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Contents

1. JUDICIAL PRONOUNCEMENTS

a) Deputy Assistant Commissioner having jurisdiction over the assessee is a "Proper Officer" to inspect the books of accounts

(M/s B.A.M.S.M Constructions Vs. The Deputy Assistant Commissioner ST, 2022–VIL–791-AP)

Facts:

- The Petitioner filed the writ petition under Article 226 of the Constitution of India, questioning the Assessment order, dated 05.05.2022, passed by the Respondent for the tax period June 2017 to September 2019 under IGST Act, 2017, as contrary to the provisions of GST Act, 2017.
- Respondent on an authorization given by Joint Commissioner, Kurnool conducted inspection of the business premises of the petitioner, but petitioner alleged that there is no authorization from Joint Commissioner to make assessment. It is alleged that an assessment order came to be passed on 05.05.2022, imposing GST on certain works contracts said to have been executed in the State of Telangana and were reported to tax paid thereon in the State of Telangana.
- The question before the Hon'ble High Court was imposition of GST by the State of Andhra Pradesh on the works executed in the state of Telangana on the ground that the invoices issued by the petitioner mentioned the GSTIN of Andhra Pradesh.
- The next issue before the Hon'ble High Court that Deputy Commissioner is not a proper officer having territorial jurisdiction to assess the case and impugned assessment order is without jurisdiction.
- Further, the next issue was whether Respondent erred in assessing the case of the petitioner when the authorization issued by the Joint Commissioner was only to conduct inspection of the business records.

Held:

- The respondent contended before the Hon'ble High Court that Joint Commissioner gave authorization to the deputy commissioner to inspect the books of account and since the officer is also having territorial jurisdiction over the petitioner, in terms of Notification No. 37, dated 30th June, 2017.
- The next issue that arises for consideration is *"whether the procedure followed by the authorities with regard to passing the order under section 73 of the CGST Act, with section 20 of the IGST Act is correct or nor?*
- In this regard the court held that entire process of issuing authorization, submission of documents and books of accounts etc. were prior to the amendment of Rule 142(1A) i.e. 15.10.2020, meaning thereby that the proper officer "shall" before service of notice under sub – section 1 of Section 73 or 74, indicate the details of tax, interest and penalty in Form GST DRC – 01A.
- The next question before the Hon'ble Court was the *"That being so, the question is whether such forms were issued?*
- In this regard the court held that since the notice came to be issued much prior to amendment to Rule 142 (1A), the mandatory requirement, issuance of FORM GST DRC-01A, i.e., is part A and Part B was followed by reply in Form GST DRC-06 as contemplated under the Act followed has been followed. Hence, the argument of the learned Counsel for the Petitioner that the procedure contemplated under the Act was not followed fallowed falls to ground.
- The next issue raised by the learned Counsel for the Petitioner is *whether one single Assessment Order can be passed for IGST, CGST and SGST, and whether the very same Officer can pass the Assessment Order for IGST also?*
- In order to answer the above issue, the court held that his Section, inter alia, contemplates that, the Officers appointed under the SGST Act are authorized to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council notify. In the absence of any notification being placed on record, exempting the first Respondent from passing assessment order, it can be said,

without any hesitation, that the Officer, who is competent to pass assessment under SGST, is also competent to assess the case of the assesse under IGST Act. In view of the above, it cannot be said that the first Respondent is not competent to assess the case of the Petitioner under IGST Act.

- The only other issue, which remains consideration is "*whether a single Assessment order can be passed for IGST, SGST and CGST?*
- With regard to the above issue the court held that except stating that single Assessment order could not have been passed, no provision under law debarring the authority from following such procedure has been placed on record. Further, prejudice that is caused in passing single assessment order is also not shown. Apart from that, neither IGST nor CGST Act, anywhere prohibit making a single assessment under both the enactments. When the same officer is authorized to assess the case of the dealer under IGST and SGST, court feel that there is nothing wrong in single assessment being made unless gave prejudice is show, which is not in the case at hand.

  Further, the court held that in the instant case issue was within the state of State of Telangana and there was no movement of goods, leave alone any activity in the State of Andhra Pradesh. Respondent could not have assessed the case of the petitioner, even assuming he has authority to do so, but the order impugned shows that the petitioner is doing civil works, contract services to state government of A.P and also with the Government of Telangana and Karnataka.
- Therefore, whether the turnovers fall outside the purview of Section 7 of the IGST and, as such, no tax under Section 5 of IGST can be levied by the first Respondent herein is a factual aspect, for which, this Court under Article 226 of the Constitution of India, cannot embark on investigating the same, more so, when a remedy of Appeal is available to the Petitioner. Hence, the argument that the Assessment Order is hit by Article 286 of the Constitution of India, cannot be gone into and answered in this Writ Petition.
- For the aforesaid, the court dismiss the writ petition.

b) Documents, books, or things seized by the department during the search can be retained for a period of four and a half years, by which the notice has to be issued

(Dhruv Krishan Maggu Vs. Principal Director General, DGGI., 2022–VIL–821-DEL)

Facts:

- The fact of the case is that Directorate General of Goods and Service Intelligence ("DGGI") received a communication from Chief Manager, Allahabad Bank informing of certain high-level transactions related to refund of GST credited to four newly opened bank accounts. Thereafter, the bank accounts of M/s Monal Enterprises, Aircon Overseas, Micra Overseas, and Ganesh Inc. were frozen.
- Further, the department conducted search at the premises, which was a common address of all the four firms, revealed that the firms were non-functional and non-existent.
- The petitioner stated that despite substantial time having lapsed when the seizure took place from the petitioner, computer, laptops, documents, etc. are not being released.
- Therefore, the petitioner by way of present writ petition has sought a relief to release the computer, laptop, documents, and things seized.

Held:

- The court observed that there is a clear distinction brought about in the CGST Act, 2017 in case of inspection, search and seizure of 'documents or books or things' in contrast to seizure of 'goods'. Section 67(2) of the CGST Act, 2017 makes it clear that while the first proviso would apply qua seizure of goods, the second proviso would apply in respect of documents or books or things.
- Further, in the case of documents or books or things, the same can be retained by the officer for so long as it is required for examination and for inquiry of

proceedings under the CGST Act, 2017 and that is in contrast with Section 67(7) as per which when goods are seized, the said seized goods have to be returned to the person from whom they were seized within six months of the seizure of goods, unless and until, the proper officer, on sufficient cause, extends the same for a further period of not exceeding then six months.

- The court held that by a conjoint reading of sections 67(2) second proviso, 67(3), 74(2), 74(10) the 'documents or book or things' can be retained for a maximum period of four and half years, within which period the notice has to be issued, plus thirty days from the date of erroneous refund. In the present case, the said period had not yet lapsed.
- Accordingly, at this stage, Court does not deem it appropriate to direct release of seized 'computer, laptop, documents and other things'. Hence, writ petitions are dismissed.

c) Rule 86A is not applicable in case of non-payment to vendors within 180 days

(Sunny Jain Vs. The Union of India Anr Ors, 2022–VIL–823-DEL)

Facts:

- The Petitioner filed the writ petition impugning the action of the respondents in blocking the input tax credit which is credited in the Electronic Credit Ledger of the petitioner.
- The respondents sent an e – mail dated 01.04.2022 informing the petitioner that ITC has been blocked. Prior to that mail petitioner had raised the grievances dated 07.09.2021, his ECL had been locked for a period of eighteen months without any intimation or enquiry.
- In the said grievances, the petitioner had raised an issue that respondents had contravened the Rule 86A of the CGST Rules, wherein it states that it is impermissible to block the ECL for a period exceeding one year.

- Further, the petitioner claims that he sent an e – mail dated 06.10.2021 to Anti Evasion Office CGST, Delhi thereafter, Anti Evasion, Delhi sought certain documents. The said documents were submitted by the petitioner dated 18.10.2021 and 02.11.2021.
- Thereafter, respondents issued a letter dated 12.11.2021 and directed to deposit interest on account of non – payment of consideration to a supplier (D.G Impex), within a period of 180 days accordance with Section 16(2) of the CGST Act, 2017 and Rules 37 of CGST Rules, 2017.
- Respondent mentioned a reason in affidavit that he has received an email from DGARM wherein the petitioner's name was enclosed in availing the inadmissible ITC during the period 2017 – 18 and 2018 – 19.

Held:

- A plain reading of rule 86A of the CGST Rules indicate that the restriction, as contemplated under Rule 86(1) of the CGST Rules, can be imposed only where the ITC available in the ECR has been *"fraudulently availed "or is "ineligible"* as specified in the said sub – rule.
- A plain reading of Rule 86A of the CGST Rules indicate that the restriction, as contemplated under Rule 86(1) of the CGST Rules, can be imposed only where the ITC available in the ECR has been *"fraudulently availed "or is "ineligible"* as specified in the said sub – rule.
- The court held that blocking of an ITC in the ECR of a taxpayer, effectively prevents the plaintiff from using the ITC for discharge of his liabilities. It is a drastic measure and therefore, can be taken only when the conditions for taking such measure are met.
- Further, the court held that on a conjoint reading of proviso of section 16(2) of CGST Act, 2017 and Rules 37 of the CGST Rules, leaves no room for doubt that a taxpayer is entitled to avail of ITC even though he has not paid the supplier for the goods/ services. However, taxpayer is entitled to reverse the same with interest by including the amount of ITC availed as part of his output

liability, if he does not make the payment to the supplier within the stipulated period of 180 days.

- The respondents have completely misdirected themselves in proceeding on the basis that unless a taxpayer pays the supplier, he is ineligible to avail of the ITC lying to his credit in the ECL.
- However, it is important to note that in terms of Rule 86A (3) of the CGST Rules, the restrictions imposed under Rule 86A of the CGST Rules cannot extend beyond the period of one year from the date of imposing such restriction.
- Thus, the court held that in the given facts and circumstances of the case, the action of the respondents to continue blocking of ITC available in the ECR of the petitioner for such extended period is without the authority of law. In this regard, respondents are directed to unblock the ITC available to the petitioner in his ECR.

d) Offline filing of GST appeal to be accepted in the absence of mechanism of online filing

(M/s Singla Trading Company v. The Union of India, 2022-VIL-835-RAJ)

Facts:

- The petitioner by way of present petition has challenged the order passed by the Appellate Authority Commercial Taxes, whereby the appeal submitted by the petitioner against the order GST-ADT-02 was returned solitary ground that the appeal memo had not been filed online.
- The petitioner stated that GST Authority has not provided any module for filing of the online appeal against the order passed against the petitioner. Further, left with no other option, the petitioner preferred an offline appeal but the same has been retuned without any justification.

Held:

- The Hon'ble High Court held that the online module for preferring an appeal against the order issued in Form GST ADT-02 has not been prescribed under the GST Acts and Rules.
- Therefore, the court directed the appellate authority accept the offline appeal of the petitioner and decide the same as per law.

e) Tax amount paid during the search proceedings is not voluntary in nature and liable to be refunded with interest

(M/s Vallabh Textiles Vs. Senior Intelligence Officer and Ors., 2022–VIL–840-DEL)

Facts:

- The Petitioner was engaged in the business of trading in Ready-Made Garments (RMG) and also engaged on selling these very goods on behalf of third parties. *Albeit* in the domestic market, on commission basis.
- Respondents alleged that the Petitioner *inter alia* sold goods in cash on behalf of two entities i.e. Empire Apparels Pvt. Ltd. and M/s Navrang Enterprise during the period spanning between July, 2017 and February 2022 and received commission @ 5% i.e., 149.90 crores in cash.
- Thereafter, the respondent conducted search at Petitioner from 16.02.2022 at about 3:30 pm till 17.02.2022 at 9:30 pm. Further, panchnama was drawn bearing the signature of the authorised representative of the Petitioner. As a result, the petitioner made payment of GST along with interest and penalty vide 4 DRC-03 dated 17.02.2022 prior to conclusion of search proceedings.
- The Petitioner has filed the present petition contending that the aforesaid payment and statement were not voluntary and made on coercion.

Held:

- The proper officer is required to issue an acknowledgment accepting the payment made vide DRC-03 in the prescribed form i.e., DRC-04. However, no document has been placed on record by the respondents, demonstrating acknowledgement of having accepted the payment.
- Therefore, the Hon'ble Delhi High Court held that the stand taken by the respondent that the payment vide DRC-03 was voluntary in nature, based on self-ascertainment of tax, interest and penalty is not established.
- Further, the fact that the voluntary payment was made in 4 tranches during the early hours of 17.02.2022 i.e., between 1:28 am to 7:30 am during the search shows that the said payments were not voluntary in nature.
- In terms of the *Instruction No. 01/2022-2023 dated 25.05.2022* and decision of Hon'ble Gujarat High Court in the case of ***Bhumi Associate v. Union of India MANU/GJ/0174/2021 - 2021-VIL-117-GUJ***, it is advised that voluntary payment, if any, should be made the day after the search has ended and the concerned officers have left the premises of the assessee which has not been followed by the Respondents in the present case.
- Consequently, the Hon'ble Delhi High Court directed the respondents to return the payment made vide DRC-03, along with interest at the rate of 6% (simple) per annum.

f) Refund of GST amount paid to wrong GSTN is not governed by section 54 and such claims can also be filed manually

(M/s. Varshan Enterprises Vs. Office of GST council, 2022-VIL-843-AP)

Facts:

- The Petitioner is engaged in the business of laying telecom pipe services in state of Telangana. Further, the Petitioner erroneously issued two tax

invoices in March,2018 and other two tax invoices in June, 2018 along with credit note declaring IGST to the party located in Mumbai.

- As the petitioner was entitled to furnish the returns quarterly therefore, the tax invoices issued in March, 2018 were shown in Form GSTR 3B of April, 2018 and details of all invoices were shown in Form GSTR-1 for the quarter ending 30.06.2018.
- Further while uploading the details on GST portal, the petitioner wrongly entered GST Number of Mumbai instead of Telangana. This was a human error and due to this error, the actual recipient of cable laying services in Telangana was not able to claim the credit of IGST.
- The recipient refused to pay the GST amount by reducing the subsequent consideration payable, then the petitioner tried to rectify the mistake in May 2020, but the portal was not permitting to correct the same as the time available for such rectification was 20.10.2019
- The petitioner requested the superintendent to either refund the amount or adjust the same against the existing liabilities, but it was denied as due to time period of two years was also over.
- The writ petition was filed where the Ld. Counsel for petitioner argued that there was no dispute that the error was made by the petitioner and it was impossible for the petitioner to follow the Circular no.125/44/2019-GST dt.18.11.2019 as it permits certain types of refunds through electronic mode only, and the claim of the petitioner would not come under the said purview.
- Also, as per Rule 97(A) of CGST Rules,2017 it was permitted to file manual refund application and if the respondent had permitted the manual filing, the petitioner would have been in a position to submit his claim manually successfully. So, the inability of the petitioner to submit his claim through electronic mode by following the Circular, does not enable the respondents to contend that the claim of the petitioner is barred by limitation.
- The ld. Counsel of CBIT contended that it was the duty of the petitioner was to follow the procedure as contemplated in the Circular and his claim falls

under Section 54 of the CGST Act, which prescribe the period of limitation of two years and the petitioners claim is barred by limitation.

Held:

- As per Section 54 of the CGST Act, any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed.
- It is held that the as per Para No.3 of the said circular, the claim of the petitioner would not come under the said purview and when Rule 97A permits manual filing also, it is not known why there was a restriction for filing the claim electronically in the said Circular.
- Further the amount that was paid by the petitioner furnishing the incorrect details cannot be taken as a tax due to the respondent. When such is the case, the respondents cannot contend that the claim of the petitioner is barred by limitation.
- The respondents cannot retain the disputed amount that are paid to them, due to inadvertent error and Circular restricts only electronic filing and as the contention of the respondents that the claim of the petitioner is barred by limitation is not acceptable, the respondents cannot retain the amount, which was paid by the petitioner. Therefore, the relief was granted to petitioner.
- Further Petitioner is required to fill the manual form and submit to the department for refund.

g) Recovery under cost sharing agreement does not amount to supply of services hence, no service tax leviable

(Hazira LNG Pvt Ltd. Vs. CST, Service Tax, 2022-VIL-837-CESTAT-AHM-ST)

Facts:

- The Appellant had an associated enterprise namely M/s. Hazira Port Pvt. Ltd. (hereinafter referred as **'HPPL'**) with whom the Appellant shared certain expenditure like common office building, security services, insurance services, manpower costs etc.
- Accordingly, the Appellant raised cost sharing invoices to HPPL under the taxable category of Business Support Services (BSS) charging applicable service tax.
- However, due to poor financial condition of HPPL, the Appellant waived off the sum of Rs.29,20,64,558/- along with service tax of Rs. 2,64,57,777/-.
- During the course of audit, it was observed that the Appellant had not paid service tax amounting to Rs. 2,64,57,777/- on the said waived amount.
- Accordingly, SCN was issued on the said issue and, on adjudication, the demand along with interest and penalty was confirmed by the Department.
- Being aggrieved, the Appellant filed the present appeal.

Held:

- The Hon'ble CESTAT, Ahmedabad relied on the decision of Hon'ble Apex Court in case of ***Gujarat State Fertilizers & Chemicals Ltd Vs CCE [2016 (45) STR 489 (SC)]*** and held that the arrangement of the appellant with it is associate companies is in the nature of cost sharing and therefore, the appellants are not providing any services to their associate companies.
- Moreover, the Department has not been able to identify any specific service, which the Appellant has provided to the group companies.
- Service tax is a levy on rendition of taxable service whereas as per the present facts of the case the activities in the nature of sharing cost between associate companies do not amount to provision of any service by Appellant to group companies as per the cost sharing agreement.
- Therefore, the demand was set aside.

h) Supplier of main services being provided on principal-to-principal basis does not fall under the ambit of an intermediary

(Commissioner of CGST v. M/s Singtel Global India Private Limited 2022-VIL-929-CESTAT-DEL-ST)

Facts:

- The respondent was a licensed telecommunication service provider in India.
- Singapore Telecommunications Limited was a licensed telecommunication service provider in Singapore (**'SingTel'**).
- The Respondent and SingTel had entered into an agreement for supply of services necessary and ancillary to enable SingTel to provide to its customers seamless global telecommunication services.
- Further, the Respondent had entered into agreements with the Indian telecommunication service providers for providing bandwidth so as to enable it to provide the required services to SingTel for its customers.
- The Respondent applied for refund of the unutilized input service credit of input services used by it to export telecommunication services to SingTel under Rule 5 of the CENVAT Credit Rules, 2004 (**'CCR**').
- The refund was allowed by the adjudication officer and confirmed by Commissioner (Appeals) by rejecting the appeal filed by the department against the refund order.
- The department being aggrieved by the order of Commissioner (Appeals) had filed the present appeal.

Held:

- An intermediary is a person who arranges or facilitates provision of the main service between two or more persons however, the Respondent is not involved in the arrangement or facilitation of the supply of service but on principal-to-principal basis.
- The Hon'ble CESTAT, Delhi analysed the agreement and observed as under:

  - The Respondent is providing all facilities and resources whatsoever necessary to enable it to provide services to SingTel at its own expense.
  - The Respondent is responsible for raising bill for services provided by it to SingTel.
  - The relationship of the parties to the Agreement shall always and only be that of independent contractors and nothing in the Agreement shall create or be deemed to create a partnership or the relationship of principal and agent or employer and employee between the parties.
- Further, there is no contract between SingTel and the operators in India. The Respondent may have used the services of telecom operators in India but this would not mean that these telecom operators were providing services to SingTel.
- The agreement between the Respondent & SingTel and the Respondent & Indian telecommunication service providers are distinct and independent from each other.
- The Respondent provided the main service i.e. telecommunication service to SingTel on its own account and the said services qualify as export of services.
- Moreover, the Respondent is not a privy to the Agreement entered into between SingTel and its end customers.
- The Hon'ble CESTAT, Delhi relied on the decision of Hon'ble Delhi High Court in case of ***Verizon Communication India Pvt. Ltd. versus Asstt. Commr. S. T., Delhi-III [2018 (8) G.S.T.L. 32 (Del.)]*** wherein it was held that the intermediary essentially excludes any person who has provided the service on their own account.
- Therefore, the Hon'ble CESTAT, Delhi held that Respondent is not an intermediary and, consequently dismissed the appeal.

i) Concurrence of the contractor for transfer of rights by one contractee to another without any consideration does not qualify as service

(M/s All India Football Federation v. Commissioner of CGST, Audit-II, New Delhi 2022-VIL-943-CESTAT-DEL-ST)

Facts:

- The Appellant was a governing body for football matches and competitions and owns and controls the rights relating to national teams' competitions.
- The Appellant entered into an agreement with M/s Zee Entertainment Enterprises Pvt. Ltd. (**'ZEEL'**) dated 26.09.2005 wherein the Appellant had granted commercial rights for broadcasting for a period of 10 years.
- Thereafter, a tripartite agreement was entered into between the Appellant, ZEEL and M/s IMG Reliance Pvt. Ltd. (**'IMGR'**) dated 09.12.2010 by which said commercial rights which were granted to ZEEL were transferred to IMGR. In lieu of said transfer of commercial rights, IMGR paid a termination fee of Rs. 70 crores to ZEEL on behalf of the Appellant.
- A Show Cause Notice (**'SCN'**) was issued to the Appellant demanding Service tax on the said termination fee of Rs. 70 crores under the category of *"granting rights or permitting commercial use or exploitation of any event including an event relating to art, entertainment, business, sports or marriage"* under Section 65(105)(zzzzr) of the Finance Act, 1994 (**'Finance Act'**) along with applicable interest and penalty.
- After adjudication of the said SCN, the Order-in-Original (**'Impugned Order'**) was issued confirming the demand.
- The Appellant being aggrieved by the Impugned Order has filed the present appeal.

Held:

- The Hon'ble CESTAT, Delhi observed that in case the Appellant had sold the commercial rights to IMGR or to any other entities, it would have been taxable under Section 65(105)(zzzzr) of the Finance Act.
- However, the tripartite agreement has been entered to circumvent the said situation by transferring the rights from ZEEL to IMGR directly with the concurrence of the Appellant for a consideration known as the termination fee paid by IMGR to ZEEL.
- It is to be noted that the Appellant has not rendered any service in this agreement but has concurred to the tripartite agreement whereby the rights were transferred from ZEEL to IMGR.
- Therefore, such concurrence by the Appellant to the transfer of rights from ZEEL to IMGR does not amount to rendering of any service. Further, the amount paid by IMGR to ZEEL on behalf of the Appellant cannot be considered as an amount paid to the Appellant for any service.
- Accordingly, the Hon'ble CESTAT, Delhi allowed the appeal and set aside the demand.

j) Merely receiving a tender or opening a tender cannot be considered as acceptance of the contract

(M/s P. Natesan & Co v. Commissioner of GST & Central Excise, Madhurai 2022-VIL-967-CESTAT-CHE-ST)

Facts:

- The Appellant was engaged in providing works contract services.
- A tender was opened by the office of the Military Engineer Services on 23.01.2015 which was accepted by the Appellant on 19.03.2015 and accordingly, the Appellant entered into a contract and signed the same on 19.03.2015 for providing works contract services.

- The Appellant filed a refund claim for the period 01.04.2015 to 29.02.2016 for refund of the Service tax paid by them on such services in terms of Section 102 of the Finance Act, 1994 ('**Finance Act'**) as being exempted services provided to Government.
- After due process of law, the refund claim was rejected.
- The Appellant being aggrieved by the rejection of refund has filed the present appeal.

Held:

- The Hon'ble CESTAT, Chennai stated that a contract comes into effect and binds the parties only when it is accepted.
- Further, as per Section 2(b) of Indian Contract Act, 1872, acceptance refers to the act of one party agreeing to the terms of proposed by another party. Merely receiving a tender or opening a tender cannot be considered as acceptance. There should be communication or intimation of the acceptance.
- Further, it has been expressly stated in Section 102 of the Finance Act that the contract has to be entered prior to 01.03.2015 to avail the exemption.
- Since in the present case, the contract has been entered on 19.03.2015 therefore, the Appellant is not eligible for exemption of Service tax.
- Accordingly, the Hon'ble CESTAT, Chennai upheld the rejection of refund and dismissed the appeal.

2. AAR/AAAR

k) "Job work agreement" and "job work charges" shall be mentioned in the invoices to qualify as 'job work'.

(M/s Indian Oil Corporation Limited, 2022-VIL-91-AAAR)

Facts:

- The Appellant is a public sector undertaking, bearing GSTIN No. 21AAACI1681G1Z1 for its Refinery business and 21AAACI1681G6ZW for its Petrochemical business. The Appellant owns and operates 15 MMTPA oil refinery in the state of Odisha located at Paradeep and refines crude oil and produces several petroleum products.
- Further, the Appellant requires Hydrogen gas, Nitrogen gas and HP steam for its refining activity, collectively referred to as 'Industrial Gases'. The industrial gases can be obtained from inputs such as Naphtha and other utilities such as De-mineralized water ('DM water'), power, cooling water, service water, instrument air etc.
- The Appellant floated a tender and M/s Praxair India Private Limited ("Praxair"), was awarded a contract for the Construction, Commissioning, and Leasing and thereafter for Operating and Maintaining a new Hydrogen & Nitrogen Plant within the IOCL refinery complex at Paradeep for supplying of industrial gas on Build-Own-Operate (BOO) basis.
- Under the said agreement, all the inputs required for Hydrogen plant and Nitrogen plant like naphtha, DM water, cooling water, service water, fire water, steam and power all supplied by the Appellant to M/s. Praxair India Private Limited located in its Refinery Complex at Paradeep for manufacturing of industrial gases as the final product and the final products are sent back to the Appellant through pipeline for exclusive utilization in the refinery processes. The ownership of the input and output products remain with the Appellant only.

- The Appellant approached to the Hon'ble Advance Ruling Authority, Odisha (AAR) vide application no AD211120006200H dated 25.11.2020 for getting an advance ruling on the following issues: -
    - Whether sending of inputs (Naphtha, DM water, Power, Cooling water, service water and instrument air) by the Appellant to M/s. Praxair India Private Limited and receiving back of industrial gases (Hydrogen gas, Nitrogen gas and HP steam) under the lease agreement will fall under 'job work' in terms of section 2(68) of Central Goods and Service Tax Act, 2017 (CGST Act) and Odisha Goods and Service Tax Act, 2017 (OGST Act)?
    - Whether all the payments under the lease agreement will attract GST as applicable to Job Work?
- The Authority for Advance Ruling after the detailed examination observed that the concept of the Job Work is missing in the said transaction vide Order No. 03/ODISHA-AAR/2020-21 dated 15.12.2021 - 2022-VIL-71-AAR on the following grounds:
    i. That the plant is not under the control and possession of M/s, Praxair India Private Limited, because it has been leased to the Appellant on a monthly rent basis for 15 years.
    ii. That there is no specific job work agreement between the Appellant and M/s. Praxair India Pvt Ltd.
    iii. That no job work charges or any processing/conversion charges of inputs have been claimed by "Praxair" as evident from the invoices raised to the Appellant.
    iv. As per agreement M/s. Praxair India Pvt Ltd. is raising six invoices each month for the service rendered under the agreement to Appellant which is as follows:
        a. two for fixed lease charges,
        b. two for fixed operation & maintenance charges, and

c. two for variable operation & maintenance charges at the rate of 18%.

- 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:

- It is observed that the Appellant as per the lease agreement and the O&M agreement for both the hydrogen plant and nitrogen plant, it was found that M/s Praxair has given the production plant to the Appellant on lease for 15 years which was clearly mentioned in the para 1.1 of the agreement.
- As per the para 1.1, it is clear that the plant is not under the control and possession of M/s. Praxair India Private Limited and the agreement held between M/s. Praxair India Private Limited and the Appellant is a simple 'lease agreement' and not a 'job work agreement' where M/s. Praxair India Private Limited has no control and possession over the place where the inputs supplied by the Appellant are processed.
- Further, ongoing through the O&M agreement of hydrogen plant and nitrogen plant which deals with fixed/variable operation & maintenance charges, it is observed that M/s. Praxair India Private Limited (as Contractor) has entered an agreement as Tripartite Agreement of assignment with the Appellant (as IOCL) for Operating and Maintaining a new Hydrogen & Nitrogen Plant within the refinery complex, Paradeep.
- It is also observed that M/s. Praxair can carry out the work for operation and maintenance of the production plant under the specific control of Appellant and it never charged any processing or conversion charges because none of such clauses mentioned for such charges in the lease agreement and O&M agreement. Further, the claim of M/s Praxair uses Plant to produce Hydrogen and Nitrogen Gas by using the inputs provided by the Appellant is a job work, is not acceptable.

- In the instant case, the Appellant has never been able to produce any job work agreement and invoices reflecting job work and its charges. After going through the sample invoices submitted by the Appellant it is amply clear that the job work charges are not mentioned in the invoices raised to the Appellant for the service rendered.
- Therefore, the activities undertaken in the Appellant's premises or production plant do not qualify for 'Job Work' under section 2(68) of CGST Act.
- In light of the above, the Ruling of the Advance Ruling Authority, Odisha, is in tune with legal provisions of the Act, and it needs no interference. Therefore, the decision of the Advance Ruling Authority, Odisha is upheld.

l) Supply of educational and health care services will constitute as business and liable for registration

(M/s. Kasturba Health Society, 2022-VIL-92-AAAR)

Facts:

- The Appellant is registered under section 12AA as a charitable institution with the objective to provide the health and medical education in rural India.
- The Appellant setup medical college and attached clinical laboratory in name of "Kasturba Hospital". Both these activities are carried on different titles but under same legal entity.
- The Appellant has not filed the return since none of the activity was in nature of business and does not fall under the definition of supply hence, it was not obliged to comply with the GST provision.
- The jurisdictional GST authorities issued the notice to comply with GST provisions i.e., filing of returns. Then it was learnt that the persons with same activities either not applied for GST registration or the registration was duly cancelled by the GST authorities considering the nature of business does not liable to get registered.

- The Appellant asked following questions which were not answered by advance ruling authorities, as medical college and laboratory were two separate entities:
    - Whether appellant having main object of educational institute can be said to be business and whether it was liable for registration.
    - Whether fees and other charges received from students would constitute as "outward supply".
    - Whether cost of medicines and along with other nominal charges would constitute as composite supply.
    - Further, nominal charges received from patients towards health insurance scheme would be eligible for exemption under "Education and/or health care services".
    - Nominal charges received for making space available for essential facilities such as banking, parking etc in support for activities for attainment of main activities would fall under meaning of supply and qualify for exemption under educational and/or health services.

Held:

- MAAR ordered the subject advance ruling application in pursuance to and in compliance with the order of Hon'ble Bombay High Court.
- For the first question i.e., whether it was a business or not, it was held that the Appellant-Society through its establishment MGIMS is undertaking such job or work which require the service of highly educated, trained, and skilled persons i.e., doctors hired by them for teaching the medical education to the students, hence the said work done by the Appellant can be said to be in the nature of "profession", and accordingly, will be construed as "business" in terms of the GST provisions.
- Further, the activities provided by the appellant can be rightly construed as supply in term of section 7(1)(a) of the CGST Act, 2017.

- Also, the services of medical education provided by the Appellant-Society is recognized by the Maharashtra University of Health Sciences, it was held that the medical education services provided by the Appellant to the students will attract nil rate of GST as per the aforesaid entry 66, ibid.
- Further, the Appellant providing services of diagnosis or treatment or care of the patients, hence, their services can be rightly termed as "health care services". And accordingly, it was held that the said services will be exempt from the payment of GST.
- For the second question it was held that the fees and other charges received from students, and recoupment charges received from patients would constitute consideration for outward supply.
- For the third question that whether cost of medicines and along with other nominal charges would constitute as composite supply, it was held that the said activities would fall within the meaning of "composite supply" and qualify for exemption under the category of "educational and/or health care services".
- For the question whether nominal charges received from patients towards health insurance scheme would be eligible for exemption under "Education and/or health care services it was held that it is eligible for exemption under exemption notification no. 12/2017-C.T (Rate) under Sl.No. 74.
- For the last question whether nominal charges received for making space available for essential facilities such as banking, parking etc. in support for activities for attainment of main activities would fall under meaning of supply and qualify for exemption under educational and/or health services, it was held that these services were not provided to a single recipient as compulsory under the provisions of composite supply. Thus, the said service of renting of immovable property will be considered as separate and independent supplies and will be taxable at the applicable rate of 18%.

m) Transaction of leasing of goods by a foreign supplier to Indian recipient without transfer of title qualifies as service and is taxable as import of service

(M/s. Deccan Transcon Leasing Pvt. Ltd., 2022-VIL-94-AAAR)

Facts:

- The Appellant is a non-vessel owner container carriers/operator that takes containers on lease from suppliers outside India and in turn use it in transportation of bulk chemicals.
- The Appellant enters into lease agreement in which they pay lease rentals every month and entitled for purchase the container during the lease period or at the end as the case may be.
- The appellant contended that the containers are recognized as assets whenever there is certainty for payment therefore this transaction is a supply of goods as per Sl. No.1(C) of schedule II of section 7 i.e any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods/.
- Therefore, the appellant asked the question before the advance ruling that it is purchase of goods not as lease service and the goods had never entered into the territory of India so GST would not be applicable.
- The appellant also quoted Mohit Mineral vs UOI -2020-VIL-36-GUJ where it was held that transaction occurring totally outside India is not liable for GST.
- The decision of advance ruling was against the appellant and the appellant appealed against the order of advance ruling.

Held:

- It was held there was no transfer of title of goods until the appellant purchases the container and this fact wasn't disputed either.

- Further on the interpretation of the entry 1(C) of schedule II of CGST Act
    - *prima facie* there shall be transfer of title in goods
    - The agreement should not leave any option regarding passing of property in goods, upon payment of full consideration
- For supply to fall under entry 1(C) there should be an immediate transfer of title of goods as per agreement and property should be passed after payment was done. Therefore, future title transfer cannot be classified under entry 1(C) of Schedule-II.
- Further it can be concluded from the agreement that default in payment is one of the conditions for return of goods making it clear that the title transfer after payment of full consideration is not automatic.
- Also, the appellant's contention is that his transaction was a hire-purchase transaction and thereby falls within scope of Schedule II entry no. 1C of CGST Act, 2017, but the advance ruling observed GST Act doesn't differentiate between the type of leases as to whether it is a Hire-purchase, financial lease or Operating Lease.
- Therefore, the said transaction attracts IGST and is exigible to tax as per section 5 (1) and (3) of IGST Act and Notification No: 10/2017 -IGST(R).
- Further where the location of the supplier of services or recipient of services is located outside India, the place of supply is the location of recipient of services. Therefore, the transaction is taxable under reverse charge basis, with tax to be paid by the recipient of services.

n) GST is applicable even if building is constructed outside India when both recipient and supplier are from India

(M/s Sri Avantika Contracts (I) Limited, 2022-VIL-95-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 recipient of the construction service is the Government of Maldives as the institute is being constructed as a part of assistance from Government of India to Government of Maldives and as per the GST Act, 2017, the supply of services is taxable only within the territory of India. And therefore, the supply of this service outside India does not constitute taxable supply.
- The Appellant filed an AAR contending that the recipient of the service is Government of Maldives as they would be ultimate owners of the constructed building and hence the place of supply would be Maldives in terms of Section 13(4) of IGST Act, 2017.
- The Government of Republic of India & Government of Maldives entered into a memorandum of understanding for construction of a Police Academy. As per this MOU the Government of India has awarded the work relating to planning, designing and execution of the project to National Buildings Construction Corporation Ltd., New Delhi.
- Further, the Appellant has not entered into contract with Government of Maldives for carrying out the said construction. Hence Government of Maldives is not the recipient of any service from the Appellant and National Buildings Construction Corporation Ltd., New Delhi is the recipient of the Service.
- The Authority for Advance Ruling has observed as under:

Question Raised	Ruling
1.Whether the construction of Institute of Security and	The Appellant who is the supplier of service & NBCCL who is recipient of service are located in India and therefore the place of supply is to

Law Enforcement studies at Addu City in Maldives, constructed for Government of Maldives under a Memorandum of Understanding between India and Maldives falls within the GST net?	be determined under Section 12 of the IGST Act. The proviso to Sub-Section (3) of Section 12 of IGST Act clearly mentions that if the location of immovable property is intended to be located outside India, the place of supply shall be the location of the recipient. Therefore, the supply by the Appellant to the NBCCL is within the ambit of GST.
2. Who is the recipient of service in the instant case?	National Buildings Construction Corporation Limited is recipient of service from the Appellant
3. What is the place of supply in respect of the works contract for setting up of the Institute of Security and Law Enforcement Studies at ADDU City in Maldives?	The Appellant who is the supplier of service & NBCCL who is recipient of service are located in India and therefore the place of supply is to be determined under Section 12 of the IGST Act. The proviso to Sub-Section (3) of Section 12 of IGST Act clearly mention that if the location of immovable property is intended to be located outside India, the place of supply shall be the location of the recipient i.e., NBCCL

- 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, the agreement to be performed is made from the place of business for which the registration has obtained located in India. Hence, the location will be the supplier of services i.e. Hyderabad.
- Further, the consideration which is payable for the supply of works contract services is agreed to be paid by M/s NBCC Limited, New Delhi. Hence, M/s NBCC (India) Limited, New Delhi will be the recipient of services.
- In case where the total works contract service is agreed to be performed has been received, the place of such services will be the location of the recipient of the services.
- In the present case, the supply, the agreement to perform is received at the place of business for which registration has been obtained (i.e. NBCC (India) Limited, Lodhi Road, New Delhi). Hence, this location, i.e., NBCC (India) Limited at New Delhi will be the location of the recipient of services.
- The Appellate Authority for Advance Ruling has upheld the ruling passed by the Authority for Advance Ruling.

Question Raised	**Ruling**
1.Whether the construction of Institute of Security and Law Enforcement studies at Addu City in Maldives, constructed for Government of Maldives under an Memorandum of Understanding between India and Maldives falls within the GST net?	Yes, the supply is within the ambit of GST
2. Who is the recipient of service in the instant case?	National Buildings Construction Corporation Limited is recipient of service from the Appellant

3. What is the place of supply in respect of the works contract for setting up of the Institute of Security and Law Enforcement Studies at ADDU City in Maldives?	The Appellant who is the supplier of service & NBCCL who is recipient of service are located in India and therefore, the place of supply is to be determined under Section 12 of the IGST Act. The proviso to Sub-Section (3) of Section 12 of IGST Act clearly mentions that if the location of immovable property is intended to be located outside India, the place of supply shall be the location of the recipient i.e., NBCCL

o) ITC is admissible on the canteen services mandated under factories Act

(M/s. Tata Motors Limited, 2022-VIL-100-AAAR)

Facts:

- The Appellant is maintaining canteen facility services at the factory for their employees as per the requirements of Factories Act,1948 and it was argued that ITC paid on goods or services availed shall be available where it was obligatory in nature as per section 17(5) (b) of CGST Act,2017.
- Further the Appellant sought the advance ruling on the following question:
    - Whether ITC available on GST charged by service provider on canteen services.
    - Whether GST is applicable on nominal amount recovered from employees for using canteen services.
    - If ITC available whether it will be restricted to the extent of cost borne by the Appellant.

- The GAAR held that the ITC paid on canteen services is blocked and inadmissible and also, GST is not leviable on the amount which is paid by the employees.
- The Appellant was aggrieved by the decision and decided to appeal against the present decision.

Held:

- It was held that the Circular no. 172/04/2022-GST has been issued wherein clarification has been provided that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17of the CGST Act, ITC will be available to the appellant in respect of food and beverages as canteen facility, is obligatory to be provided under the Factories Act, 1948 to its employees working in the factory.
- Therefore, the ITC will be available in respect of such services provided by canteen facility to its direct employees.
- Further, the ITC of GST charged by the canteen service provider will be available but only to the extent of cost, borne by the appellant and disallowing proportionate credit to the extent of cost of food recovered from such employees.

p) Cost of Diesel has to be included in the value of the supply of Diesel Generators.

(M/s Yaadvi Scientific Solutions Private Limited, 2022-VIL-303-AAR)

Facts:

- The Applicant is a Private Limited Company registered under the provisions of Central Goods and Services Tax Act, 2017 and is an integrated Custom Research and Manufacturing Services (CRAMS) provider offering single point

access to discovery services, CPRD (Chemical Process Research and Development), drug production development & regulatory support services and also pharmaceutical technologies to global pharma and Biotech Companies.

- The Applicant performs activities which require extensive co-ordination with other research sites / customer sites to attend appropriate meetings (Joint Scientific Review Committee, Steering Committee), supervise studies at third party sites (preclinical and clinical sites), the employees are needed to undertake travel / work from home etc., Company while providing above said services, some of the expenses are incurred by their employees on behalf of the Company.
- Further, the Applicant states that the employee staff takes all the invoices in the name of the Company along with the Company GSTIN for domestic transaction invoices and company takes input tax credit in respect of eligible transactions and in respect of such transactions reverse charged attracts on such payments.
- Further, the company discharges the liability by paying under the reverse charge mechanism to government. The employees incur expenses on behalf of the company in the course of employment and the said amounts are reimbursed by the company on periodical basis. These expenses are incurred by the company and are only paid by the employee and later reimbursed to the employee by the company.
- The applicant has sought advance ruling in respect of the following questions:
    - Whether on reimbursement of expenses at actual cost which are incurred by the employee staffs on behalf of Company is liable to tax?
    - Whether Reverse Charge Mechanism is applicable on reimbursement of expenses paid on behalf of the Company at actuals which are incurred by the employee staff who is also a whole-time director Company?
    - iii. Whether-

- time limit prescribed to take input tax credit under the Section 16(4) of the GST Act, 2017 applies only for the invoice or debit note for the supply of goods or services or both or it shall also applies to invoice issued in accordance with the provisions of clause (f) of sub-section (3) of Section 31 i.e., self-invoices by registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 (under reverse charge mechanism).
- Tax paid during current financial year under reverse charge mechanism as per sub-section (3) or sub-section (4) of section 9 for any of the previous financial year transaction, input tax credit on such payment of tax would be availed in the year of payment or in the year in which transaction happened.

o If answer to the Question 1 and Question 2 is affirmative, whether reverse charge is to be calculated on values including GST or excluding GST.

Held:

The Authority for Advance Ruling has observed as under:

- The Applicant's employees incur expenses incur expenses on behalf of the company in the course of employment and the said amounts are reimbursed by the applicant on periodical basis. The issue is whether reimbursement of expenses at actual cost which are incurred by the employee staffs on behalf of Company is liable to tax.
- The services by an employee to the employer in the course of or in relation to his employment are covered under Clause 1 of the Schedule III which relates to the activities or transactions which shall be treated neither as a Supply of Goods nor as a Supply of Services. Hence the services provided by the employees of the Applicant to the Applicant are not a supply. Further, the expenses incurred by the employees are expenses of the applicant and the

consideration is payable by the Applicant himself and later on reimbursed by the Applicant.

- Further, the amount paid by the employee to the supplier of service represents the amount paid 'by any other person' and is therefore covered under the term "consideration" paid by the applicant to the service provider for the services received by the employees on behalf of the company and the said amount being reimbursed by the Applicant to the employee would not amount to consideration for the supplies received as the services of the employee to his employer in the course of his employment is not a supply of goods or supply of services in terms of clause 1 of the Schedule III of the CGST Act, 2017 and hence the same is not liable to tax.
- Further, the whole time director of the company may be functioning in dual capacities, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company (employment). As per the **Circular No: 140/10/2020 dated: 10.06.2020, only part of employee Director's remuneration which is declared** separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and hence taxable under reverse charge basis. Hence Reverse Charge Mechanism is not applicable on reimbursement of expenses on actuals, to a whole-time director of Company who is also an employee of the company.

S. No.	Questions	Held by AAAR
1.	Whether on reimbursement of expenses at actual cost which are incurred by the employee staffs on behalf of Company is liable to tax?	Reimbursement of expenses at actual cost which are incurred by the employee staffs on behalf of Company is not liable

		to tax since the same is covered under Clause 1 of the Schedule III of CGST Act 2017
2.	Whether Reverse Charge Mechanism is applicable on reimbursement of expenses paid on behalf of the Company at actuals which are incurred by the employee staff who is also a whole-time director Company?	Reverse Charge Mechanism is not applicable on reimbursement of expenses paid on behalf of the Company at actuals which are incurred by the employee staff who is also a whole-time director Company.
3.	Whether- a. Time limit prescribed to take input tax credit under the Section 16(4) of the GST Act, 2017 applies only for the invoice or debit note for the supply of goods or services or both or it shall also applies to invoice issued in accordance with the provisions of clause (f) of sub-section (3) of Section 31 i.e., self-invoices by registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 (under reverse charge mechanism).	This question is not covered under section 97(2) of the CGST Act 2017, in respect which an applicant can seek advance ruling and hence this authority refrains from giving any ruling in this regard.
	b. Tax paid during current financial year under reverse charge	This question is not covered under section 97(2) of the

	mechanism as per sub-section (3) or sub-section (4) of section 9 for any of the previous financial year transaction, input tax credit on such payment of tax would be availed in the year of payment or in the year in which transaction happened.	CGST Act 2017, in respect which an applicant can seek advance ruling and hence this authority refrains from giving any ruling in this regard.
4.	If answer to the Question 1 and Question 2 is affirmative, whether reverse charge is to be calculated on values including GST or excluding GST.	Reverse charge is to be calculated on values excluding GST.

q) GST payable under RCM on transfer of monetary proceeds by Indian company to its foreign company for use of their expertise and credentials for participating in bid

(M/s. IVL India Environmental R&D Pvt. Ltd., 2022-VIL-305-AAR)

Facts:

- The Applicant was a company incorporated by the foreign company in India in order to execute the obligations as per terms and conditions and to satisfy the conditions of contract.
- The Contract was awarded to Applicant on the basis of expertise of foreign company therefore, the Applicant and the foreign company executed a contract with municipal corporation governing the scope of work, payment terms and general conditions of contract, which was signed complying the terms and conditions.

- It was evident that since the Applicant does not receive any service from the foreign company and the question asked by the Applicant was whether reverse charge applicable on the Applicant as per schedule I of CGST Act or not.

Held:

- It was held that the applicant is the one who is actually performing the services, as per the services mentioned in the contract and the foreign company is providing the support for such service to applicant and for providing the support the consideration is being provided to foreign company. Further, there is no doubt that the services are being supplied in taxable territory.
- Therefore, the transfer of monetary proceeds by the Applicant to Foreign company will be liable for payment of IGST under reverse charge mechanism under Entry No. 1 of Notification10/2017 - IGST (Rate).

r) Leasing of equipment by Company located in one state to its registrations located across India is a taxable supply to be valued at open market value

(M/s Chep India PVT LTD, 2022-VIL-309-AAR)

Facts:

- The Applicant is an Indian accompany and wholly owned subsidiary of Brambles Limited, a company and has its headquarters in Sydney, Australia.
- Further, the Applicant is a part of the said global organization and its business is primarily renting of re-usable unit-load equipment for shared use by multiple participants within industrial and retail sector throughout the supply chain, under a business model known as "pooling". Ownership of the equipment rests with CIPL at all times. CIPL enhances performance for customers by helping

them transport goods through their supply chains more efficiently, sustainably and safely.

- The Applicant is contemplating certain changes in its business model and the proposed business model would be as follows:
    - CIPL would be consolidating the ownership of all the equipment into the state of Maharashtra. Currently, while majority of the procurements / manufacture happen in Maharashtra, some of the procurements are also done from other states.
    - As the ownership of equipment would be with CIPL, Maharashtra, it would be entering into the arrangement with the customer and all the other CIPL units (located in other States) for leasing the equipment to them at the agreed leasing or hiring charges.
    - CIPL, Maharashtra would thereafter lease the equipment to its other CIPL units based on their demand requirement. CIPL, Maharashtra would be sending the equipment to the other unit of CIPL (Say CIPL, Karnataka) under the cover of the delivery challan. CIPL, Maharashtra would be raising periodical invoices for lease charges (based on number of days of usage) to CIPL, Karnataka.
    - CIPL, Karnataka would thereafter be issuing the equipment to its customers who would be using it for movement of their goods through the supply chain. CIPL, Karnataka would be charging the lease charges to its customers based on the period for which the equipment would be used by the customers.
    - Also, there are chances that other units of CIPL, (Say CIPL, Tamil Nadu) may require certain equipment from CIPL Maharashtra which are available with CIPL, Karnataka (under lease from CIPL Maharashtra). In such a case, basis instructions from CIPL, Maharashtra, CIPL, Karnataka would transfer the equipment to CIPL, Tamil Nadu. In such a case, the moment equipment reaches CIPL Tamil Nadu, CIPL, Maharashtra would stop charging CIPL, Karnataka

and start charging CIPL, Tamil Nadu towards lease charges (basis number of days of usage). Further, CIPL, Karnataka would charge CIPL, Maharashtra a consideration for facilitation / arrangement of movement of equipment to CIPL, Tamil Nadu basis the instruction.

- The Applicant has sought advance ruling in respect of the following questions:
    - ***Question 1 -*** *Whether the pallets, crates and containers (hereinafter referred as "equipment") leased by CHEP India Private Limited (hereinafter referred to as "CIPL" or "the Applicant") located and registered in Maharashtra to its other GST registrations located across India (say CIPL Karnataka), would be considered as lease transaction and accordingly taxable as supply of services in terms of Section 7 of the CGST Act and MGST Act?*
    - ***Question 2 -*** *If the answer to Question 1 is Yes, what is the value on which GST has to be charged i.e. whether it should be lease charges or the value of equipment in terms of Section 15 of the CGST Act and MGST Act read with relevant Rules?*
    - ***Question 3 -*** *What are the documents that should accompany the movement of the goods from CIPL, Maharashtra to CIPL, Karnataka?*
    - ***Question 4 -*** *Whether movement of leased equipment from CIPL, Karnataka to CIPL, Tamil Nadu on the instruction of CIPL, Maharashtra can be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act and MGST Act, and thereby not liable to GST?*
    - ***Question 5 -*** *With reference to Question 4 above, what are the documents that should accompany the movement of the goods from CIPL, Karnataka to CIPL, Tamil Nadu?*

Held:

The Authority for Advance Ruling has observed as under:

- **In respect of the Question 1:** The definition of the supply is too wide and includes "lease" within its ambit and as per the point 5(f) of Schedule II, "transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration" is deemed as service under GST.
- Any lease transaction is deemed as supply of services as per Schedule II, as it involves transfer of right to use the goods for a consideration and the present matter, the Applicant (Maharashtra) transfers the right to use the equipment for a period of time to third party customers in Maharashtra and other CIPL registrations across India for periodical considerations and in respect of the customers in Maharashtra, the Applicant is considering the transaction as leasing and discharging the tax on the invoice amount which is computed on the basis of the period of the use of equipment.
- The leasing between different registration of the same company is covered under the scope of Supply as per the Section 25 of the CGST Act, 2017 as two registrations of the same company are considered as distinct person under GST.
- **In respect of the Question 2**: The changes in the business model have not been implemented and the said model is yet not operational, so the actual facts and figures to answer the question are not available making this more like hypothetical question.
- However, one fact is clear that applicant would be entering into the arrangement with the customer and all the other CIPL units (located in other States) for leasing the equipment to them at the agreed leasing or hiring charges. So naturally, the rates to be applied for leasing to equipment to the other customers and to the branches of applicant would be same or similar.
- **Question No. 3 and 5** were not admitted and hence, not answered.
- **In respect of the Question 4:** The main question raised by the Applicant is with respect to the movement of goods located in a State other than Maharashtra. As per clause (a) of Section 10 of IGST Act, 2017 read with Sub-

section (1) of Section 8 of the IGST Act, 2017 and Section 22 of the CGST Act, 2017, it is clear that the it is an origin based provision wherein the registration to be taken in the said state and after the conjoint reading of the above mentioned provisions it appears that if the situs of supply is determined on the basis of movement of goods and delivery of goods.

- Further, the transaction in question is not within the state of the Maharashtra, and it is outside the jurisdiction of the Maharashtra Advance Ruling Authority cannot acquire the jurisdiction over the questions raised, hence no ruling can be given on this question.

s) GST payable under RCM on transfer of monetary proceeds by Indian company to its foreign company for use of their expertise and credentials for participating in bid

(M/s. IVL India Environmental R&D Pvt. Ltd., 2022-VIL-305-AAR)

Facts:

- The Applicant was a company incorporated by the foreign company in India in order to execute the obligations as per terms and conditions and to satisfy the conditions of contract.
- The Contract was awarded to Applicant on the basis of expertise of foreign company therefore, the Applicant and the foreign company executed a contract with municipal corporation governing the scope of work, payment terms and general conditions of contract, which was signed complying the terms and conditions.
- It was evident that since the Applicant does not receive any service from the foreign company and the question asked by the Applicant was whether reverse charge applicable on the Applicant as per schedule I of CGST Act or not.

Held:

- It was held that the applicant is the one who is actually performing the services, as per the services mentioned in the contract and the foreign company is providing the support for such service to applicant and for providing the support the consideration is being provided to foreign company. Further, there is no doubt that the services are being supplied in taxable territory.

- Therefore, the transfer of monetary proceeds by the Applicant to Foreign company will be liable for payment of IGST under reverse charge mechanism under Entry No. 1 of Notification10/2017 - IGST (Rate).

t) Transferring of an independent part of business as a going concern is exempted from GST

(M/s. Capfront Technologies Pvt. Ltd., 2022-VIL-312-AAR)

Facts:

- The Applicant is a private limited company and are into the business of dataanalytics services, digital marketing services and also product development. It owned and developed the mobile application which is used to facilitate the lending of short terms personal loans.
- The Applicant intended to transfer the independent part of their business i.e. the mobile application along with its rights, obligations, source codes, development specifications and end user manuals as a going concern to their wholly owned subsidiary.
- Further the Applicant stated that the transfer of business as a whole or independent part thereof amounts to supply of service. Since the aforesaid independent part of their business qualifies to be a "going concern" the same

is covered under Sl. No. 2 in Notification No.12/2017-GST (Rate) and thus exempt from levy of GST.

- The Applicant has sought the advance ruling on whether GST would be applicable on the transfer of mobile application software.

Held:

- It is held that the mobile application which is to be sold is a fully functional part of the business and not only assets, but liabilities are also being transferred. Further, this shows the continuity of business and is decided to be transferred as a whole to a new owner thus it amounts to transfer of a going concern.
- Therefore, it is held that transfer of independent part of business qualifies as going concern and thus exempted from the GST as per Sl. No.2 of Notification No.12/2017- Central Tax (Rate) and attracts NIL rate of tax.

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