected by the Court.
- The Court also observed that the authority concerned have already adjudicated the application for refund based on transactions of all the three units taken together as per the calculation made by the petitioner itself, had no scope for him to again entertain further claim made on the self-same transactions by computing such refund taking into consideration unit-wise figures.
- The words "registered person" being defined in Section 2(94) means that "a person who is registered under Section 25 but does not include a person having a Unique Identity Number", the word "every" followed by "registered person" is clear indication of the fact that GSTIN as assigned to "a person", i.e., common/single GSTIN assigned to the three units of the petitioner.
- Further, the claim for refund of unutilized input tax credit as found in the provisions of Section 16(3) of the IGST Act and Section 16(1) read with Section 54(1) of the GST Act is subject to manner, condition and restriction as "prescribed" and it is impermissible for the Court to redraw the boundaries or to expand the provision for refund beyond what the Legislature has provided.

b) Issuance of the SCN is not imperative before passing of an order

(M/s Vishaka Exports Vs. Assistant Commissioner (ST) (FAC), Tiruppur, 2023-VIL-15-MAD)

Facts:

- The Petitioner is a registered taxpayer and on verification by the respondent of the GSTR-3B and GSTR-1 monthly returns filed by the Petitioner for the Assessment year 2018-2019 certain discrepancies pertaining to difference in turn over between GSTR 1 and GSTR 3B, difference between GSTR 3B Vs GSTR 2A, input mismatch were noticed.
- In regard to Owing to such discrepancies observed by the noticed by sole respondent, the impugned order came to be made pursuant to which the Petitioner has filed the captioned writ petition.
- The Petitioner raised three points in the hearing which are follows:
    a) the impugned order was not preceded by Forms GST DRC-01 and GST DRC-01A;
    b) that no 'show cause notice' ['SCN'] was issued by the respondent before making the impugned order;
    c) that the writ petitioner has filed a rectification petition under Section 161 of TN-G&ST Act and the same is pending.

Held:

The Hon'ble High Court has observed as under:

- In the instant case, the Petitioner referred to the case of ***Shri Tyres Vs. State Tax Officer - 2021-VIL-693-MAD*** but the same has been bad in law as per the sub-rule (1A) of Rule 142 of TN-G&ST Rules, the expression 'proper officer shall' has been amended to read as 'proper officer may' which kicked in on and from 15.10.2020 and the first point stands doused.
- The second issue that the respondent did not issue the SCN prior to the impugned order and it is held that it is not imperative to issue a SCN for a revision under Section 22(4) of erstwhile TNVAT Act, 2006 unlike best judgment method revision under Section 27 of TNVAT Act wherein it is statutorily imperative to issue SCN before resorting to Section 27 of TNVAT Act and the same is vide the State Bank of India officers case law, [State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner,

Chennai-1 in W.P.No.22634 of 2019 order dated 01.08.2019] - 2019-VIL-781-MAD.

- Further, the Petitioner points out that the impugned order records that a personal hearing was in fact held on 10.06.2022 but there was actually no personal hearing.
- The third issue being that the Petitioner filed a rectification petition being a communication dated 13.07.2022 and on a careful perusal of the rectification application, leaves this Court with the considered view that it does not qualify qua errors apparent on the face of the record as it talks about output mismatch qua Forms GSTR 3B and GSTR 1 and credit notes not reversed in GSTR 3B.
- As per the same this a valid ground for the statutory appeal under Section 107 of TN- G&ST Act but it cannot be gainsaid that it is an error apparent on the face of record and the Court refrains itself from expressing any view or opinion on the same as this Court intends to preserve the rights of the writ petitioner to prefer a statutory appeal under Section 107 of TN-G&ST Act.
- Due to the above-mentioned reasons, writ petition fails, and it is made clear that all the rights and contentions of the writ petitioner are preserved.

c) Assessee allowed to follow the procedure laid down under the Circular even for of FY 2019-2020

(M/s Wipro Limited India Vs. The Assistant Commissioner of Central Taxes, 2023–VIL–22-KAR)

Facts:

- The Petitioner supplied the goods to the M/s ABB Global Industries Limited wherein, the petitioner incorrectly mentioned the GSTIN of the M/s ABB India Limited while filing the GSTR – 1 returns.
- In this regard, the petitioner filed the writ petition before the Hon'ble High court in the nature of mandamus directing the respondent to allow the petitioner to access the GST portal in order to rectify form GSTR – 1 which was uploaded between F.Y 2017 – 18 and 2018 – 19 with respect to the invoice

issued to the recipient so as to enable the recipient to avail the credit of the tax paid by the petitioner in accordance to the time limit prescribed in section 16(4) of the CGST Act, 2017.

Held:

- In the instant case petitioner relied upon the CBI Circular bearing no. 183/15/2022-GST dated 27.12.2022 the government of India has classified the scenario for claiming the ITC pertaining to the F.Y 2017 – 18 and 2018 – 19 which are as follows:

Scenario

GSTR – 1	GSTR – 3B
Not filed	Filed
Filed but not reported certain supply	Filed
Filed but wrongly reported B2B supply as B2C supply.	Filed
Filed but reported wring GSTIN	Filed

- The court held that error committed by the petitioner in showing the wrong GSTIN number in the invoices which was carried forward in the relevant forms as that ABB India Limited instead of M/s ABB Global Industries and Services Private Limited is clearly a bonafide error which has occurred due to the bonafide reasons, unavoidable circumstances, sufficient cause and consequently, the aforesaid circular would be directly and squarely applicable to the facts of the instant case.
- Therefore, in the instant case, court directed the respondent to follow the procedure prescribed in the circular and apply the said circular to the facts in the instant case.
- Further, the court stated that circular refers only to the years 2017 – 18 and

2018 – 19, since there are identical errors committed by the petitioner not only respect of assessment years 2017 – 18 and 2018 – 19 but also in relation to the assessment year 2019 – 20 therefore, petitioner is entitled to the benefit of the circular for the year 2019 – 20 also.

d) Lack of clarity w.r.t reasons/ contraventions in SCN violates the principles of natural justice

(M/s Chitra Automobile Vs The State of Jharkhand, 2023-VIL-61-JHR)

Facts:

- The Petitioner was engaged in the trading of two-wheeler bikes and its parts which are sold to the various customers. Petitioner had regularly filed its monthly returns of outward supplies in FORM GSTR-1 and monthly return of self-assessment in FORM GSTR-3B.
- Department issued the SCN under section 73 of the JGST Act, 2017 along with FORM GST DRC-01 stating that the petitioner has violated provisions of JGST Act for the tax period March 2019.
- However, petitioner has not submitted any reply of the SCN. Consequently, department issued the summary of order in FORM GST DRC-07 as per Rule 142(5) of the JGST Act,2017.
- For setting aside and quashed the impugned order, petitioner filed writ petition under Article 226 in the Hon'ble High Court.

Held:

- Petitioner contended before the Hon'ble High Court that SCN issued is in violation of rule of law and principles of natural justice. Department issued the summary of order in Form GST DRC-07 within five days of issuance of SCN.
- Further, petitioner submitted before the Hon'ble High Court that SCN for the tax period March 2019 is in format without striking out the irrelevant

particulars, is vague and does not spell out the contravention for which the petitioner is charged.

- The Court held that SCN issued in a format without striking out irrelevant particulars is not in line with the intent of the legislature. Thus, this Court holds that the foundation of the proceeding in the instant case suffers from material irregularity and hence not sustainable being contrary to section 73(1) of the JGST Act.
- Thus, the DRC-07 (Order) issued within five days of the issuance of DRC-01 (SCN) depicts a clear picture of the violation of principles of natural justice.
- Accordingly, in the instant case SCN does not fulfill the ingredients of proper SCN and thus amounts to violation of principles of natural justice. Therefore, summary of the order in FORM DRC-07 are liable to be quashed and set aside.

e) No GST on issuance of prepaid payment instrument vouchers

(M/s Premier Sales Promotion Pvt Limited Vs The Union of India, 2023-VIL-67-KAR)

Facts:

- The Petitioner was engaged in the transaction of procuring pre-paid payment instruments of gift vouchers, cash back vouchers and e-vouchers from the issuers and further supplying for specified face value.
- Assessee submitted an application before Authority of Advance Ruling, Karnataka on the issue of liability of GST on pre-paid payment instruments or vouchers wherein the Karnataka AAR ruled that supply of vouchers is taxable as goods and the time of supply would be governed by section 12(5) of the CGST Act, 2017.
- Further, the Karnataka Appellate Authority has also affirmed the order passed by the Advance Ruling Authority.
- Thereafter, feeling aggrieved by the decision of AAAR, petitioner filed the writ petition under Article 226 on the issue that the "Whether voucher themselves

are chargeable to tax at the time of supply or chargeable when goods and services are redeemed".

Held:

- Vouchers are mere instruments accepted as consideration for supply of goods or services. As vouchers are considered as instruments, they would fall under definition of 'money'.
- However, CGST Act excluded 'money' from the definition of goods and services therefore GST shall not be leviable.
- Further, in the instant petition vouchers are semi closed PPIs in which the goods or services to be redeemed are not identified at the time of issuance. These PPIs do not permit cash withdrawal, irrespective of whether they are issued by banks or non-banking companies.
- The value printed on the form can be transacted only at the time of redemption of the voucher. Therefore, the issuance of vouchers is similar to pre-deposit and not supply of goods or services. Hence, vouchers are neither good nor services therefore cannot be taxed.
- In view of the above, order passed by the Karnataka AAR and AAAR are quashed holding that vouchers do not fall under the category of goods and services and they are exempted from levy of tax.

f) Assessee cannot be faulted for non-issuance of settlement memo by the tax authority under VCES Scheme

(M/s Uravi T & Wedge Lamps Pvt. Ltd. V. Commissioner of CGST, Bhiwadi, 2023-VIL-10-CESTAT-MUM-ST)

Facts:

- The Appellant was manufacturing excisable goods and was availing services of transport agency services for outward transportation of goods manufactured by them.

- Government of India came up with Voluntary Compliance Encouragement Scheme (VCES Scheme) in 2013 and the Appellant filed a declaration in January 2014 for the period April 2008 to December 2012 under VCES-1.
- Their VCES-1 was duly acknowledged and accepted by the department and VCES-2 was issued to them.
- Thereafter, the Appellant made the payment of the admitted tax liability as per challan dated 25.01.2014. They also intimated the facts about making the payment to the department.
- However, VCES-3 towards final settlement of dues was not issued to the Appellant.
- Subsequently, audit was conducted and the Department observed that the Appellant had not paid the Service tax due on the GTA services availed by them under reverse charge mechanism (RCM) during the period April 2008 to March 2013. Accordingly, Show Cause Notice dated 22.04.2014 (SCN) was issued.
- After due process of law, the Appeal filed by the Appellant before Commissioner (Appeals) was dismissed.
- Being aggrieved, the Appellant filed the present appeal.

Held:

For the period from April 2008 to December 2012

- The Hon'ble CESTAT, Mumbai observed that once a declarant files a declaration admitting the tax liability for the period upto December 2012 in Form VCES-1, Revenue has to issue the acknowledgment in VCES-2 or reject the same by issuing a notice to the declarant.
- In absence of any such notice for rejection, the Appellant rightly acted as per VCES-2 and paid the declared liability and intimated the department regarding such payment. Even then the designated authority has not issued Form VCES-3. Therefore, the Appellant cannot be faulted for non-production of VCES-3.

- Further, Section 111 of the Finance Act, 2013 clearly provides that in case there is some liability or the declaration made is found to be improper substantially, then a show cause notice for confirming the additional tax liability would be issued. However, no such notice has also been issued thus, there cannot be a case for rejection of the declaration made by the Appellant under VCES scheme.

For the period from January 2013 to March 2013

- With regard to the demand made for the period January 2013 to March 2013, the Appellant paid the entire amount prior to issuance of SCN. Therefore, SCN cannot be issued in terms of Section 73(3) of the Finance Act, 1994.
- Since all the amounts were paid prior to the issuance of SCN therefore, the Hon'ble CESTAT, Mumbai set aside the demand and consequently allowed the appeal.

g) Limitation law not applicable for refund claimed in respect of tax paid under pre-GST regime

(M/s NIIT Limited V. Commissioner, CGST- Delhi East, 2023-VIL-38-CESTAT-DEL-ST)

Facts:

- The Appellant has issued certain invoices for services to be provided to their clients during the period from January 2017 to June 2017 (relevant period) and duly deposited service tax as the same was payable on accrual basis.
- However, the said services were not provided and therefore, the Appellant reversed the entries in its books of accounts reversing the invoices along with service tax during October 2017 to December 2017.
- Accordingly, the Appellant issued the credit note to the clients and refunded the service tax if paid by the said client.
- Thereafter, the Appellant filed the refund claim on 06.02.2018 and show cause notice (SCN) was issued disallowing the refund on the ground of limitation and

further directed the Appellant to produce certain supporting documents.

- After the due process of law, the refund was rejected by Commissioner (Appeals) on the ground, *inter alia*, being time barred for the period of January 2017 as taxes for the said period were paid on 06.02.2017 and on the ground of unjust enrichment as no debit notes were received from the clients in respect of credit notes issued by the Appellant for the relevant period.
- Being aggrieved, the Appellant filed the present appeal.

Held:

- The Hon'ble CESTAT, Delhi held that Section 142 of the CGST Act, 2017 has done away with limitation period for the purpose of refund arising under the existing law.
- Further, the Appellant has not taken any credit in their accounts, nor claimed transition refund by Form TRAN-1 through GST regime.
- Furthermore, the Appellant has not passed on any credit to their clients which is duly certified by their Chartered Accountant therefore, the Appellant is not barred by unjust enrichment.
- Accordingly, the Hon'ble CESTAT, Delhi set aside the demand and consequently allowed the appeal directing the Department to grant refund along with applicable interest.

h) Relevant date w.r.t refund arising out of the provisional assessment to be calculated from the date on final assessment

(M/s Oriental Insurance Company Limited V. Commissioner of CE&ST, LTU, New Delhi, 2023-VIL-45-CESTAT-DEL-ST)

Facts:

- The Appellant was engaged in the provision of general insurance and re-insurance services.
- The Appellant filed the returns on provisional basis and thereafter, requested the Department to finalise its assessment.

- The said assessment was finalised by the Department vide order dated 13.07.2011 wherein it was noted that the tax liability in the return filed by the Appellant was more than the tax amount paid through challans and accordingly, a demand of Rs. 8,71,249/- was confirmed with interest.
- Being aggrieved, the Appellant filed the appeal before the Commissioner (Appeals) wherein the Commissioner (Appeals) vide order dated 17.10.2012 observed that cumulatively, the Appellant has made excess payment of tax.
- Further, based on the above observation of the Commissioner (Appeals), the Appellant filed a refund application on 15.03.2013 to the extent of said excess payment of tax.
- After due process of law, the refund application was rejected by Commissioner (Appeals) on account of being time barred (relevant dated being the date of assessment order i.e., 13.07.2011) and unjust enrichment.
- Being aggrieved, the Appellant filed the present appeal.

Held:

- The Hon'ble CESTAT, Delhi observed that as per Section 11B of the Excise Act, 1944, in case where duty becomes refundable as a consequence of an order or direction of appellate Tribunal, relevant date would be the date of order or direction.
- Therefore, in the present case, the relevant date for the purpose of calculating limitation of refund application would be 17.10.2012 (i.e., the date on which the Commissioner (Appeals) finalised the provisional assessment), as it is this date on which Appellant became entitled to refund of amount.
- Further, w.r.t unjust enrichment, the Hon'ble CESTAT, Delhi held that there is no question of unjust enrichment as excess tax was paid by the Appellant and it is the balance amount of tax that has been claimed by the Appellant in the refund application. Therefore, it cannot be said that the burden of tax had been passed to a third person.
- Accordingly, the Hon'ble CESTAT, Delhi allowed the appeal directing the Department to grant refund along with applicable interest.

i) **Refund of service tax allowed in case the advance amount is refunded along with service tax on cancellation of contract**

(M/s Credence Property Developers Pvt. Ltd. V. Commissioner of CGST & CE, Mumbai East, 2023-VIL-53-CESTAT-MUM-ST)

Facts:

- The Appellant was engaged in providing construction of residential complex services.
- The Appellant has filed two refund applications seeking refund of service tax paid in respect of flats that were booked and later cancelled by the buyers as the Appellant refunded the advance received in lieu of such flats along with service tax amount collected from the buyers.
- After due procedure of law, the said refund was rejected by the Commissioner (Appeals) *vide* order dated 17.10.2018 on the ground that the Appellant has not paid any excess service tax but has paid only that much which they were liable to pay for consideration received by them on the invoice issued to the buyers.
- Being aggrieved, the Appellant filed the present appeal.

Held:

- The Hon'ble CESTAT, Mumbai stated that the first principle of service tax is that tax is to be paid on those services only which are taxable under the said statute. However, for that purpose there must be some 'service' and therefore, no service tax can be imposed where there are no services.
- Further, in case the taxpayer deposits any tax without involvement of any services then that amount will be considered merely a 'deposit' and keeping of the said amount by the department is violative of Article 265 of the

Constitution of India which specifically provides that "No tax shall be levied or collected except by authority of law".

- Since in the present case, the booking of the flats was cancelled by the buyer and the advance along with service tax was refunded by the Appellant, there was no service at all and consequently, service tax paid by the Appellant is merely a deposit which is liable to be refunded to the Appellant.
- Further, since there was no service, Point of Taxation Rules, 2011 cannot be invoked.
- Accordingly, the Hon'ble CESTAT, Mumbai allowed the appeal and directing the Department to grant refund.

j) Service Tax not payable on software activation charges on which Sales tax/ VAT has already been paid as sale of goods

((M/s Black Box Limited V. Commissioner of CE & ST, Ahmedabad-III, 2023-VIL-51-CESTAT-AHM-ST)

Facts:

- The Appellant was engaged in purchasing Electronic Private Automatic Branch Exchange (EPABX) from the foreign based vendor and further selling it to the customers wherein customers may intimate their specific requirements to the Appellant.
- Accordingly, activation of such specific function was done by foreign vendors on payment of charges, known as activation charges for 'software activation'.
- The Appellant collects the said charges from its customers and pays CST/ Sales tax on the entire amount and after retaining profit, remaining amount was transferred to foreign vendors.
- The Department on scrutiny of Balance Sheet observed that the Appellant has shown certain amount as 'Software Activation' income received from customers after sale of goods i.e., equipment/ software.
- Accordingly, three SCNs were issued to show cause as to why the activity of selling of software should not be treated as taxable services under the

category of "Business Auxiliary Services" under Section 65 of the Finance Act, 1994 (hereinafter referred as **'Finance Act'**) and demanded service tax along with applicable interest.

- After due procedure of law, the service tax demand on the said activity was confirmed under the category of "Business Auxiliary Services".
- Being aggrieved, the Appellant filed the present appeal.

Held:

- The Hon'ble CESTAT, Ahmedabad observed that the only commercial obligation on Appellant is of sale of goods to the customers as and when required and there is no service obligation in entire transaction.
- Further, the Appellant neither receives any commission in the subject transaction nor the Appellant is acting as a facilitator or a service provider to customers.
- Therefore, the subject transaction is that of sale/ purchase of goods with no element of service in it.
- Moreover, the subject transaction is covered under definition of sales of goods for the purpose of payment of VAT/CST.
- The Hon'ble CESTAT, Ahmedabad relied upon the case of Bharat Sanchar Nigam Limited and another v. Union of India and others, 2006 (2) S.T.R. 161 (S.C.) and Infosys Technologies v. C.T.O. - 2009 (233) E.L.T. 56 (Mad.) to hold that software activation charges collected by the Appellant are covered under the activity of sales of goods and not under the provisions of "service" as defined in the Finance Act.
- Accordingly, the Hon'ble CESTAT, Ahmedabad allowed the appeal and set aside the demand.

2. AAR/AAAR

a) The procurement and distribution of drugs, medicines and other surgical equipment by an assessee on behalf of government without any value addition, without an intent of making profit and intent to do business amounts to Supply under CGST Act and is eligible for exemption as per Entry 3 of Notification 12/2017 CT (Rate)

(M/s Andhra Pradesh Medical Service And Infrastructure Development Corporation, 2023-VIL-02-AAAR)

Facts:

- The Appellant is engaged in the construction services providing works contract services and have secured contract from National Buildings Construction Corporation Limited (NBCCL) Delhi for constructing a building at Addu City, Maldives.
- The Appellant preferred an Advance Ruling on the following:
  - **a.** Whether the procurement and distribution of drugs, medicines and other surgical equipment by APMSIDC on behalf of government without any value addition, and without any profit or loss, without even the intent to do any business amounts to supply under section 7 of CGST/SGST Act.
  - **b.** b. Whether the establishment charges received from State Government as per G.O.RT 672 dated 20-05-1998 and G.O RT 1357 dated 19-10-2009 by APMSIDC is eligible for exemption as per Entry 3 or3A of Notification 12/2017 Central Tax (rate)?
- Further, Authority for Advance Ruling, Andhra Pradesh had pronounced a ruling that the transaction under the question is a supply and the establishment charges based on the reasoning that these are ancillary to the principal supply they are also included in the supply as held above. Thus, in effect the ruling on second question is predominantly depended on the rationale and ruling of question 1. It appears that the Advance ruling authority had not considered the facts of the case and the ruling was hence not just and fair.

- Being aggrieved by the said order, the Appellant has filed the present appeal before the Appellate Authority for Advance Ruling.

Held:

The Appellate Authority for Advance Ruling has observed as under:

- In the instant case, there are two transactions, first being the transaction of procurement by the Andhra Pradesh Medical Services and Infrastructure Development Corporation hereafter referred to as APMSIDC and the procedure for procurement is enunciated at para (6) of G.O. Rt 1357 dated 19-10-2009. As per the procedure mentioned in the above said order, the APMSIDC procures medicines by adopting e-procurement process using the common platform already established by the Government of Andhra Pradesh.
- On examination of all the facts and procedures, it can be concluded that the process of procurement by the APMSIDC is GST compliant where there is a purchaser, supplier and consideration and GST is discharged on the consideration.
- The second transaction involved in the issue in question is the transaction of distribution of medicines by the APMSIDC and the same to be decided that whether the process of distribution of medicines undertaken by the APMSIDC falls within the scope and definition of supply or deemed supply under Schedule 1 of the APGST Act 2017.
- In the instant case, the payment is being made, in money i.e. '2% on the cost of procurement and distribution of drugs, consumables and equipment for Hospitals', in respect of, supply of service i.e. 'Warehousing and Distribution of Medicines and surgical equipment to the PHCs and Government Hospitals as per directions of DHOs' by the recipient i.e. by the State Government and the distribution of medicines by the APMSIDC to various hospitals and PHCs in terms of G.O Rt. No. 1357 dated 19-10-2009 fall within the ambit of supply and therefore is taxable.

- Further, the service rendered by the APMSIDC is in relation to a function entrusted to a Panchayat under Article 243G of the Constitution of India, (the appellant is providing Pure Service (supply / distribution of drugs, consumables and equipment for Hospitals) to State Government by way of an activity in relation to a function entrusted to a Panchayat under Article 243G (Sl.No.23 of Eleventh Schedule of Article 243G of Constitution is - Health and sanitation, including hospitals, primary health centres and dispensaries). Therefore, the Appellant is rightly eligible for the exemption under Entry 3 or 3A of the Notification No. 12/2017- Central Tax (Rate) dt:28.06.2017.
- Hence, the ruling passed by the AAR vide AAR No.10/AP/GST/2022 Dtd.30.05.2022 - 2022-VIL-182-AAR does not appear to be legal and proper and accordingly modify the order as given below:

Question Raised	Ruling
1. Whether the procurement and distribution of drugs, medicines and other surgical equipment by APMSIDC on behalf of government without any value addition, and without any profit or loss, without even the intent to do business in the same amounts to Supply under Section 7 of CGST/SGST Act.	Yes, the procurement and distribution of drugs, medicines and other surgical equipment by APMSIDC on behalf of government without any value addition, and without any profit or loss, without even the intent to do business in the same amounts to supply under Section 7 of CGST/SGST Act. Since the Appellant is providing 'service' receiving 'consideration' despite not satisfying the parameter of 'in the course or furthering of the business' amount to Supply under

	Section 7 of CGST/SGST Act. However, the benefit of Notification No.12/2017-CT (Rate) Dtd.28.06.2017 is available to this supply.
2. Whether the establishment charges received from the State Government as per G.O. Rt 672 dated 20-5-1998 and G.O. Rt 1357 dated 19- 10-2009 by APMSIDC is eligible for exemption as per Entry 3 or 3A of Notification 12/2017 Central Tax (Rate)??	Yes, the establishment charges received from the State Government as per G.O. Rt 672 dated 20-5-1998 and G.O. Rt 1357 dated 19- 10-2009 by APMSIDC is eligible for exemption as per Entry 3 or 3A of Notification 12/2017 Central Tax (Rate).

b) Leasing of property for residential hostel purposes is not eligible for exemption from GST.

(M/s. Aluri Krishna Prasad, 2022-VIL-03-AAAR)

Facts:

- The Appellant owns various residential buildings and leased out them to different educational institutions/ societies for the purpose of accommodation of their students and the amount charged from those students was Rs.1000/- p.m. Further the Appellant stated that as per Notification No.12/2017-CT (Rate), i.e., renting of residential dwelling for use as residence is exempt from GST.
- Therefore, the Appellant sought the advance ruling on the following points:
    - The amount received for leasing residential hostel rooms is exempt under sl. No.14 of Notification no. 12/2017-CT (Rate).
    - The amount received for leasing residential hostel rooms is exempt

under sl. No.12 of Notification no 12/2017-CT (Rate).

- The Hon'ble AAR ruled that the Appellant was not eligible for the exemption from GST on the following grounds:
    - The agreement between the Appellant and the educational institutes was on built up area basis and not on the basis of unit cost of accommodation and hence, it cannot be treated as given for residential dwelling.
    - Further the Appellant is not extending accommodation to the students but to the institutions to whom the building is given on rent is providing accommodation to the students.

- The Appellant filed an appeal against the said ruling given by the Hon'ble ARA on the following ground:
    - The purpose for which the building is given on rent is for dwelling as residence and it is immaterial how the amount is collected and from whom.

Held:

- It was held that as per description in the sanctioned plan it indicates that the plan is for construction of hostel building and not for residential dwelling. Accordingly, the Appellant leases property to educational institute and educational institute further sub-leases to students.
- Further leasing of property to the registered person can be construed as property used for furtherance of business i.e., running hostel accommodation for students, executives etc.
- It is a fact from the records that building rented out by the Appellant is not for residential dwelling at all but to be used for hostel building which is commercial in nature. Further the residential dwelling should be used by the tenant but in this case the tenant is the commercial entity providing assistance with management of educational institutions and providing educational allied management services to its customers and the entity is

using the said property for further sub-let for furtherance of business.

- There is no evidence to show that either the building was a residential dwelling, or it is going to be put to use as residence by the educational institutes itself.
- Therefore, the ruling provided by the advance ruling authority has been upheld.

c) Right to use car parking space is not to be construed as a composite supply with sale of flat and is taxable @18% separately

(Eden Real Estates Pvt. Ltd., 2022-VIL-06-AAR)

Facts:

- The Applicant is engaged in business of construction of residential apartment. The customers were given offer to opt for car parking along with apartment by paying certain sum towards right to use car parking space.
- The Applicant has sought advance ruling on the following questions: -
    - Whether the amounts charged by the Applicant for right to use of parking space along with the sale of under constructed apartments is to be treated as a composite supply of construction of residential apartment services or the same is a distinct supply under section 7 of the CGST Act.
    - If the same is not to be treated as a composite supply, then the rate of tax applicable on such charges collected by the Applicant.
    - If such apartments are sold after receipt of completion certificate from the competent authority, then whether the amounts collected for right to use of car parking space will also be treated as a non-GST supply under Sch. III of the CGST Act, 2017 and no GST shall be payable on the amounts charged towards such right to use car parking space.
    - Whether the taxability would change if such charges for right to use of car parking space is collected after the sale of the apartment has

been done i.e., the customer had not opted for the car parking space at the time of purchase of the under constructed unit, but had sought for the same after the unit was handed over to the customer after receipt of the completion certificate?

- The Applicant argued that the right to use car parking is naturally bundled with apartment sale therefore it is to be treated as composite supply.
- Further, if the apartment is sold after receiving the completion certificate in such case also it is to be treated as composite supply and shall be exempted from GST as per schedule III
- Further as per press release of 47th GST council meeting it was clarified that any location charge or preferential location charges are part of consideration charged for long term lease of land and shall get the same treatment under GST."

Held:

- It was held that supply of services for right to use of car parking space is a separate supply and not to be construed as a composite supply of construction of residential apartment services further the right to use car parking would be taxable @18%.
- Further in case if apartment is sold after receiving completion certificate then tax is payable on supply of services for right to use of car parking space.
- If car parking space is purchased after the purchase of apartment then also the tax is payable on supply of services for right to use of car parking space.

d) Designing and development of tools for the overseas customer is supply of goods

(M/s. Precision Camshafts Limited, 2023-VIL-08-AAAR)

Facts:

- The Appellant is engaged in business of manufacturing camshafts which are used for the manufacturing engines and contributes in controlling

engine power, emissions and fuel consumption.

- The overseas customers place orders for manufacturing of camshafts which are sent outside India. Since the supply of goods are export of goods and the refund of the GST paid on the inputs was granted by the department.
- The Appellant undertakes the designing and process planning for development of tools. However, the Appellant hires third party vendor for manufacturing the tools as per the specifications.
- As the Appellant undertakes drawing, design, modelling, simulation and documentation for manufacture of the tools, which constitutes 56-60% of the cost of tools and the third-party vendor constitutes 40%.
- The Appellant filed the application on whether the supply of assistance in design and development of patterns used for manufacture of camshaft to a customer is a composite supply of services, the principal supply being supply of services.
- The MAAR held that the activity of design and development of patterns used for manufacturing of camshaft for a customer is a supply of service in the form of intermediary service.
- The Appellant was aggrieved by the order of MAAR and the appeal was filed against the said order.
- It was argued that as per Circular No. 159/15/2021-GST, following conditions are to be fulfilled in order to decide that the transaction is intermediary service:
    - Involvement of minimum three persons
    - Two Distinct supplies
    - Intermediary has the character of an agent, broker or any other similar person
    - Does not include a person who supplies such goods or services or both or securities on his own account
    - Sub-contracting for a service is not an intermediary service
- However, in the present case, the principal service is provided by the

Appellant on its own account and no commission is being charged for outsourcing meagre amount of services to third party vendor on behalf of service recipient.

- Further, it was argued that due to the following reasons the said transaction will not qualify as the intermediary services:
  - The Appellant is engaging a third-party vendor to merely give physical form and shape to the tools.
  - The Appellant doesn't charge any separate commission from the customers for getting the tools manufactured from third party vendors.
  - The Appellant is paid a fixed remuneration for the development of the tools.
  - The Appellant will be required to pay for the manufacture of the tools to the third-party vendors, irrespective of whether the Appellant gets paid for the same by the customers.

Held:

- It was held that the Appellant prepares the drawing and designs of tools and also checks the feasibility of the tools. Further, the invoices raised by the Appellant also shows that specific tools are supplied by them and accordingly the ownership of the tools lies with the customer. Further, the tools will be always in possession of Appellant and will be scraped by the Appellant. Therefore, it is clear that the dominant supply is in form of goods not services.
- It is clear that the Appellant is making such supply of tools and there is no issue of receiving commission from overseas customers. Appellant is not facilitating any supply between overseas entity and third-party vendor. Hence, the findings of the MAAR that the said transaction is an intermediary service is erroneous and not acceptable.
- Further the contention of the Appellant that it was supply of services was also not valid as it is to be considered as supply of goods.

- Therefore, the MAAAR modified the advance ruling order and held that the impugned transaction was neither the intermediary service nor composite supply but it is to be treated as supply of goods.

e) SEZ not liable to pay GST under RCM on services provide by DTA suppliers

(M/s Portescap India Private Limited, 2023-VIL-09-AAAR)

Facts:

- The Appellant is a private limited company incorporated in India and registered Companies Act, 1956 and *inter alia* engaged in manufacturing of customized motors in India. As the Appellant is an SEZ Unit, it is engaged in exports of the manufactured goods outside India.
- The Appellant procures Rental Services from **"Santacruz Electronics Export Processing Zone"** (hereinafter referred to as **"SEEPZ"**) SEZ Authority, situated at SEEPZ service centre building, Andheri East, Mumbai-400096, which is a Local authority having GSTIN 27AAALS4995G1ZH.
- Further, other services like Advocate Services and Gate Pass Services from SEEPZ are being procured wherein GST is presently being discharged by the Appellant under the Reverse Charge Mechanism.
- As per the Notification No. 18/2017 - Integrated Tax (Rate) dated 05.07.2017, the Central Government exempts services imported by a unit or a developer in the Special Economic Zone for authorized operations, from the whole of the integrated tax leviable thereon under section 5 of the Integrated Goods and Service Tax Act, 2017.
- Further, the SEZ Act 2005 provides for exemption to all goods or services procured from a DTA (Domestic Tariff Area) or foreign suppliers specified in first schedule. According to Section 51 of the SEZ Act 2005, the provisions of SEZ Act would have overriding effect on provisions of any other act including taxation laws.
- The Appellant filed an application before the Authority for Advance Ruling,

Maharashtra seeking a ruling on the following questions:

i. Whether an SEZ unit is required to comply with the reverse charge mechanism as a service recipient for local/domestic renting of immovable property services procured by the unit from SEEPZ Special Economic Zone Authority (Local Authority) in accordance with Notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017 read with Notification No. 03/2018 - Central Tax (Rate) dated 25.01.2018?

ii. Whether an SEZ unit is required to pay tax under reverse charge mechanism on any other services in accordance with Notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017 read with Notification No. 03/2018 - Central Tax (Rate) dated 25.01.2018?

- The Authority for Advance Ruling, Maharashtra held that the Appellant is liable to pay IGST on procurement of renting of immovable property services from SEEPZ under RCM.
- Being aggrieved by the impugned order, the Appellant has filed the present appeal.
- The Appellant submitted that Reverse Charge is not applicable in the case of SEZ and the reliance has been placed on CBIC Circular No 48/22/2018-GST dated 14.06.2018, which provides the clarification regarding the nature of supplies made to the SEZ developers or SEZ unit will be treated as inter-state supplies or intra-state supplies. As per the aforesaid circular, it has been clarified that any supply made to SEZ developers or SEZ unit for authorized operation as endorsed by the specified officer of SEZ will be treated as inter-state supply even if the supplier of goods or services or both, and the place of supply are in the same state/union territory.
- Further, in accordance with Notification No. 18/2017- Integrated Tax (Rate) dated 05.07.2017, SEZ Unit is exempted from whole of the IGST leviable under Section 5 of IGST Act, 2017.
- The Appellant further submitted that the SEZ Act, 2005 read with SEZ Rules, 2006 overrides any other law and the "reverse charge" notifications cannot have any application in this case. Also, the reverse charge

notifications were issued prior to the amendment to the SEZ Rules which has in order to align the same with GST Laws with effect from 19.09.2018.

- The respondent submitted that the Appellant is liable to pay GST on reverse charge basis as the Appellant is registered under the CGST Act, 2017 and the supply of services of renting of immovable property by SEZ authority to them.

Held:

- The first issue of whether the impugned supply of renting of immovable property services provided by the SEEPZ SEZ Authority to the SEZ unit, i.e., the Appellant, is zero-rated supply in terms of section 16(1) of the IGST Act, 2017 and on perusal of the same, it is clear that nay supply of goods or services or both made to a SEZ developer or SEZ unit for carrying out the authorised operation in SEZ will be considered as zero-rated supply. That is, the said supply will not attract any GST.
- Further, the provisions of zero-rated supply will cover even the supply of services which are specified under the reverse charge Notification 10/2017-I.T. (Rate) dated 28.06.2017 as amended by Notification No. 03/2018-I.T. (Rate) dated 25.01.2018 because it is a settled proposition of the law that the specific provisions made in the Act will have greater legal force than that of a notification issued under same or any other provisions of the same Act. Hence the provisions laid down under section 16(1) of the IGST Act, 2017 will supersede over the notification issued under section 5(3) of the IGST Act, 2017, which enumerates the services which attract GST under reverse charge basis. As long as the supply is being made to SEZ developer or SEZ unit for carrying out the authorised operation in SEZ, the same will be treated as zero-rated supply, and will not be subject to GST. Therefore, it will not matter in the present case that the impugned services of renting of immovable property is being provided by the SEEPZ SEZ to the Appellant. Thus, the contention put forth by the Respondent

that the said services are being supplied by the SEZ developer, and not be supplier located in DTA does not hold water, and hence not sustainable.

- From the provisions of section 16 (1) and Section 5 (3) of IGST Act it is clear that the intention of the legislature is not to tax the supplies made to a unit in SEZ or a SEZ developer, which has been made zero rated under clause (b) of section 16 (1) of the IGST Act, 2017. Therefore, a unit in SEZ or SEZ developer can procure such service for use in authorised operation without payment of integrated tax provided the actual recipient i.e., SEZ unit or SEZ developer, furnishes a LUT or bond as specified in condition (i) of para 1 of notification No. 37/2017-CT. The actual recipient here in the subject supplies is a deemed supplier for the purpose of aforesaid condition and the Appellant will not be required to pay any GST under RCM on the impugned supply of renting of immovable property services received SEEPZ SEZ, if Appellant furnishes LUT.
- Thus, the Advance Ruling No. GST-ARA-93/2019-20/B-110 dated 10.12.2021 - 2021-VIL-464-AAR, passed by the MAAR is set aside and the following has been passed:
  (i) the Appellant are not required to pay GST under RCM on the impugned services of renting of immovable property services received from SEEPZ SEZ for carrying out the authorised operation in SEZ subject to furnishing of LUT or bond as a deemed supplier of such services
  (ii) the Appellant are not required to pay GST under RCM on any other services received from the suppliers located in DTA for carrying out the authorized operation in SEZ subject to furnishing of LUT or bond as a deemed supplier of such services.

f) Assessee working as a "Project Implementing Agency" shall issue a tax invoice to the State Government Department/ Directorate on the contract value as determined by the department

(M/s West Bengal Agro Industries Corporation Limited, 2023-VIL-11-AAR)

Facts:

- The Applicant is a Government Undertaking under the administrative control of Water Resources Investigation & Development Department, Government of West Bengal. The commercial operations carried out by the applicant are mainly entrusted with three operating divisions namely (i) Project Division, (ii) Agronomy Division and (iii) Agri Engineering Division.
- Further, is it submitted that the Applicant upon selection by various departments of Government of West Bengal as an 'executing agency', it undertakes various works following the Standard Operating Procedure and gets the work done by different suppliers/contractors.
- The Applicant enters into contract with the Govt department and also with the contractor for the completion of the work. And also monitors and supervises the work in order to ensure that the work conforms to the specifications and drawings.
- The contractor issued tax invoice to the Applicant along with Running Account (RA) Bill and the applicant, upon verification of the same, intimates the concerned Department/ Ordering authority about the completion of the work and places the requisition of fund to pay to the Contractor.
- Further, the concerned Department/Ordering authority issues completion certificate for the said works and releases the fund to the applicant, payment is released to the contractor after deducting statutory deductions & security deposits and the Applicant submits the Utilization Certificate against the released fund to the concerned Department/ Ordering authority and refund the balance amount.
- The Applicant has sought advance ruling in respect of the following questions:

  a. Whether the applicant is required to issue tax invoice to State Government Department/ Directorate on the contract value as determined by the department where the applicant is working as a "Project Implementing Agency"?

Held:

The Authority for Advance Ruling has observed as under:

- The Applicant enters into an agreement with the contractor and liable to pay the consideration to the contractor and the Applicant has admitted being a project implementing agency engaged by the administrative department of Govt. of Bengal.
- Further, the Applicant acts as an agent of the Govt. department and the Applicant shall also be treated as recipient of supply of goods or services or both since the aforesaid definition has made it abundantly clear that 'any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied. Thus, the Applicant is the recipient of supply provided by the contractor meaning thereby the contractor doesn't make any supply to the department concerned.
- In the present case, there are two separate supplies taking place i.e., the first one is made by the contractor to the applicant and thereafter another supply is made by the Applicant to the department concerned in spite of the fact as stated by the applicant that there is no value addition in respect of the second supply.
- Hence, the Applicant is working as a "Project Implementing Agency' is making supplies to State Government Department/ Directorate and therefore is required to issue tax invoice on the contract value as determined by the department.

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