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1. JUDICIAL PRONOUNCEMENTS

a) Bombay HC at GOA has jurisdiction when tax is levied by Goa Government in respect of lottery business carried in Goa

(M/s The state of Goa Vs Summit Online Trade Solutions (P) Ltd & Ors. 2023-VIL-21-SC)

Facts:

- The petitioner was engaged in the business of purchase and sale of lottery tickets run, conducted and organized by the Government of Sikkim both within the State of Sikkim as well as outside the state.
- Petitioner sells the lottery tickets in the state of Sikkim, Punjab, Goa and Maharashtra.
- Petitioner filed the writ petition to set aside the impugned Notification 01/2017 CT(R) 01, 2017 and the state rate Notification of the state of Sikkim, Goa, Punjab and Maharashtra to the extent it levies differential rates of tax on supply of lottery tickets by creating an illusory sub-classification between 'lottery run by the state Government' as discriminatory and further hold that only 12% *ad volorem* tax can be levied uniformly.
- Further, petitioner prayed before the Hon'ble HC to set aside the impugned notification of the state of Sikkim, Goa, Punjab and Maharashtra to the extent it levies tax on the face value of the lottery ticket without abating the prize money.
- However, the Hon'ble HC by a common judgment and order dismissed the writ petitions.
- Consequently, the petitioner filed the special leave petition before the Hon'ble SC on the issue that whether the High Court was justified in returning the finding that "at least a part of the cause of action has arisen within the jurisdiction of the court" and premised on such finding to dismiss the application and whether the facts pleaded constitute a part of the cause of action sufficient to attract Article 226(2) of the constitution.

Held:

- The party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the High Court to decide the dispute and that, at least, a part of the cause of action to move the High Court arose within its jurisdiction.
- Such pleaded facts must have a nexus with the subject matter of challenge based on which the prayer would not give rise to a cause of action conferring the jurisdiction of the Court.
- Here, in the present case the tax has been levied by the government of Goa in respect of business that the petitioner company is carrying on within the territory of Goa. Such tax is payable by the petitioner not in respect of carrying on any business in the territory of Sikkim.
- Hence, merely because the petitioner company has its office in Gangtok, the same by itself does not form an integral part of the cause of action authorizing the petitioner company to move High Court.
- Therefore, the High Court ought not to have dismissed the applications of the appellant without considering the petition memo which has no semblance of case having been made out as to how part of cause of action arose within the territorial limits of the High Court or without any pleading as to how any right has been affected within the territory of Sikkim.
- Even otherwise, he High Court was not justified in dismissing the interim applications. Assuming that a slender part of the cause of action did arise within the State of Sikkim, the concept of *forum conveniens* ought to have been .**Union of India – 2004-VIL-59-SC** and **Ambica Industries Vs CCE – 2007-VIL-82-SC-CE,** even if a small part of the cause of action arises within the territorial jurisdiction of a High Court, the same by itself could not have been a determinative factor compelling the High Court to keep the writ petitions alive against the appellant to decide the matter qua the impugned notification, on merit
- For the reasons aforesaid, the Hon'ble Supreme Court held that the High Court has erred in dismissing the applications filed by the appellant. Consequently, the impugned judgment passed by the High Court is set aside and civil appeals are allowed.

b) Rule 89(4)(c) restricting the value of zero-rated supply for computation of refund amount held *ultra vires* the GST Act

(M/s Tonbo Imaging India Pvt Ltd Vs Union of India, 2023-VIL-198-KAR)

Facts:

- The petitioner being engaged in the developing innovative designs in micro-optics, lower power electronics and real time vision processing to design systems for real world applications in fields of military applications, have exported various customized/ unique products during the period May 2018 to March 2019 (hereinafter referred to as '**relevant period**').
- Since, the said exports made by the Petitioner qualified as "Zero rated" supplies under Section 16 of the IGST Act, the petitioner filed the refund applications dated 25.05.2020, 27.05.2020 and 28.05.2020 in terms of the provisions laid down under Section 54(2)(i) of the CGST Act read with Rule 89 of the CGST Rules for claiming the refund of unutilised ITC accumulated over the relevant period.
- However, the Department issued SCN(s) rejecting the refund claim on the ground that the Petitioner had not given any proof ascertaining that the value of zero-rated supplies considered for the purposes of computing the refund amount has been determined by considering the lower of the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier, which was required to be given in terms of Rule 89(4)(c) of the CGST Rules as amended w.e.f 23.03.2020.
- In response to the said SCN(s), the petitioner submitted the reply stating that amended Rule 89(4)(c) of the CGST Rules would not be applicable, as the relevant period is much prior to the date of amendment of Rule 89(4)(c). Therefore, the petitioner contends that the refund applications must be governed under the old rule not the provision of the amended rule shall not apply in the present case.

- In pursuance of the same, the respondents passed an order rejecting the refund applications (hereinafter referred to as '**impugned order**').
- Being aggrieved by the impugned order, the petitioner had filed the present writ petition not limited to assailing the impugned order but also the questioned the validity of Rule 89(4)(c) of the CGST Rules as well as the Explanation to the Rule 93 of the CGST Rules.

Held:

- The Hon'ble High Court had considered the provisions laid down under the provisions of GST law along with emphasizing the motive of introduction of the present tax regime i.e., to avoid the cascading effect of taxes before reaching to the conclusion regarding the validity of the subject rule in the present matter.
- The fact that the concept of zero-rated supply has emerged to make the entire supply chain in an export transaction tax-free and to exempt its taxation at all input and output stages so as to make the products internationally competitive in terms of price, has been stressed upon while discussing the implication of the amended provision.
- The said intention is effectuated *vide* Section 16 of the IGST Act which specifies no restriction on availing/utilizing credit of input taxes paid for making/providing the output supply in an export transaction, notwithstanding that such supply may be an exempt supply and therefore, refund can be claimed of input tax credit lying unutilized on account of such zero-rated supplies (i.e., exports) as also on the output tax.
- It has been observed that the amended rule 89(4)(c) places a restriction on the value of zero-rated supply to a maximum of 1.5 times of the value of like goods domestically supplied by the same or, similarly placed supplier. It has been held that the said rule is merely a machinery provision to operationalize Section 54 of the CGST Act where exports are done without payment of output tax under bond or LUT and thus, it cannot override what the Act allows and hence, cannot restrict the value of zero-rated supply to be considered for the purposes of computing refund amount which would defeat the motive of removing the cascading effect and making exports tax free. The rule in

whittling down such refund is *ultra vires* in view of the well settled principle of law that Rules cannot override the parent legislation.

- Further, it has been held that Rule 89(4)(c) is violative of Article 14 and 19(1)(g) of the Constitution of India since, it restricts the quantum of refund of unutilized input tax credit only in case of refund claimed on unutilised ITC on account of export of goods made without payment of duty under a Bond/Letter of Undertaking (LUT) and not in cases where export of goods is made after payment of duty. This leads to a hostile discrimation in the two scenarios under which exports are made without any rational basis.
- It is essential for the funds to rotate for a business to thrive in case of exports and if any restriction or condition is provided then the entire concept of refund of unutilized input tax credit relating to zero-rated supply would be obliterated. In such scenario, the incentive given to exporters who bring valuable foreign exchange would lose its meaning and lead to increase in the price quoted for exports which makes the amended rule highly unreasonable.
- Further, it has been held that the said rule suffers from the vice of vagueness and there is ambiguity about the words "like goods" and "similarly placed supplier" since, they are very open ended and not defined under the GST law and also, there is no clarification regarding the following situations:
    - where no similar goods are domestically supplied;
    - supplier who may have different pricing policy for different local customers nor what would be the consequences in respect of a supplier who would be pricing the local goods differently in different states for the same products being exported;
    - when it is impossible for any exporter to show proof of value of "like goods" domestically supplied by the "same or, similarly placed, supplier".
- Further, the application of the subject rule, would lead to loss of object of zero-rating exports if exports are made to suffer GST that would make exports uncompetitive being against the policy of the Government.
- It has been held that impugned Rule 89(4)(c) is arbitrary and unreasonable, in as much as the possibility of taking undue benefit by inflating the value of the zero-rated supply of goods, cannot be a ground to amend the Rule, which deserves to be declared invalid on this ground also.

- Further, on the basis of the above discussions and findings, the Hon'ble High Court held that Rule 89(4)(c) is merely being a machinery provision cannot impose a rigorous condition to take away right to obtain refund and hence, deserves to be declared ultra-vires and invalid.
- The Petitioner has been granted relief by considering that the impugned order deserves to be quashed on the basis of above discussion and that the Petitioner's refund applications shall be accepted and refund of unutilised ITC shall be granted along with applicable interest.

c) Cash cannot be seized by the Department as it did not form part of the stock in trade of the petitioner's business

(Shabu George, Gigi Mathew Vs Sales Tax Officer and others, 2023-VIL-197-KER)

Facts:

- Investigation was conducted by the department at the premises of the Petitioner and cash was seized by the department and retained by the department for more than 6 months without issuance of SCN.
- The Petitioner being aggrieved by seizure of said cash has filed the present appeal on the ground that the seizure of cash was unwarranted especially when the investigation itself was for alleged evasion of tax due from the appellants under the GST Law.

Held:

- The Court observed that while it may be a fact that Section 67(2) of the CGST Act authorizes the seizure of 'things', including cash however, the power of any authority to seize any 'thing' while functioning under the provisions of a taxing statute must be guided and informed in its exercise by the object of the statute concerned.
- In an investigation aimed at detecting tax evasion under the GST Law, cash cannot be seized especially when it is the admitted case that the cash did not form part of the stock in trade of the Petitioner's business.
- The findings of the Intelligence Officer that 'it is suspicious that this much amount of money kept in the house of M/s. Shabu as idle and not deposited at

bank ' and further ' the amount received as gift on the day of marriage has not been recorded in his income tax return and from this it is evident that the money is from illicit sources' reveal the extent to which authorities under the Act are misinformed of their powers and the limits of their jurisdiction.

- The aforesaid findings of the Intelligence Officer could perhaps have been justified had he been an officer attached to the Income Tax department but irrelevant from the perspective of GST Law.
- Thus, the Court held that the seizure of cash was wholly uncalled for and unwarranted.
- Moreover, the Court held that the department has retained the seized cash for more than 6 months and is yet to issue a SCN, there can be no justification for a continued retention of the said amount and therefore, allowed the present appeal to release to the cash seized from the premises.

d) Services directly rendered by Indian Branch Office of an entity to its group entities does not constitute services as an intermediary

(M/s Ernst and Young Limited Vs Additional Commissioner, CGST Appeals -II, Delhi and Anr. 2023-VIL-190-DEL)

Facts:

- The petitioner is an Indian Branch Office of M/s Ernst & Young Limited, a company incorporated under the laws of United Kingdom (hereafter 'E&Y Limited'). The petitioner was established pursuant to the permission granted by the Reserve Bank of India on 04.04.2008.
- E&Y Limited has entered into service agreements for providing professional consultancy service to various entities of Ernst & Young group (hereafter 'EY Entities') including Ernst & Young US LLP, Ernst & Young Service Pty Ltd. Australia, Ernst & Young Group Ltd. New Zealand and Ernst & Young LLP, UK on arm's length basis.
- In terms of the service agreements, the overseas entities had retained E&Y Limited, acting through its Indian Branch (the petitioner herein) to provide certain professional services.
- The issues to be addressed here is:

- Whether the Service rendered by the petitioner to EY Entities in terms of the service agreement constitutes services as an 'intermediary".
- Also, whether the supply of service by the petitioner would be outside India with reference to Section 13 of the IGST Act?
- The petitioner has filed the present petition impugning an order-in-appeal (hereafter 'the impugned order') passed by the Additional Commissioner of CGST Appeal-II (hereafter 'the Appellate Authority'), whereby respective appeals preferred by the petitioner against orders-in-original (hereafter 'the impugned orders-in-original') passed by the Assistant Commissioner, CGST, Division Vasant Kunj (hereafter 'the Adjudicating Authority') were rejected.

Held:

- In the present case, there is no dispute that the petitioner does not arrange or facilitate services to EY entities from third parties; it renders services to them. The petitioner had not arranged the said supply from any third party.
- A person who provides services, as opposed to arranging or facilitating of goods from another supplier, is not an intermediary within the definition of Section 2(13) of the IGST Act.
- The petitioner would not fall within the definition of 'intermediary' under Section 2(13) of the IGST Act as it is the actual supplier of the professional services and has not arranged or facilitated the supply from any third party.
- Therefore, it can be concluded that person involved in supply of main supply on principal-to-principal basis to another person cannot be considered as supplier of intermediary service.
- Moreover, the services rendered by the petitioner are not as an intermediary and therefore, the place of supply of the services rendered by the petitioner to overseas entities is required to be determined on basis of the location of the recipient of the services. Since the recipient of the services is outside India, the professional services rendered by the petitioner would fall within the scope of definition of 'export of services' as defined under Section 2(6) of the IGST Act.
- Thus, indisputably, the services provided by the petitioner would fall within the scope of the definition of the term 'export of service' under Section 2(6) of the IGST Act.

- The petition is, accordingly, allowed. The impugned order as well as the impugned orders-in-original are set aside. The Adjudicating Authority is directed to process the petitioner's refund application as expeditiously as possible.

e) Refund application cannot be rejected merely on apprehension of fake invoicing without any cogent material establishing non-receipt of goods by the asseessee

(M/s Balaji Exim Vs the Commissioner, CGST and ORS. 2023-VIL-181-DEL)

Facts:

- In the instant case, the petitioner filed the writ petition for challenging the Order-in-Appeal dated 31.03.2022 ('impugned order') which was passed to dismiss the appeals filed by the Petitioner against the orders rejecting the refund applications made by him in respect of the unutilised ITC accumulated on account of export of goods.
- The said refund applications filed by the Petitioner were not processed on account that the supplier viz. M/s Shruti Exports, from whom the Petitioner has procured certain inward supplies has allegedly received fake invoices from its suppliers/vendors and its ITC was blocked. However, the Petitioner in this regard has already appeared before the Anti Evasion Branch post receiving the summon and have submitted the documents sought therein in relation to the said procurements. Meanwhile, the Petitioner has also moved to the Hon'ble High Court of Calcutta for seeking unblocking of its Electronic Credit Ledger.
- The Petitioner was issued a Show Cause Notice demanding a report regarding legitimacy and genuineness of the export of goods from the Customs Station, Kolkata, which were purchased from M/s Shruti Exports on the ground that the input tax credit claimed by him were in relation to fake invoices.
- The Petitioner submitted that although M/s Shruti Exports might be involved in a proceeding concerning availment of ineligible ITC on account of fake invoices issued by its supplier, the Petitioner is not concerned with any such transactions and allegations. The Petitioner further, states that the purchases

made by it are genuine and are against genuine invoices and therefore, the refund applied by it shall be allowed.

- Despite the submissions made by the Petitioner, the appeal against the order rejecting the refund application was dismissed by the Commissioner, CGST and Ors. on the ground that it appears that the inward supplies received by the Petitioner are a part of supply chain involving fake ITC as held in the original order for rejection of refund claim.
- Being aggrieved by the impugned order, the Petitioner has filed the present writ petition.

Held:

- The Hon'ble High Court held as under:
- It has been observed that the Petitioner has received the invoices in respect of inward supplies from M/s Shruti Exports which was being investigated by DGGI in connection to fake invoicing. However, the Hon'ble Court also considered that the said invoices were being reflected in the AIO system.
- Further, there has been no allegation raised on the Petitioner for non-payment of the amount towards the inward supplies received and it is pertinent to note that the Petitioner had made the payment to M/s Shruti Exports along with tax amount (IGST and Cess).
- The petitioner has also established by way of its submissions, the genuineness of the transaction and giving the complete trail of transactions to substantiate that the supply received by it was not related to fake invoices received by M/s Shruti Exports.
- The Hon'ble High Court observed that there is no dispute regarding the exports made by the Petitioner, the payment has been made by the Petitioner including the taxes and the invoices were issued by a registered dealer. Further, it has been stated that there is merit in the Petitioner's contention that it is not required to examine the affairs of its supplying dealers.
- Based on the above observations, it was held that the refund applications have been rejected merely on account of suspicion without any cogent material to ascertain the illegitimate availment of ITC by Petitioner and the Petitioner

would be entitled to the refund of the ITC on goods that have been exported by it. The present petitions are accordingly allowed.

f) Delay in filing certified copy of the order after seven days of filing of appeal is merely a procedural lapse

(M/s. PKV Agencies VS The Appellate Deputy Commissioner (GST), 2023-VIL-175-MAD)

Facts:

- The petitioner filed the appeal under section 107 of the TNGST Act, 2017 electronically.
- However, petitioner did not file a hard copy of the impugned order within a period of seven days from the date of filing of appeal which has been provided under Rule 108(3) of the TNGST Act,2017.
- Petitioner approached the respondent after a month in respect of submission of certified copy of the impugned order which was refused to be received on the ground that copy of the order was not submit within the seven days from the date of filing of appeal as provided under proviso to Rule 108(3) of TNGST Rules,2017.
- Being aggrieved by the said decision petitioner filed the writ petition on the issue that whether an appeal can be entertained even if the assessee has not submitted a certified copy of order within a period of seven days.

Held:

- The Court relied upon the decision passed by the Hon'ble Odisha HC in the case of **M/s Atlas PVC Pipes Limited Vs State of Odisha and others, 2022-VIL-451-ORI,** wherein the Court held that where the petitioner would fail to submit certified copy of the order impugned in the appeal nor is there any provision restricting application of section 5 of the Limitation Act,1963 in the context of supply of certified copy within period stipulated. The requirement to furnish certified copy of the impugned order within seven days of filing of appeal is provided as procedural requirement. Merely on default in compliance mentioned under Rule 108(3) merit of the matter in appeal should not have

been sacrificed. Since the petitioner has enclosed the copy of impugned order as made available to it in the GST portal while filing the Memo of Appeal, non-submission of certified copy, as has rightly been conceded by the Additional Standing Counsel appearing on behalf of CT&GST Organisation, is to be treated as mere technical defect.

- The Court taken the view of the aforesaid decision passed by the Orissa High Court and directed the petitioner to submit the certified copy of the impugned order within a period of one week from the date of receipt of a copy of this order.

g) Proceedings under Section 73/74 of the CGST Act to be initiated first instead of directly blocking the bank account of assessee under Section 83 of the CGST Act

(M/s Eunike General Trading Vs Commissioner of Goods and Service Tax, West, Delhi, 2023-VIL-173-DEL)

Facts:

- The petitioner filed the writ petition before the Hon'ble High Court praying to order or direction be issued to unblock the bank account on respect of the amount of Rs. 34,48,080 which relates to refund sanctioned and credited in the petitioner bank account.
- Refund was granted by an order dated 05.08.2022. However, the said order was subject to an audit and a review, pursuant to which the petitioner was directed to deposit a sum of Rs. 38,786 as an amount erroneously refunded.
- Petitioner voluntary deposited the said amount of Rs. 38,785 as directed. However, the balance amount of the refund granted by the respondent continues to be blocked.
- Consequently, petitioner filed the writ petition praying that order or direction be issued to unblock the bank account in respect of the amount of Rs. 34,48,080/- contending that respondents should have filed a review or appeal against the order granting refund instead of initiating proceedings under Section 83 of the CGST Act.

Held:

- Section 73 and 74 of the CGST Act provides for recovery of refund where the same has been erroneously granted. Clearly, if the respondents are of view that the refund has been erroneously granted, they would be required to take appropriate action under section 73 or 74 of the CGST Act.
- Recourse to Section 107(2) may be necessary only if adjudicating authority has adjudicated any contentious issue, which in the opinion of the Commissioner requires to be reviewed.
- Insofar as the blocking of the bank account is concerned, the said action is taken under Section 83 of the CGST Act. By virtue of sub-section (2) of Section 83 of the CGST Act, the said order of attachment ceases to be operative on expiry of a period of one year from the date of the order. The respondents are required to adhere to the said discipline.
- Considering the averment that the auditor has already reviewed the petitioner case and has directed refund for the sum of Rs 38,786/-.
- Accordingly, the Court directed the respondent to reconsider the petitioner request for lifting of the block placed on the petitioner bank account and continue the same only if it is satisfied that the conditions as specified in section 83 of the CGST Act continue to exist.

h) Rectification of GSTR-1 for the FY 2017-18 allowed in case of inadvertent errors

(M/s Deepa Traders Vs Principal chief commissioner of GST& Central excise & Ors, 2023-VIL-167-MAD)

Facts:

- The petitioner in respect of returns for a few months during the period 2017-18, committed certain errors. The errors are of following in nature:
  i. Recipients GSTIN/name has been wrongly mentioned.
  ii. The invoice number/date have been wrongly mentioned.
  iii. Supply details were correctly supplied in GSTR 3 and tax duly remitted However, some of the invoice wise details have been omitted to be reported in Form GSTR 1.
  iv. IGST was inadvertently remitted under the heads SGST and CGST.

- The aforesaid errors are attributed to inadvertent carelessness on the part of a part-time accountant then employed by the petitioner.
- Accordingly, petitioner filed the writ petition before the Hon'ble High Court.

Held:

- In the instant case, Court relied upon the decision passed in the case of **Sun Dye Chem Vs Assistant Commissioner 2020-VIL-523-MAD** reiterated in **Pentacle Machineries Pvt. Ltd. Vs Office of the GST Council, New Delhi-2021-VIL-193-MAD** to the effect that those petitioners must be permitted the benefit of rectification of errors where there is no malafides attributed to the assesse. The errors committed are clearly inadvertent and, the rectification would, in fact, enable proper reporting of the turnover and input tax credit to enable claims to be made in an appropriate fashion by the petitioner and connected assesse.
- Further, the Court relied upon the decision passed in the case of **Sun Dye Chem (Supra),** to hold that the error arose out of inadvertence, that such bonafide mistake must be permitted to be correct.
- Consequently, the view taken in the above case law the Court accepted the prayer of the petitioner and held that error committed by petitioner are clearly inadvertent.
- Therefore, respondents are directed to do the needful to enable uploading of the rectified GSTR-1.

i) Penalty under section 129 on goods lying in godown is not sustainable under eyes of law

(M/s Sandip Kumar Singhal Vs. Deputy Commissioner, 2023-VIL-164-CAL)

Facts:

- In the instant case E-way bill was generated on 09.02.2022 for transporting cumin seeds from Gujarat to Siliguri and the same was valid up to 20.02.2022.
- The goods of the petitioner were seized on 22.02.2022 from a godown upon invoking the provision of section 67(2) of the CGST Act.

- The goods were dispatched from Gujarat and were to reach Siliguri, West Bengal. However, the goods confiscated from a godown which the petitioner claims to be three Kilometres ahead of the final destination point mentioned in the e-way bill.
- The order of the seizure issued in Form GST INS-02 dated 22.02.2022 mentioned that on inspection of the goods under section 67(1) of the Act and on scrutiny of the books of accounts, registers, documents/papers and goods found during inspection/search there were reasons to believe that the goods were liable to be confiscated and the same were seized by invoking section 67(2).
- The Adjudicating authority was of the opinion that the goods were transported in contravention of Section 68 of the Act and confirmed the penalty imposed under Section 129(1)(a) of the Act. On payment of the penalty amount the goods of the petitioner were released. However, the appeal was preferred and the appellate authority also affirmed the order passed by the adjudicating authority.
- Accordingly, the petitioner filed the writ petition before the Hon'ble Court challenging the validity of levy of penalty under Section 129 of the CGST Act, when the seizure of goods were made under Section 67(2) of the Act.
- Petitioner contended that the Section 129 can be invoked only in respect of goods and conveyances which are in transit and if the goods were inspected and seized while in transit then the provision of Section 68 of the CGST Act ought to be invoked not the Section 67, as has been invoked in the present case.

Held:

- Section 67(2) of the Act empowers the proper officer to confiscate goods, if such goods are secreted in any place, for evading payment of tax. The place may be searched and goods seized and the same shall be released on payment of applicable taxes. The proper officer, if has reasons to believe that the goods are stored in a warehouse or godown or any other place without paying tax or not paying requisite tax, may cause inspection, search and seizure.

- Section 129 deals with detention, seizure and release of goods and conveyances in transit. The said provision is to be invoked when the goods are in movement on a conveyance.
- Here, the goods in question were not seized while in transit. Goods were seized from a godown, two days after the expiry of the e-way bill whereas the godown in question from where the goods were seized is approximately three kilometers ahead from the final destination mentioned in the e-way bill.
- When the goods were held to be in transit, then notice under Form GST MOV ought to have been issued. The authority, as an afterthought, held the goods to be in transit but, for reasons best known, did not issue either order or notice in Form GST MOV. There is no mention of any vehicle or conveyance for transporting the goods.
- The nomenclature of the form is an indication of the offence committed by the taxpayer. Not issuing any order/notice in Form GST MOV makes it clear that the authority was satisfied that the goods were not in transit.
- From the facts of the present case, it appears that though the authority found the goods in the godown to be lesser quantity but the authority never questioned the identity and quantum of the goods apropos the expired e-way bill.
- It is not the case of the respondent that the goods which were seized from the godown were not the goods which were transported by the expired e-way bill. It does not appear that the petitioner had the intention to evade tax as petitioner already paid the taxable amount at the time of generation of e-way bill.
- It appears that though initially the authority invoked the provision of section 67 but thereafter shifted stand and relied upon section 68 read with section 129 for imposition of penalty.
- At one point of time the goods were held to be stored in the godown without the proper documents and without a valid e-way bill and immediately thereafter, the goods were held to be in transit. A single consignment of goods cannot be held to be stored in the godown and to be in transit, simultaneously, at the same time.
- The petitioner was certainly at fault in not recording the additional godown at the time of generation of the e-way bill, but at the same time, the petitioner

ought not to be penalized with two hundred percent penalty for such trivial offence. As the goods were not confiscated while on the move, imposition of penalty under Section 129 of the Act is erroneous and bad in law. The aforesaid section cannot be relied upon to penalize the RTP when the goods are seized from a godown.

- Further, the Court relied upon the decision passed by the Hon'ble Supreme Court in the case of **Union of India & ors. Vs Magnum Steel Limited etc-2023-VIL-16-SC-CU** wherein the court held that the person authorizing the search must express his satisfaction that the material is sufficient for conducting a search and a reasonable belief that some objective material exists on the official record to trigger searches. The report of the proper officer is an unsatisfactory one, not enough to initiate search in the godown.
- In **Mahabir Polyplast Private Limited Vs State of UP & two Ors 2022-VIL-559-ALH,** the Court was of the opinion that provision of Section 129(3) of the Act would not be invoked to subject a godown premises to search and seizure operation. For invoking Section 67 of the Act existence of "reasons to believe" to subject the premises to search and seize goods is mandated. Here, the authority is vacillating between Section 67 and 68; whether the goods are in transit or in the godown.
- Accordingly, the authority has not acted in accordance with the appropriate legal provisions therefore, the impugned order of the adjudicating authority and the appellate forum are liable to be set aside.

j) Reason to believe *sine qua non* for blocking electronic credit ledger under Rule 86A of the CGST Rules

(M/s Parity Infotech Solutions Pvt Ltd Vs Government of National Capital Territory of Delhi & Ors., 2023-VIL-162-DEL)

Facts:

- Summon was issued to the petitioner in relation to fake invoicing which was duly complied by the petitioner.
- Subsequently, the Petitioner received an e-mail from the Department regarding blocking of electronic credit ledger (ECL) on 26.11.2020. The petitioner logged

into GST Portal and found that the balance of ₹27,88,200 (IGST) has been blocked however, no reasons for such blocking were reflected on GST Portal.

- Thereafter, the petitioner sent various letters/emails seeking information regarding the reasons for blocking of the ECL did not receive any satisfactory response.
- Thereafter, summary SCN was issued without any details and after due procedure of law impugned order was passed confirming demand of ₹27,88,200 and immediately thereafter, the petitioner's ECL reflected that the said amount, as demanded in terms of the impugned order, had been debited on 30.03.2022.
- The petitioner being aggrieved filed the present petition on following grounds:
  - SCN was bereft of any particulars;
  - the demand was created artificially so as to deny the ITC without any tangible material or justifiable reason and merely to satisfy Rule 86A(3) pursuant to issuance of instruction dated 08.03.2022 (Unblocking of ITC on expiry of one year from the date of blocking);
  - Challenged the instruction dated 08.03.2022.

Held:

- Unless the competent officer (Commissioner or an officer authorized by him not below the rank of Assistant Commissioner) has reasons to believe that the conditions in the said clauses are satisfied or the ITC was fraudulently availed, the ITC in the ECL cannot be blocked.
- It is also necessary for the concerned officer to record the reasons for blocking the ITC in writing.
- Blocking of the ITC effectively deprives the taxpayer of a valuable resource to discharge its liability and realise the value in monetary terms. Thus, the said action is a drastic step and it is necessary that all legislative checks and balances, enacted in respect of exercise of power to take such measures, are duly satisfied.
- The existence of a 'reason to believe' that the ITC has been availed fraudulently or the conditions of ineligibility, as specified in clauses (a) to (d) of Rule 86A of the Rules, are necessary to be satisfied and in the absence of 'reasons to believe' recourse to measure under Rule 86A of the Rules is impermissible.

- In the present case, the respondents admitted that the petitioner's ECL was blocked solely on the basis of communication received from Joint Commissioner, Central Tax stating that investigation regarding fake invoice has been initiated and petitioner's firm was listed as one of the beneficiaries. Thus, there was no tangible material to form any belief that the ITC lying in petitioner's ECL was on account of fake invoice and without satisfying the conditions of Rule 86A.
- Consequently, SCN under Section 74 of the CGST Act has also been issued mechanically as the respondents had no material to form any opinion that the ITC had been availed wrongly on account of any fraud or any wilful-misstatement or suppression of facts to evade tax. Thus, without authority of law.
- SCN and impugned order have been issued/passed solely to deprive the petitioner from utilising the ITC, which could no longer be kept blocked by virtue of Rule 86A(3) of the CGST Rules.
- Hon'ble High Court of Delhi allowed the petition and set aside the SCN and impugned order and directed the respondents to restore ITC to ECL of petitioner.
- Further, set aside the instruction dated 08.03.2022 to the extent that it suggests that the ITC of the taxpayers can continue to be blocked beyond a period of one year.
- Further, clarified that the impugned instructions cannot be read to direct issuance of a show cause notice and creation of demands in disregard of the provisions the CGST Act or the Rules made thereunder.

k) Application of Dominant Intention Test to ascertain whether a bouquet of supply is to be taxed at same rate as a composite pack or differently/separately at a higher rate

(State of Karnataka Vs. Intex Technologies India Limited and Others, 2023-VIL-143-KAR)

Facts:

- M/s. Intex Technologies India Ltd./respondent is a registered dealer under the Karnataka Value Added Tax Act, 2003 ('KVAT Act'). It is engaged in trading mobile phones, parts and accessories. It sells mobile phones in a composite

package which also contains accessories such as headsets, cables, ejection pin, adapter, charger, manual etc. The respondent discharges its VAT liability on sale of such composite goods at same rate of tax.

- Department observed that mobile charger is not an integral part of the mobile phone to treat among 'composite goods' because merely making a composite package of cell phone, charger shall not make it eligible as composite goods for the purpose of interpretation of the provisions. Accordingly, chargers sold with the mobile phones, are independent gadgets and therefore, cannot be taxed at par with a mobile phone. Accordingly, the Department issued SCN alleging short-payment of tax on the part of the respondent and subsequently, the demand was confirmed against the respondent.
- The respondent preferred an appeal before the Hon'ble VAT Tribunal wherein, the appeal filed by the respondent was allowed by holding that charger sold along with mobile phone in a composite pack attracts tax as that of mobile phone. Being aggrieved with order passed by Hon'ble VAT Tribunal, the Revenue has preferred the petitions.

Held:

- In the present case, it has been held that the essential character of 'mobile set' is the mobile phone and not the charger. Thus, the classification based on components would apply and as per the essential character, the retail set containing of a mobile phone and a mobile charger shall be classifiable as 'mobile phones' under heading 8517.
- The main intention of a purchaser/seller while buying/selling a 'Mobile Set' is to buy/sell the mobile phone and not charger alone. Supply of charger, headset, and ejection pin are incidental to the sale. Therefore, the Dominant Intention Test should apply to the present case and hence, charger cannot be differently taxed and taxed at the same rate as of 'mobile phone'.

l) Issuance of Show Cause Notice (DRC-01) along with the intimation notice (DRC-01A) simultaneously tantamounts to violation of the principles of natural justice

(M/s Ravi Enterprises Vs the Commissioner of State Tax & Another, 2023-VIL-142-UTR)

Facts:

- In the instant case, the petitioner filed the writ petition for challenging the ex-parte assessment cum demand order ('impugned order') passed by the Deputy Commissioner, State Tax confirming the demand of tax along with applicable interest and penalty, on the ground that the procedure followed for adjudicating the matter is in complete violation to the principals of natural justice and the manner prescribed for adjudicating a matter as per the provisions of GST Law.
- The Petitioner contends that the issuance and uploading of the notice in FORM DRC-01A for intimating the initiation of the proceedings on the same day as of the Show Cause Notice u/s 73 of the CGST Act denies a valuable right of the petitioner for making the submissions and respond to the intimation notice.
- Petitioner approached the Hon'ble High Court by stating that the impugned order is violative of Article 14 and 19(1) (g) of the Constitution of India, the principles of natural justice and the SGST Act and the Rules made thereunder and hence, being aggrieved by the impugned order, the Petitioner has filed the present writ petition to sought relief before the Hon'ble High Court.

Held:

- The Hon'ble High Court held as under:
- On the bare perusal of the provisions of Section 73 of the CGST Act read along with Rule 142 of the CGST Rules, 2017, it is evident that the Proper Officer has been directed to communicate the details of any tax, interest and penalty as ascertained to the registered person in Part A of FORM GST DRC-01A and provide an opportunity to the registered person to furnish reply in Part B of the said form.
- In the present case, the Ld. Standing Counsel fairly submitted on the basis of the directions from the Additional Commissioner, State Tax that the Petitioner

was not provided a reasonable opportunity to respond and make submissions to contend the subject matter on which the demand is being confirmed.

- The Hon'ble High Court allowed the writ petition and quashed the impugned order considering that the order was issued in violation to the principles of natural justice. Therefore, the matter is remanded back to the Competent Authority allowing the Petitioner to file his reply to the intimation in FORM DRC-01A and also provided liberty to the competent authority to issue a fresh show cause notice after taking into account the reply furnished by the Petitioner.

m) Denial of benefit of payment of tax to bonafide taxpayer on account of technical glitches is impermissible under law

(M/s SK Likproof Pvt Ltd Vs Union of India, 2023-VIL-148-GUJ-ST)

Facts:

- In the year 2020, the petitioner had filed an application in Form SVLDRS-1 to avail the benefit of SVLDRS scheme as one-time measure for liquidation of its past dispute of service tax amounting to INR 3,60,502/-. The petitioner was asked to pay the amount of Rs 81,050.60 for full and final settlement of tax dues under the Act. The petitioner had made the requisite payment, however, due to technical glitches, the amount could not be debited and got re-credited in their account.
- Meanwhile the time limit prescribed for payment of tax under scheme had already been over when the petitioner had actually made payment and recovery proceedings were initiated against the petitioner to make payment of entire amount of ST along with interest and penalty.
- The petitioner being aggrieved by recovery of the entire amount by the respondent on the basis of liability declared under the SVLDRS Scheme prefers present writ petition to challenge the action of respondent for not issuing Form SVLDRS 4 under Scheme.

Held:

- Applying the ratio laid down by the Apex Court in the case of **M/s Shekhar Resorts Ltd. Vs Union of India in Civil Appeal No. 8957 of 2022,** it has

been held that the petitioner was not under the fault when the amount could not get deposited with the bank and was recredited after having once gone to the bank. Thus, to deny the benefit only because there were technical glitches about which the petitioner could not have done anything, would amount to leaving the petitioner remediless which is impermissible under the law. Hence, the petition is allowed and it has been directed to respondent to refund the amount which has been recovered over and above the liability declared in SVLDRS Scheme.

n) Refund cannot be rejected on the ground of non-establishment of nexus between the output service and the input services

(Basell Polyolefins India Pvt. Ltd. Vs Deputy Commissioner – Navi Mumbai, 2023-VIL-264-CESTAT-MUM-ST)

Facts:

- The Appellant was engaged in providing various taxable services and accordingly availed Cenvat credit of service tax paid on input services.
- The Appellant had exported taxable output services to their group companies located abroad however, there was no scope for utilization of Cenvat Credit availed by the appellants on the input services.
- Therefore, the Appellants filed refund application claiming refund of service tax paid on the input services.
- Some were denied by the original authority and the Appellant filed an appeal against them and, the Commissioner (Appeals) remanded the matters back to the original authority.
- Upon fresh adjudication the original authority had again rejected the refund and the Appellant again filed the appeal against the same wherein the Commissioner(Appeals) partially allowed the appeal and rejected some refund on account of following reasons:
- Refund rejected attained Finality
- Refund claim time barred
- Invoices not addressed to the registered premises
- Invoice not in the name of the assessee
- Ineligible input services

- Absence of Nexus
- Reduction in proportionate refund
- CA Certificate not produced
- Not an export service
- Relevant documents not produced
- Mismatch of export proceeds
- Others
- Being aggrieved, the Appellant has preferred the present appeal.

Held:

- Refund rejected attained finality- The Tribunal observed that the matter was remanded back for fresh adjudication but the original authority has decided the matter on limited issues and remanded the matter again for fresh fact finding.
- Refund claimed time barred- Lower authorities have held that the relevant date for filing of the refund application is the date of payment of service tax on input services whereas it is settled that the said relevant date should be construed as the date of filing of the refund application at the end of the quarter for which such benefit is claimed. Since the appellant has filed the refund application within 1 year from the end of the relevant quarters, the refund applications are not time barred.
- Invoices not addressed to the registered premises- The said finding is factually incorrect as the name of the appellant has been mentioned on disputed invoices. Moreover, the mandatory requirement of claim of refund benefit cannot be whittled down for the procedural lapses.
- Ineligible input services and absence of nexus- Lower authorities have not dealt with the said issue and since availment of credit at the material time was not disputed by the department, claiming of refund of the accumulated Cenvat Credit on account of exportation of service at a later stage cannot be denied by the department. Further, refund cannot be rejected on the ground of non-establishment of nexus between the output service and the input services.
- Mismatch of export proceeds and relevant documents not produced- Not contented by the Appellant

- Other issues- The Tribunal remanded back the matter to the original authority for proper verification of documentary evidence for ascertaining eligibility of refund.

o) Sale of loan application forms is not a taxable service and hence not liable to service tax

(M/s. Rajasthan Financial Corporation Vs Addl. Commissioner, Central Excise, Jaipur, 2023-VIL-260-CESTAT-DEL-ST)

Facts:

- The appellant is a state financial corporation/ undertaking of the Government of Rajasthan and has been formed for non-business/ non-commercial purposes to facilitate the growth of the industry in Rajasthan.
- During the course of audit of service tax records following observations were made by the department:
  (i) The appellant was collecting rent of its immovable property let out for commercial use on which no service tax was paid.
  (ii) The appellant was selling loan application forms, on which no service tax was paid.
  (iii) The appellant was collecting service charges against seed capital assistance sanctioned to the new entrepreneurs, on which no service tax was paid.
  (iv) The appellant was collecting financial/foreclosure charges on account of premature repayment of loans by the borrowers, on which no service tax was paid.
  (v) The appellant had been collecting financial charges on account of service charges against Working Capital Term Loans, on which no service tax was paid.
- Accordingly, SCN was issued proposing service tax. After due procedure of law, the demand against renting of immovable property service was set aside on account of it being confirmed vide another earlier Order and the remaining demands were confirmed vide impugned order.
- Being aggrieved, the Appellant has preferred the present appeal.

Held:

- Sale of loan forms- Relied upon the case of Sadhana Educational & People Development Services Pvt. Ltd. wherein it has held that amount collected for sale of forms prospectus etc. would not be includible in the taxable value for levy of service tax. Accordingly, the Tribunal held that the sale of loan application forms is not a taxable service and therefore, no demand is leviable on such sale of loan forms.
- Seed capital assistance scheme- the Tribunal observed that although the term used in the terms and conditions of said scheme is 'service charge' but the underlying nature of the 1% and 10% is nothing but interest on the seed capital loan, extended to the entrepreneurs. Therefore, the same is not liable to service tax as it is a settled principle of law that interest on loans is not taxable to service tax.
- Service tax on the service charge for prepayment/foreclosure of premature payment of loan- The Tribunal relied upon the case of **Repco Home Finance Ltd. [2020 (42) GSTL 104 (Tri-LB) - 2020-VIL-309-CESTAT-CHE-ST]** wherein it was held that foreclosure charges are in the nature of liquidated damages and said damages are paid in terms of 'condition to contract' and are not 'consideration for a contract'. Therefore, said damages cannot be leviable to service tax under the category 'banking and other financial services'. Accordingly, the Tribunal held that that the service charges for pre-payment or foreclosure of loan amount by the customer cannot be treated as taxable service and is not chargeable to service tax.
- Service charge against Working Capital Term Loan- The Tribunal observed that the service charges of 1% is the consideration for the services being provided by the Appellant to the borrowers and not interest (as interest is being charged separately). Therefore, service tax is leviable on the service charge.

p) Foreign currency expenditure made by the assessee for operating of representative office not taxable under RCM

(M/s Kusum Healthcare Pvt. Ltd. Vs Commissioner of CE & ST, 2023-VIL-226-CESTAT-DEL-ST)

Facts:

- The Appellant is engaged as a manufacturer-exporter of pharmaceutical products in 100% EOU. It has established representative offices in many countries to promote its goods and to liaison with the local authorities in such countries.
- The said representative offices do not have any independent revenue or clients and the purchase orders are entered with the clients directly by the Appellant.
- Further, the payment for goods supplied to the customers is also received by the Appellant and all the expenses incurred in the supply of goods are claimed as expenses in India.
- The salaries of the employees working at the representative offices are also remitted by the Appellant. The Appellant also reimburses other expenses incurred by the representative offices for its operations like rent, security, electricity etc.
- SCN was issued proposing demand service tax for the period September 2014 to September 2015 on the entire value of foreign expenses incurred by the Appellant alleging that the payments made in foreign currency to its representative offices in countries other than India towards business promotions, marketing and consultancy activity were taxable in India.
- After due process of law demand was confirmed vide impugned order under erstwhile Section 66A of the Finance Act, 1994 read with Rule 3 of Services (Provided from outside India and received in India) Rules, 2006.
- The Appellant being aggrieved has filed the present appeal.

Held:

- The impugned notice has been passed confirming the demand based on provisions applicable prior to 01.07.2012 whereas the relevant period is September 2014 to September 2015. Therefore, the Hon'ble CESTAT, Delhi set

aside the demand by relying on the decision of the Hon'ble HC, Karnataka in **CST, Bangalore vs The Peoples Choice [2014-TIOL-431-HC-KAR-ST]**.

- Further, the issue involved in the present case has been decided in favor of the Appellant in previous cases therefore, the demand has been set aside by the Hon'ble CESTAT, Delhi.
- The Court accepted the following argument of the Appellant:
  - Foreign currency expenditure was made by the Appellant on account of business promotion expenses and such expenses were directly paid by the Appellant and such invoices were also addressed to the Appellant and not to the representative offices.
  - Some expenses were incurred in respect of goods thus no service tax is payable as per Section 65B(44) of the Finance Act.
  - Some expenses were incurred towards organization of tour by foreign entity for eligible pharmacists under the promotional activities to travel to Paris and other destinations. Since individual pharmacist received the benefit of the service rendered by foreign tour organizer the services were provided outside India in terms of rule 4(b) of the POP Rules, 2012 and consequently have been provided and received outside the taxable territory. Thus, the said expenses cannot be subjected to the levy of service tax.
  - W.r.t advertisement, the Appellant duly discharged service tax on non-print media advertisements and print media advertisements were exempt in terms of negative list.
- Accordingly, the Court dropped the demand and set aside the order.

q) No restriction on distribution of whole credit by ISD to any one of the units in pre-GST regime

(M/s Indo Alusys Industries Ltd Vs Commissioner of CGST, C. &CE., 2023-VIL-170-CESTAT-DEL-CE)

Facts:

- The Appellant was engaged in manufacturing Aluminium Alloy Extruded Products at their Bhiwadi Unit. They also have one division with centralised registration at Delhi with ISD registration. The latter unit was engaged in fixing,

installing etc. of manufactured aluminium doors and windows at the premises of the customers.

- The Appellant procured composite orders from the customers i.e., cost of manufactured goods and post delivery services in respect of said goods.
- During the course of audit, the Appellant was directed to provide the back-up from which ratio of value of clearances of manufactured goods and services provided by ISD had been worked out. However, the Appellant did not provide the same.
- Accordingly, the SCNs were issued alleging that the Appellant has:
  - wrongly availed Cenvat credit on the strength of irregular ISD invoices on services like erection, commission & installation, advertisement, cargo handling, clearing & forwarding, tour operating, BAS, Manpower recruitment agency, renting etc. violating Rule 2(m) (i.e., definition of ISD), Rule 3 (i.e., Cenvat credit) and Rule 7 (i.e., Manner of distribution of credit by ISD) of Cenvat Credit Rules, 2004.
  - the aforementioned services do not fall within the ambit of input services in terms of Rule 2(l) of said Cenval Credit Rules, 2004.
  - Ratio in which the Cenvat credit has been distributed in incorrect.
- After due procedure of law, the demand was confirmed vide impugned order.
- Being aggrieved, the Appellant filed the present appeal.

Held:

- Rule 7 of the Cenvat Credit Rules, 2004 reveals that during the relevant period there have been only two explicit conditions for the purposes:
  - credit distributed against a prescribed document should not exceed the amount of service tax paid.
  - the credit of service tax cannot be distributed in respect of services exclusively used in manufacture of exempted goods or providing of exempted services.
- A combined reading of Rule 3 with Rule 7 makes it clear that the head office of the assessee registered as an ISD can distribute credit to its manufacturing units/service provider units only in respect of services received in respective units, which should also qualify for eligible 'input service' in terms of Rule 2(l) of the Cenvat Credit Rules, 2004. Rule 3 of Cenvat Credit Rules, 2004 is the

substantial rule for taking Cenvat credit and is not subordinate to rule 7 thereof which only provides a mechanism for distribution of ISD credit.

- As per the definition of input services under 2(l) of the Cenvat Credit Rules, 2004, those services which are used in or in relation to manufacture of finished goods qualify as input service (including those mentioned in the inclusive part of the definition) and must have nexus with manufacture of final product. The specified input service would become eligible for credit the moment it is used in or in relation to the manufacture of final product.
- Further, the Tribunal relied upon various judicial pronouncements wherein the disputed services have been held to be eligible input services to hold that once the services in question have already been settled to be the eligible input services, the Cenvat credit thereof cannot be denied to the assessee.
- With respect to the proportion of distribution of Cenvat credit, the Tribunal noted that no allegation has been made w.r.t non-fulfilment of aforementioned condition of Rule 7 of the Cenvat Credit Rules, 2004. Further, there is no restriction in said Rule for distributing even the whole credit by ISD to any one of the units. However, in the present case the entire credit has been distributed based on the turnover ratio formula.
- Disallowing the Cenvat credit is therefore held to be without any logical and legal basis.

2. AAAR/AAR

r) GST is applicable on the sale of commercial built-up area by Government of India enterprise on behalf of Ministry of Housing and Urban Affairs

(M/s NBCC (India) Limited Advance Ruling, 2023-VIL-16-AAAR)

Facts:

- M/s NBCC (India) Limited (Appellant) is a Government of India enterprise and engaged in project management consultancy, real estate development and EPC contracts. They have signed a memorandum of understanding with Ministry of Housing and Urban Affairs (MOHUA), Government of India, wherein MOHUA has appointed the Appellant as the executing agency for redevelopment of colonies having "General Pool Residential Accommodation" and "Government Pool Office Accommodation" at Nauroji Nagar, Sarojini Nagar and Netajl Nagar in Delhi.
- The issue here is:

  a) Whether the Appellant is liable to pay GST on sale of commercial super built up area on behalf of MoHUA, Government of India, by considering the Appellant also as the supplier of service while selling such commercial built-up space as an agent on behalf of the Government of India in the colonies under redevelopment.

  b) Whether the MoHUA, Government of India, is liable to pay GST on sale of commercial built-up space, and whether it relates to any function entrusted to a municipality under Article 243W of the Constitution.

  c) Whether the Appellant is liable to pay GST on sale of built-up space for which part of the consideration was received prior to 01.07.2017, and partly on or after 01.07.2017.

  d) Whether the Appellant is liable to pay GST on consideration received under an agreement to sell constructed units in a building which is under construction.

Held:

- The supplier means any person supplying the goods or services or both and it also includes an agent. The definition of agent includes a commission agent, broker etc. acting as such on behalf of supplier in relation to the goods or services or both. Combined reading of the definitions of both the supplier and the agent as given in section 2(5) and Section 2(105) respectively of the CGST Act, 2017 makes it clear that the appellant is an agent of MoHUA as they are in the business of supply of commercial built-up space on behalf of later. Therefore, the appellant is a taxable person as defined under Section 2(107) of CGST Act, 2017 and is liable to discharge the tax liability as per statutory provisions.
- The responsibility to collect and/ or deposit GST on the taxable supply of goods or services as an agent of MoHUA lies with the appellant, since he is engaged in the sale of commercial built-up area on behalf of MoHUA.
- There is no force in the claim of the appellant that the functions of Municipalities given in Twelfth Schedule of the Constitution covers construction of commercial built-up space in the redevelopment projects. In the present case, the appellant is selling the commercial built-up space to the private entities and this activity cannot be treated as a function of Municipality, as envisaged under article 243W of the Constitution of India.
- Moreover, the commercial built-up spaces are for the purpose of sale to individual buyers who will use them for their commercial gain and this by no stretch of imagination this can be termed as a facility meant for use of common public.
- It was further held that as per the statutory provisions the appellant is liable to pay GST on the services supplied under GST regime i.e., w.e.f. 01.07.2017, even if a part of the consideration had been received prior to 01.07.2017.
- Hence, the Order dated 05.10.2018 - 2018-VIL-225-AAR of Delhi Authority for Advance Ruling is upheld. The appeal filed by M/s NBCC (India) Ltd., is dismissed being devoid of merit.

s) Contribution by an outgoing member is not in the nature of voluntary and gratuitous payment but advance paid for services carried out or to be carried by the Society and hence taxable under GST

(M/s Monalisa Co-Operative Housing Society Limited, 2022-VIL-15-AAAR)

Facts:

- The Appellant is a co- operative housing society registered under the Maharashtra Co-operative Housing Society Act (MCHS Act) having 48 Flats which provides services to its members and charges GST on maintenance charges recovered from its Members. It is submitted that when there is a transfer of a flat, the outgoing member makes a gratuitous & voluntary payment to the society. The same does not have any implications on outgoing formalities to be completed as per MCHS Act. The Appellant stated that the above contribution made is entirely voluntary and is not at all a consideration received in lieu of services provided by the Appellant.
- Further, the Appellant also collects funds from its members for future major repairs and renovation of the premises. Such funds have no immediate utilization purpose. The amount will only be utilized once the Appellant finalizes on the bids received for the repairs to be carried out.
- The Appellant, for the purpose of seeking clarity regarding the applicability of GST on the transactions under question had filed an application for the Advance Ruling before the MAAR. The questions asked by the Appellant in their Advance Ruling Application were as under:
    - Whether the receipt of a gratuitous payment from an outgoing member for the time he has resided in the society be taxable under the CGST Act, 2017 as there is no corresponding service being provided separately by the tax payer society?
- The Maharashtra Authority for Advance Ruling, MAAR, vide Order No. GST-ARA-30/2020-21/B-71 dated 31.05.2022 - 2022- VIL-153-AAR, held that the receipt of amount from an outgoing member in the name of gratuitous payment from an outgoing member is taxable under the CGST Act, 2017.

- Therefore, being aggrieved of the Impugned Order passed by MAAR, the present appeal is being filed before Maharashtra Appellate Authority for Advance Ruling.

Held:

- In the instant case, one of the outgoing members of the society has made a payment to the society which Appellant claims to be voluntary contribution on his own will and volition.
- The MAAR has observed that considering the Model Bye Laws No. 7 (e) & 38 (e) (ix) of the Cooperative Housing Societies, Appellant cannot recover additional amount towards donation or contribution to any other funds or under any other pretext from transferor or transferee by the housing society. Society cannot collect amounts as voluntary donations from Transferor or Transferee in excess of premium i.e., Rs. 25,000/- fixed by the society for transfer of flats. In concurrence with the views of MAAR that the society cannot at all accept voluntary donations from a Transferor or Transferee in transgression of the Model Bye Laws of Cooperative Housing Societies in Maharashtra.
- The said contribution by the outgoing member is nothing but Advance amounts paid to the society for services carried out or to be carried out for the members of the Society and is therefore taxable as per the GST Laws.
- Hence, the Advance Ruling bearing No. GST-ARA-30/2020-21/B- 71 dated 31.05.2022 - 2022-VIL-153-AAR pronounced by the MAAR is confirmed and uphold. Therefore, the Appeal filed by the Appellant is, hereby, dismissed.

t) ITC on vouchers and subscription packages not allowed as they are neither goods nor services

(M/s Myntra Designs Pvt Ltd, 2022-VIL-13-AAAR)

Facts:

- The Appellant owns an e-commerce portal www.myntra.com and is a major Indian fashion e-commerce company and is engaged in the business of selling of fashion and lifestyle products through the said e-commerce portal.

- In order to enhance the business, the Appellant proposes to run a loyalty programme wherein loyalty points will be awarded on the basis of the purchases made on its platform and Appellant through its portal, would make the vouchers and subscription packages available to those customers who wish to redeem the loyalty points earned / accumulated.
- The Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:
    - "Whether the Appellant would be eligible to avail the input tax credit, in terms of Section 16 of the CGST Act, 2017 on the vouchers and subscription packages procured by the Applicant from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned/accumulated by the said customers?"
- The AAR vide its order KAR ADRG No. 33/2022 dated 14th September 2022 - 2022-VIL-253-AAR gave the following ruling in respect of the above question, that the Appellant is not eligible to avail the ITC in terms of CGST Act, 2017 on the vouchers and and subscription packages procured by the applicant from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned / accumulated by the said customers, as the input tax credit is not available in terms of Section 17(5)(h) of the CGST Act, 2017.
- Aggrieved by the AAR the Appellant filed the present appeal before the Appellate Authority for Advance Ruling.
- The Appellant submitted that Section 17(5)(h) is not applicable to the facts and circumstances. Claim of ITC cannot be denied when there is procurement of vouchers and subscription packages for the proposed loyalty program and would be wholly and exclusively for the purpose of its business as an e-commerce platform.
- Further, the procurement of vouchers and subscription packages by the Appellant will be essentially in the nature of marketing spend to promote its e-commerce business and therefore, ITC of the tax paid cannot be restricted and relied on Bombay High Court decision in the case of Coco Cola India Pvt Ltd vs Commissioner of C.Ex Pune-III[2009 (15) S.T.R 657 (Bom) - 2009-VIL-123-BOM-ST] wherein it was held that the phrase "activities relating to business"

are words of wide import and can cover all the activities that are related to the functioning of a business.

- The Appellant further submitted that the vouchers and subscription packages have been procured as services and the re- classification them as goods is bad in law by AAR and the such vouchers are not goods has been held by the Hon'ble Supreme Court in Sodexo Svc India Pvt Ltd vs State of Maharashtra reported in 2015 (16) SCC 479 - 2015-VIL-137-SC.

Held:

- It was observed after the submission of the draft agreement between the Appellant and their vendors wherein the vendors states that they are in the business of issuing electronic vouchers as 'services' and the Appellant in the additional written submissions dated 8th Feb 2023, has placed reliance on the decision dated 16-01-2023 - 2023-VIL- 67-KAR of the Karnataka High Court in the case of Premier Sales Promotions Pvt Ltd wherein the Hon'ble High Court has held that vouchers are neither goods nor services and therefore cannot be taxed.
- Further, the holding that 'vouchers' are neither goods nor services is to be respected as the law applicable as on date until the decision is stayed or reversed by a higher court on an appeal by the Department, therefore, as per the holding, when the vouchers are intended to be procured by the Appellant is neither goods nor services, the question of eligibility of the input tax credit does not arise.
- Hence, the appeal filed by the Appellant is rejected and the Advance Ruling No KAR ADRG 33/2022 dated 14-09-2022 - 2022-VIL-253-AAR is upheld.

u) Sharing of Revenue by Clinical Establishments towards supply of authorised medical practitioners to provide healthcare service is leviable to GST as the same is not covered under Entry No. 74 (Healthcare Service) of Notification No. 12/2017 dated 28.06.2017

(M/s ARPK Healthcare Private Limited, 2023-VIL-60-AAR)

Facts:

- M/s ARPK Healthcare Private Ltd. (the Applicant) and M/s Asian Institute of Medical Science, Faridabad (hereinafter referred to as 'M/s Asian Hospital') is engaged in providing Healthcare Services.
- The Applicant has approached to M/s Asian Hospital that authorised medical practitioner employed by it will provide Gastroenterologist services (Healthcare Services) to the patients of M/s Asian Hospital.
- The Fees/Charges of Gastroenterologist services will be paid by patient to M/s Asian Hospital. Thereafter M/s Asian Hospital will pay share of the Applicant for the services rendered by them to the patients of M/s Asian Hospital.
- The question before the authorities is whether fees/charges received by Applicant from M/s Asian Hospital is exempted under the provisions of the GST Act, 2017 and whether fees/charges for Health Care Services received by M/s Asian Hospital is exempted under the provisions of the GST Act, 2017.

Held:

- The above procedure can be divided in two parts- In the first part M/s Asian Hospital will provide healthcare services to the patients through the doctors hired/outsourced by it form the Applicant. In second part, it can be said that the infrastructure including apparatus and instruments etc. established by M/s Asian Hospital is outsourced to the Applicant.
- The services provided by M/s Asian Hospital are covered under the definition of "Healthcare Service". But the outsourcing of infrastructure by M/s Asian Hospital to the Applicant is not covered under the definition of Healthcare Service. Therefore, the charges/fee paid to M/s Asian Hospital for the said outsourcings of infrastructure are leviable to GST.

- M/s Asian Hospital outsourced its requirements of specialized doctors particularly for the gastroenterological services from the applicant company and not treating the patient by itself as a clinical establishment. The exemption claimed by the applicant is available as per the entry of the said notification only when the clinical establishment itself provides this service (treatment related to gastroenterological problems) as a part of health care services to the in-patients as well as out-patients and the same is not available when such supply of services provided by a third party as a contractual arrangement.
- M/s Asian Hospital is/will be outsourcing (the business practice of hiring a party outside a company to perform services or create goods that were traditionally performed in-house by company's own employees and staff) the services of the applicant and applicable tax under the GST Act shall be levied accordingly.

v) Security services provided by a limited liability partnership not taxable under reverse charge mechanism

(M/s AS&D Enterprise LLP, 2022-VIL-59-AAR)

Facts:

- The Applicant is a Limited Liability Partnership Company and engaged in the business of providing security services to various business entities situated all over India.
- The security services are provided in the form of deployment of security personnels to keep ward & watch and providing safety and security of assets / installations / offices / buildings/ properties / equipments etc. of the site or any other locations as may be specified by the recipient.
- The Applicant has filed the present advance ruling before the Authority for Advance Ruling raising the following question:
  - Whether services (Security services) provided by the applicant LLP are covered by entry 14 of Notification No. 13/2017-CT(Rate) dated 28.06.2017 and liable for tax under reverse charge mechanism or not?

Held:

- Body Corporate has nowhere been defined under the GST Act, 2017, however the body corporate referred to in the explanation (b) of the notification no. 13/2017-CT(Rate) states that it will have the same meaning as assigned to it

in section 2(11) of the Companies Act, 2013. Application of the notification no. 29/2018 dated 31.12.2018 in the present matter is to be considered on all factual and legal aspect.

- The scope of applicability of the notification no. 29/2018 dated 31.12.2018 is relevant only when the security services are provided to a registered person and only when the supplier of services is any person other than a body corporate.
- Further, the LLP is a separate legal entity having to bear the full liability for its assets which makes it possible for partners' liability to be limited to their agreed contribution to the LLP.
- The LLP Act, 2008 confers powers on the Central Government to apply provisions of the Companies Act, 1956 as appropriate, by notification with such changes or modifications as deemed necessary whereas a body corporate is an organization such as a company or government that is considered to have its own legal rights and responsibilities. The body corporate is a separate legal entity and can enter into its own contracts and manage its own legal proceedings.
- And from the perusal of the above, it can be inferred that an LLP is a Body Corporate for the purpose of Companies Act, 2013 and the same would apply to the term body corporate for the purpose of the notification no. 13/2017-CGST(Rate) dated 28.06.2017 and as amended on 31.12.2018 vide notification no. 29/2018.
- In the present case, as a consequence the Reverse Charge Mechanism would not be applicable as the legislative intention behind the application of RCM is on those supplies in which the Government/executive do not have control over the supplier or who are working in the unorganized sector. So, the RCM is made applicable for any person other than body corporate by the said notification.

Question	Answers
Whether services (Security services) provided by the applicant LLP are covered by entry 14 of Notification No. 13/2017-CT(Rate) dated 28.06.2017 and liable for tax	No, the services provided by the applicant, limited liability company partnership are not covered under the entry 14 of the notification no. 13/2017 dated 28.06.2017 and 29/2018 dated

under reverse charge mechanism or Not?	31.12.2018. The reverse charge mechanism for the levy of tax under section 9(3) is not applicable in the present case).

w) Spraying services provided to farmers are exempted from the payment of GST

(M/s PI Industries Limited, 2022-VIL-58-AAR)

Facts:

- The Applicant is engaged in the business of manufacturing of agrochemicals and supplies the agrochemicals to the dealers/distributors who then supply the same to farmers and also supply the services of spraying agrochemicals to the farmers.
- Further, quantity of agrochemicals in the packets supplied by the Applicant to dealers/distributors is higher than the one supplied by dealers/distributors.
- The Applicants stated that the activity related to spraying of agrochemicals provided by him to the farmers is covered under Sr. No. 54 of the Notification No. 12/2017- CT and under Serial No. 57 of the Notification 9/2017- Integrated Tax (Rate) dated 28.06.2017, as amended (hereinafter referred to as "Notification No. 9/2017-IT").
- There are two supplies which are being under taken by the Applicant which are as follows:
  - The first supply is undertaken when the agrochemicals are supplied to the distributors/dealers for which the consideration is directly paid by the distributors/dealers to the Applicant.
  - The second supply is undertaken when the spraying services are provided directly to the farmers for which the consideration is paid by farmers to the Applicant.
- Both the above mentioned supplied are independent of each other.
- The Appellant filed an advance ruling application, has raised the following questions:

- Whether the supply of spraying services undertaken by the Applicant is covered under Notification No. 12/2017-CT and hence, exempted from payment of tax?
- If tax is payable, then whether Applicant can avail input tax credit of inputs and input services used for undertaking supply of spraying services?

Held:

- As per Sr. No. 54 of the Notification No. 12/2017-CT and Sr. No. 57 of the Notification No. 9/2017 IT an exemption from payment of tax for the services related to the cultivation of the plants.
- The service of spraying of agrochemicals provided by the Applicant to the farmers is an exempted supply under the Act as the spraying services are directly provided to the farmers and the consideration for such service is paid by farmers to the Applicant and these spraying service is provided at the agricultural land of the farmers during the pre-harvesting period only and spraying the agrochemicals do not alter the characteristics of the crops or the agricultural produce and the activity is undertaken only for crop protection and to make the crop produce suitable for consumption and marketable for the primary market. Hence, it is covered under the support services to agriculture as nil rated vide notification no. 11/2017-CT(R) dated 28th June, 2017.
- Similarly, the said services rendered by the Applicant can be classified under the services related to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or agriculture produce by way of:-

  (a)Agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing. and

  (c) Processes carried out at agricultural form including tending, pruning, cutting, harvesting, drawing, cleaning, trimming, sun- drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agriculture produce but make it only marketable for the primary market which are nil rated and notified at Sr. No. 54 of the notification no. 12/2017-CT(R) dated 28th June, 2017.

Question	Answer
1. Whether the supply of spraying services undertaken by the Applicant is covered under Notification No. 12/2017-CT and hence, exempted from payment of tax?	Yes
2. If tax is payable, then whether Applicant can avail input tax credit of inputs and input services used for undertaking supply of spraying services?	NA

x) The services of construction and re-carpeting to a non-governmental body shall be taxable @18%.

(Sh. Om Prakash Agarwal, Prop. M/S Mittal Trading Company, 2022-VIL-53-AAR)

Facts:

- The Applicant being a registered person has been awarded a contract from Rajasthan State Industrial Development & Investment Corporation through vide Work Order No. U (16)-2(1942)/2021-2022/2618 dated 08.09.2021 for Development of Commercial Complex at Industrial Area Agro Food Park - II, Ranpur, Kota.
- Under the said contract, the major works under the contract is Construction and Re-carpeting of C.C. Road.
- The Applicant filed an advance ruling application, has raised the following questions:
    - Applicability of Notification No. 11/2017 - Central Tax Rate dt. 28th June, 2017 amended with Notification No. 24/2017 - Central Tax (Rate) dt. 21.09.2017 and further amended vide notification no. 31/2017 - Central

Tax (Rate) dt. 13.10.2017, and furthermore amended vide notification no. 15/2021 - Central Tax (Rate) dt. 18.11.2021

Held:

- The construction work undertaken is mainly of construction and re-carpeting of C.C. Road from RIICO and Rajasthan State Industrial Development & Investment Corporation is a body constituted under RIICO Industrial Areas (Prevention of Unauthorized Development and Encroachment) Act, 1999 as a special vehicle for undertaking of various government projects as envisaged by the Government of Rajasthan, but it's not Government itself.
- The Applicant has stated that the project is covered under Sl. No. 3 (vi) (a) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 (as amended). We also observe that the amendments made through Notification No. 15/2021- Central Tax (Rate) dated 18.11.2021 and further vital amendment is made through vide Notification No. 03/2022- Central Tax (Rate) dated: 13th July, 2022.
- In this regard, it is clear that the words "or a Governmental authority or a Government Entity" has been omitted at serial number 3, in column (3), in the heading "Description of Services" in the said Notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017 vide aforesaid Notification No. 15/2021- Central Tax (Rate) dated 18.11.2021.
- Further, the GST rates of Works contract involving construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of following rendered to Government or Local authority increased to 18% vide Notification No. 03/2022- Central Tax (Rate) dated: 13th July, 2022.
- The Applicant providing service to the Rajasthan Housing Board and will be liable to pay GST @18% in light of Notification No. 11/2017 - Central Tax Rate dt. 28th June, 2017 amended with Notification No. 03/2022- Central Tax (Rate) dated 13th July, 2022.

y) Aircraft type rating training services provided to commercial pilots, as per the training curriculum approved by DGCA do not result into a qualification on completion of such training and hence is not exempted

(M/s CAE Flight Training (India) Private Limited, 2022-VIL-49-AAR)

Facts:

- The Applicant is a Directorate General of Civil Aviation (DGCA) Approved Training Organisation (ATO) engaged in the business of providing type rating training on simulators for various fleet of aircraft to the trainees aspiring to obtain licenses and ratings from the DGCA; that the flight training services imparted by the applicant (ATO) enhances the skill and knowledge of trainees.
- CAE is currently engaged in providing dry training to the Commercial Pilot License ('CPL') holders from various airlines, who have already been type rated for specific aircraft. Under dry training, airline companies are granted the right to use the full flight simulators for scheduled hours, with their pilots training under the guidance of the airline company's own instructors and is also engaged in type rating training to CPL holders who are not employed by any airlines if they approach directly for undergoing this training. CPL holders who are also on the rolls of various airlines on a stipend basis (as a trainee) and whose confirmation depends on getting aircraft-specific type rating certification can approach CAE for undergoing such training. CAE offers pilots the most advanced type rating training, using a practical and operational learning approach.
- Further, the Applicant has admitted that their activity is provision of Type Rating Training on simulators and collect fee for the said activity which is consideration. Further, the said activity is a commercial activity and hence the same are in the course or furtherance of business and thus the said activity amounts to supply in terms of Section 7(1)(a) of the CGST Act 2017 and the said activity falls under the ambit of definition of "Services" in terms of definition under Section 2(102) of the CGST Act 2017; the impugned services are classifiable under SAC 9992 94 as "Other Education & Training Services n.e.c.", covered under training for flying certificates & ship licences and

contends that they qualify to be an Educational Institution and thus their services are exempted in terms of entry No. 66(a) of Notification 12/2017-Central Tax (Rate) dated 28.06.2017, as amended.

- The Appellant filed an advance ruling application, has raised the following question:
  - *Whether the supply of the aircraft type rating training services to commercial pilots in accordance with the training curriculum approved by the Directorate General of Civil Aviation for obtaining the extension of aircraft type ratings on their existing licenses would be covered* under *Sl. No. 66 (a) of the Notification No. 12/2017-Central Tax (Rate) dated 28.6.2017 and Sl. No. 66 (a) of the Notification No. A.NI.-2-843/XI-9(47)/17-U.P. Act-1-2017-Order-(10)-2017 dated 30.6.2017, and thereby, exempted from levy of Central Goods and Service Tax & Karnataka Goods and Service Tax.*

Held:

- For the purpose of entitlement of the benefit of exemption of entry number 66(a) of Notification 12/2017, "Educational Institution" means an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force. An institution becomes an Educational institution only when the services provided by them are (i) part of a curriculum, (ii) the services yield a qualification and (iii) the said qualification must be recognized by law for the time being in force.
- As per the agreement, the Applicant undertakes the supply of the ATR extension training services to their trainee and the Applicant issues a course completion certificate once the type rating training is completed and the pilots have to file an application with the DGCA, for extension of ATR, along with the required documents amongst which the course completion certificate is the one which evidences that the said pilot has undergone the training.
- Further, the candidate who receive the training from the Applicant would be subjected to examination/test by the DGCA approved examiner. It is based on the results of these examinations and fulfilment of other prescribed conditions that the DGCA would endorse the type rating of aircraft in the licence of the trainee pilots. Therefore, the course completion certificate issued by the

applicant can't said to be a certificate which is recognized by law for the time being in force. The fact that such a certificate may be taken into account by the DGCA approved examiner for the purpose of evaluating the experience and content of training will not make it statutory in character.

- The Applicant also referred the Circular No. 117/36/2019-GST dated 11.10.2019 wherein a clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India to the effect that the Maritime Training Institutes and their training courses are approved by the Director General of Shipping and are recognized under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for seafarers) Rules, 2014 and thus the said institutes are educational institutions. Further, there is no circular applicable to the said Type Rating training, being given by the applicant and thus the Circular dated 11.10.2019 relevant to Shipping courses is not applicant to the instant case.
- Therefore, the impugned services of the applicant are not covered under entry number 66(a) of the Notification 12/2017-Central Tax (Rate) dated 28-06-2017, as amended and hence do not qualify for exemption. Thus, the said services are exigible to GST.
- Hence, the supply of the aircraft type rating training services to commercial pilots, in accordance with the training curriculum approved by the Directorate General of Civil Aviation for obtaining the extension of aircraft type ratings on their existing licenses, do not result into a qualification as the applicant imparts training and issues only course completion certificate and thus the impugned services are not covered under Sl. No. 66 (a) of the Notification No. 12/2017-Central Tax (Rate) dated 28.6.2017 and thus, are exigible to GST under the CGST/ KGST Act 2017.

z) Guest house used for employees of the company amounts to residential property and shall attract RCM provisions

(M/s Indian Metals And Ferro Alloys Limited, 2022-VIL-44-AAR)

Facts:

- The Applicant has manufacturing unit at Therubali and at Choudwar and captive mines located at Sukinda, Odisha. The Applicant has taken certain premises on rent at New Delhi and Jajpur, Odisha as guest house and theses guest houses are used to provide food and accommodation for the employees of the company who visit New Delhi for official purpose and also for the employees who visit mining office at Jajpur.
- Further, one of the apartments is taken on rent from a registered person and the other person is taken from unregistered person. In both the cases the houses taken on rent for guest house purpose are in the residential area and used by the Applicant Company for guest house of its employees.
- In normal course of business, the Applicant has taken a house on rent for use as its guest house at New-Delhi. As the term guest house is not covered within the ambit of residential dwelling as provided in education guide, the service provider at New-Delhi used to claim GST on its invoice under forward charge mechanism which is paid by the Applicant.
- Notification No. 04/2022- Central Tax (Rate) dated 13.07.2022, amended the clause 12 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 & thereby restricted the applicability of exemptions to a registered person. As per the said amendment, while any residential dwelling used as residence by a non- registered person is exempted from levy of GST, the said service received by a registered person is chargeable under GST.
- The Appellant filed an advance ruling application, has raised the following questions:
    - Whether Service Received by a registered person by way of renting of residential premises used as guest house of the registered person is subject to GST under Forward Charge Mechanism (FCM) or Reverse Charge Mechanism.

Held:

- The renting of an immovable property/residential dwelling is considered a supply of service under GST as per schedule II of the CGST Act 2017 and till 17th July 2022, services by way of renting of residential dwelling for use as residence was exempted, whereas services by way of renting for commercial use (SAC Code -997212) was taxable @ 18%. The decision to bring the renting of residential dwellings under the tax net was taken in the 47th GST Council Meeting held in June 2022 by partially removing the exemption and including the same under RCM services when provided to a registered person.
- Further, the reference is made to Notification No.05/2022-Central Tax (Rate) dated the 13th July, 2022 notified that with effect from 18th July 2022, service by way of renting of residential dwelling to a registered person shall be attracting GST under RCM (Reverse charge mechanism).
- Further, it is clear that the GST will be applicable even if the residential property is rented out to a registered person w.e.f. 18th July, 2022. Liability to pay GST @18% under the reverse charge mechanism will arise on the recipient (tenant), if he is a registered person under GST with no other condition. It may be further noted that the type or nature/purpose of use of residential dwelling i.e. for residence or otherwise by the recipient, has not been a condition in the said RCM notification. Hence, service of renting of residential dwelling to a registered person, would attract RCM irrespective of the nature of use.
- In the instant case, the Applicant has stated that it has taken on rent certain premises at New Delhi and Jajpur in Odisha, for use as guest house. The guest house is used to provide food and accommodation for the employees of the company. Thus, the nature of rented properties under discussion clearly appears to be residential properties used for commercial purpose.
- Therefore, irrespective of the purpose of use, if the residential dwelling is rented to a registered person under GST, the tenant has to discharge the GST liability under RCM as per Notification No. 05/2022-Central Tax (Rate) dated 13th July 2022.

aa) ITC denied on purchases made from the purchaser who had discharged its tax liability but the preceding seller has not discharged its liability under the Act

(M/s Vimal Alloys Pvt Ltd, 2022-VIL-42-AAR)

Facts:

- The Applicant is running a furnace at Mandi Gobindgarh and for the purpose of the same, the assessee is procuring ferrous alloys, scrap, gas and other materials from within the State of Punjab.
- Further, the Applicant is receiving the material against GST Invoice on which it is entitled to claim Input Tax Credit on the tax paid on the purchases made by it. The assessee is making the payments through banking channels and all the transactions are being reflected in its books of accounts.
- The Applicant is filing its returns in form GSTR-3B and Form GSTR-1 as per the provisions of the CGST Act, 2017.
- That recently, news are being published in the newspapers that the officials of the Department have unearthed the scam of bogus purchases as a result of which the furnaces, rolling mills etc. are being targeted by the Department in order to recover the demands even though they have nothing to do with the bogus purchases as the goods purchased by them on account of raw material is being entered in its books of account and the finished goods manufactured are sold after discharging its tax liability. The Department officials also caught hold of the furnaces/rolling mills on the ground that the preceding sellers of the seller from they have purchased goods, had not paid the tax and, therefore, they are liable to pay tax and consequential Interest and penalty, even though there is neither any obligation nor any infrastructure provided under the Act to verify or to find out the status of the discharge of tax liability by the said sellers.
- That for the sake of abundant precaution, the Applicant is procuring Returns from its immediate Vendors, i.e. Form GSTR-3B and Form GSTR-1 in order to make sure that the seller has discharged his tax liability and the purchases made by him have been entered in the books of accounts of the seller.
- The Applicant seeks Advance ruling in respect of the following:

a. Whether the purchaser is entitled to claim Input Tax Credit on the purchases made by it from the seller who had discharged its tax liability but the preceding seller has not discharged its liability under the Act?
b. If answer to the above is in negative, then how the purchaser will ensure that the tax liability has been discharged by all the sellers falling in the queue of the transaction?
c. Whether the purchaser would be eligible for the ITC since no infrastructure has been provided by the Govt. in order to ensure discharging of tax liability by the sellers falling in the queue of a transaction?
d. Whether the purchaser is entitled to claim Input Tax Credit on the purchases made by it from the seller in the event of non-payment of tax by the seller even though the purchaser is in possession of the invoice, other relevant documents and the payments have been made through banking channels and there is no connivance or collusion between the purchaser and seller?

Held:

- In regard above questions asked, the reference is made to Section 16(2)(c) of the CGST Act, 2017 wherein it is very much clear that no registered person shall be entitled to take the credit of any input tax in respect of any supply of goods or services or both unless the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply. If the seller or preceding sellers have not deposited the tax either in cash or through utilization of input tax credit admissible in respect of the said supply, purchaser is not eligible to claim ITC on such supply.
- Hence, there is no doubt in holding that the purchaser is not entitled to claim Input Tax Credit on the purchases made by it from the seller who had discharged its tax liability but the preceding seller has not discharged its liability under the Act.

S. No.	Questions	Ruling
1.	Whether the purchaser is entitled to claim Input Tax Credit on the purchases made by it from the seller who had discharged its tax liability but the preceding seller has not discharged its liability under the Act?	No, as per provisions of Section 16(2)(c) of CGST Act read with PGST Act, the purchaser is not entitled to claim Input Tax Credit on the purchases made by it from the seller who had discharged its tax liability but the preceding seller has not discharged its liability under the Act
2.	If answer to the above is in negative, then how the purchaser will ensure that the tax liability has been discharged by all the sellers falling in the queue of the transaction?	Not covered under the purview of Section 97(2)(d) of CGST Act and PGST Act, hence no ruling could be passed on these questions.
3.	Whether the purchaser would be eligible for the ITC since no infrastructure has been provided by the Govt, in order to ensure discharging of tax liability by the sellers falling in the queue of a transaction?	Not covered under the purview of Section 97(2)(d) of CGST Act and PGST Act, hence no ruling could be passed on these questions.
4.	Whether the purchaser is entitled to claim Input Tax Credit on the purchases made by it from the seller in the event of non-payment of tax by the seller even though the purchaser is in possession of the invoice, other relevant documents and the	Not covered under the purview of Section 97(2)(d) of CGST Act and PGST Act, hence no ruling could be passed on these questions.

	payments have been made through banking channels and there is no connivance or collusion between the purchaser and seller?	

bb) Sale of readily available ice creams [not prepared in the outlets] over the counter is supply of goods and taxable at 18% of GST

(M/s HRPL Restaurants P Ltd, 2022-VIL-41-AAR)

Facts:

- The Applicant is engaged in the restaurants business and operates under two business models viz;
  - company owned restaurants &
  - franchise restaurants
- Ice creams are being sold at the restaurants and the eateries and these ice creams include MRP products/pre-packaged products as well as non MRP products and they are served/packed there and then.
- Further, the Applicant stated that none of the outlets have just ice-creams on their menu; that they are serving food as well as ice creams; that the applicant is also registered as a restaurant under the FSSAI regulation. The applicant has further stated that based on the variety of transactions involved, their outlets are nothing but a restaurant/eating joint.
- It is the contention of the Applicant that they are liable for GST @ 5% by treating such supply as 'supply of restaurant service' without availing ITC; that they are not ice cream parlour in terms of circular No. 164/20/2021. The applicant has also relied on the case of M/s. Deepak & Co - 2022-VIL-68-AAAR [Order no. 2/DAAAR/22-23/2005-2010/21.6.2022] to substantiate their contention.
- The Appellant vide aforesaid application, has raised the following questions:
  - Whether supply of ice cream from any of the outlets of HRPL be considered as supply of 'restaurant services' or not?

- If the supply is classified as 'restaurant services', what would be the applicable rate of tax thereon in accordance with notification No. 11/2017-CT(Rate) dt 28.6.2017 [as amended from time to time]?
- If not the restaurant services, supply of ice cream from any of the outlets of HRPL can be considered as supply of ice cream from ice cream parlour & chargeable to GST @ 18%?

Held:

- The Applicants outlets are broadly of three types, the Applicant is supplying food which is prepared and cooked in the restaurant/eatery in addition to supplying the ice creams, which are not prepared/produced by them.
- As per the CBIC vide circular No. 164/20/2021-GST dated 6.10.2021, CBIC by relying on explanatory notes has clarified that 'restaurant service' includes services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food. It is further stated that service by an entity by way of cooking and supply of food even if it is exclusively by way of take away or door delivery or through or from any restaurant would be covered by restaurant service further going on to add that the service would also cover cloud kitchens/central kitchens within its fold.
- From the conjoint reading of the circular No. 164/20/2021-GST dated 6.10.2021 and circular No. 177/09/2022-TRU, dated 3-8-2022, clarification issued leads to a conclusion that readily available food items [not prepared, cooked in the restaurant] sold over the counter by the applicant through their outlets to the customer whether consumed in the outlets/restaurant or by way of takeaway, does not qualify as 'restaurant services' and is a supply of goods.
- Thus we hold that ice cream sold by the outlets of the applicant are already manufactured ice-cream; that it is not their case that the ice cream were manufactured/cooked/prepared by them; that the applicant is on record that their ice cream division was sold way back in the year 2017 & therefore we hold that ice cream sold by the applicant's outlet would not fall within the ambit of 'restaurant service' and is supply of goods and hence would attract GST at the rate of 18%.
- Further, when an ice cream is ordered as a desert along with cooked or prepared food at their outlets is considered as naturally bundled and supplied

in conjunction with the principal supply i.e., cooked/ prepared food, in the ordinary course of business. Thus, we hold that the supply of ice cream along with cooked or prepared food, falls within the ambit of restaurant service.

- The Applicant has relied upon the ruling by the Delhi Appellate Authority for Advance Ruling [Order No. 2/DAAAR/2022-23/2005-2010 dt 23.5.2022 - 2022- VIL-68-AAAR] but the same is not applicable to the present facts of the Applicant.
- The ruling is as under:

S. No.	Question	Ruling
1.	Whether supply of ice cream from any of the outlets of HRPL be considered as supply of 'restaurant services' or not?	The supply of ice cream from the outlets of the Applicant cannot be considered as supply of 'restaurant services'. The readily available ice creams [not prepared in their outlets] sold over the counter is supply of goods. However, an ice cream when ordered and supplied along with cooked or prepared food, through their outlets would assume the character of composite supply, wherein the prepared food being the principal supply and hence qualifies as 'restaurant services'.
2.	If the supply is classified as 'restaurant services', what would be the applicable rate of tax thereon in accordance with notification No. 11/2017-CT(Rate) dt 28.6.2017 [as amended from time to time]?	The supply of ice cream from the outlets of the Applicant is not classified as 'restaurant services'. However, the composite supply, supra, classifiable under 'restaurant service' would be leviable to GST @ 5% with no input tax credit as per Sr. No. 7(ii) of notification No. 11/2017-CT (Rate) dt 28.6.2017 as

		amended vide notification No. 20/2019-CT (Rate) dated 30.9.2019.
3.	If not the restaurant services, supply of ice cream from any of the outlets of HRPL can be considered as supply of ice cream from ice cream parlour & chargeable to GST @ 18%?	The supply of only ice cream [not prepared in their outlets and which is readily available] from any of the outlets of applicants is held to be akin to supply of ice cream from ice cream parlour, leviable to GST @ 18%.

Notification

cc) Procedure for manual filing of appeal in Form APL-01 under Odisha Goods and Services Tax Act, 2017 where rectification application is passed manually

(Notification No. CCT-PEI-POL-0155-2021/4450/CT&GST dated 10.03.2023)

- Filing of appeal in Form GST APL-01 electronically through GST Portal is not possible in certain specific circumstances where the proper officers have passed orders manually disposing the rectification applications filed manually under Section 161 of the Odisha Goods & Services Tax Act, 2017.
- In such cases, appeal shall be filed manually in Form GST APL-01 annexing thereto the self-certified copy of order appealed against.
- Form GST APL-01 shall be verified and signed manually by the appellant.
- The concerned officer shall record the APL-01 in the appeal register and issue provisional acknowledgement manually containing the serial number of the appeal register. Further, the concerned officer shall manually issue the final acknowledgement in FORM GST APL-02 indicating the appeal number.
- The appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Order and Miscellaneous

dd) Guidelines regarding refund process within timelimit issued by Rajasthan Government

(Order bearing F. No. 17(228) ACCT/GST/2023/8282 dated 10.03.2023)

- Directed all proper officers to decide the refund application and pass the final sanction/rejection order in form GST RFD-06 and the payment advice in FORM GST RFD-05 after verifying the correctness of the refund claim **within 21 days of the date of receipt of the refund application**.
- All refund applications pending beyond 21 days of receipt date, shall be disposed by the proper officer within 7 days of this order.
- In case a SCN has been already issued to the taxpayer and personal hearing/date of reply to be submitted has been given beyond 7 days, the same shall be decided within 3 days of the personal hearing/date of reply.

ee) GST number to professionals working from home

(Unstarred question no 1488 dated 14.03.2023)

- **Question:** Whether management consultants and other professionals working from home due to covid-19 pandemic or otherwise are not allowed to get GST numbers from the residential premises.

  Answer: The CGST Act does not restrict GST registration of management consultants and other professionals operating from residential premises, due to covid-19 pandemic or otherwise.

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