INDIA EXPERT

Major Indirect Tax Jurisprudence Q1 2021

By Team INDIA EXPERT

TODAY'S AGENDA

INDIA EXPERT

01 **DRI JURISDICTION**
Powers of 'proper officer'

02 **CLASSIFICATION**
General Rules to Interpretation (GRI)

03 **FREE OF COST SUPPLIES**
Value of taxable supply/service

04 **ELIGIBILITY OF ITC**
Restricted/Blocked credits

05 **EXTENDED PERIOD OF LIMITATION**
For filing suits etc. due to pandemic

06 **RECOVERY OF LIQUIDATED DAMAGES**
Tolerance of an act

07 **E-WAY BILL**
Furnishing & consequences

08 **RECOVERY FROM EMPLOYEES**
In course/furtherance of Business

09 **Miscellaneous Issues**

- ✓ High Court Decisions
- ✓ GST Appl. Authority Order
- ✓ AAAR Rulings
- ✓ AAR Rulings
- ✓ Pre-GST Decisions

INDIA EXPERT

DRI JURISDICTION

'PROPER OFFICER' UNDER THE CUSTOMS ACT

Section 2(34) of the Customs Act defines 'Proper officer' as the officer of customs who is assigned those functions by the board or the principal commissioner or commissioner of customs.

Section 6 of the Customs Act empowers the Central Government to issue Notifications, for the purpose of entrusting any functions of the board under the Act to any officer of State/Central Government or local authority.

Section 28(4) of the Customs Act empowers the proper officer to recover duties of customs not/short- levied or not/short-paid or erroneously refunded.

M/s Canon India Pvt Ltd vs Commr of Customs-SC

INDIA EXPERT

Additional Director of DRI is not "the proper officer" to initiate recovery of duty under Section 28(4) of the Customs Act

- The Hon'ble Supreme Court held that it is only "**the** proper officer" and not "**any** proper officer", who is entitled to recover duties under section 28(4) of the Customs Act, 1962
- Where one officer has exercised his powers of assessment, the power to order re-assessment must also be exercised by the same officer or his successor and not by any other officer of another department
- Further, the Additional Director of DRI is not even a "**Proper officer**" under the Customs Act as the Notification which entrust functions of a proper officer had been issued under non-existing power under Section 2(34) instead of Section 6 of the Act

CBIC Reaction to Canon Judgment

- Following the decision, the **CBIC has issued an instruction on 17.03.2021**, taking cognizance of the same and directing that till the implications of the judgment are examined by the Board, **SCNs issued by DRI shall remain pending**

- Further, **all future SCNs are to be issued only by the jurisdictional commissionerates** from where imports have taken place

- Henceforth, the ratio of this judgment is expected to hold sway over such cases until further clarity is brought about

Way Forward and open issues for Taxpayers

INDIA EXPERT

Way Forward

- Assesses can rely on ***Canon*** as a ground in pending appeals and adjudications where jurisdiction has not been disputed before
- Also, assessees now have the recourse of approaching their jurisdictional High Courts and getting the SCNs issued by DRI officials quashed

Open Issue

- Whether the decision in the Canon Case will be applicable to the Service Tax and Excise Regime and GST Regime as well?

INDIA EXPERT

CLASSIFICATION

CLASSIFICATION

INDIA EXPERT

Chapter Heading	Description
8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge or suppressors, plugs, sockets, lamp holders and other connectors, junction boxes), for a voltage not exceeding 1,000 volts; connectors for optical fibres, optical fibre bundles or cables
85363000	**Relays**
8608	Railway or tramway track fixtures and fittings; **mechanical (including electro- mechanical) signalling**, safety or traffic control equipment for railway, tramways, roads, inland waterways, parking facilities, port installation or air- fields; **parts of foregoing**

Notes to Section XVII

Note 2-

The expressions "parts" and "parts and accessories" do not apply to the following articles, *whether or not they are identifiable as* for the goods of this Section:

.....

(f)electrical machinery or equipment (Chapter 85)

...

Note 3-

References in Chapters 86 to 88 to "parts" or " accessories" do not apply to parts or accessories which are ***not suitable for use solely or principally with the articles*** of those Chapters. A part or accessory which answers to a description in ***two or more of the headings*** of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

M/s Westinghouse Saxby Farmer Ltd vs CCE- SC

INDIA EXPERT

Classification of relays used in railway signaling system as parts under Chapter Heading 8608- "Suitability for use test or user test" applied

- Competing entries- **CH 8536 vs. CH 8608** – Reliance placed on "suitability for user test"
- By invoking Note 2(f) of Section XVII, the lower authorities have overlooked the **"suitability for use test or user test"** indicated in Note 3 of Section XVII which is not justifiable
- Rule 3 of the General Rules to Interpretation (**GRI**) can only be invoked when a particular good is classifiable **under two or more headings.**
- Invocation of Note 2(f) after by-passing the sole or principal user test as acknowledged by GRI is not justified when it was conceded by the revenue that goods manufactured by the appellants are used solely as part of railway signalling equipment

INDIA EXPERT

'FREE OF COST' SUPPLIES

SERVICE TAX:

- Section 67 of the Finance Act, 1994 provides for valuation of taxable services for charging service tax. Clause (i) to Section 67(1) provides that where service tax is chargeable on any taxable service with reference to its value, then such value shall in a case where the provision of service is for a **consideration in money**, be the **gross amount charged by the service provider** for such service provided or to be provided by him

- Explanation (i) to Section 67 provides that for the purposes of this section, "consideration" includes any amount that is payable **for the taxable services provided** or to be provided

Free of Cost supplies not to be included in the consideration of services

- Value of items provided **free of cost** by the service recipient to the service provider is not to be included while arriving at the gross amount for the reason that *no price is charged by the service provider from the service recipient in respect of such goods/materials provided FOC*
- Decision of the Supreme court in ***Bhayana Builders*** as well as larger bench decision of Tribunal in case of ***Bhayana Builders*** upheld and followed

Free of Cost supplies by the service receiver not to be included in the taxable value of services

- **Cost of fuel** provided free of cost was never charged by the Appellant over and above the amount of taxable service

- Ratio of Supreme Court decisions in the cases of ***Bhayana Builders and Intercontinental Consultants and technologies*** wherein it was held that the value of items provided free of cost by the service recipient to the service provider is not to be included while arriving at the gross amount upheld and followed

M/s Petronet LNG Limited- CEST DELHI

INDIA EXPERT

'Free of Cost' supplies by service recipient to service provider do not form 'consideration' and cannot be included in the value of taxable supply

- "**Allowed loss and consumption**" clause would not represent *quid pro quo* for regasification services rendered and it is rather just a stipulation contained in the agreement between parties

- Supreme Court decision in ***Bhayana Builders*** upheld and followed yet again to emphasize that service tax is payable on gross amount charged i.e. amount billed by service provider to the service receiver

INDIA EXPERT

ELIGIBILITY OF ITC

INPUT TAX CREDIT

- **Section 16(1)** of the CGST Act provides certain conditions to be fulfilled by a registered person in order to avail Input Tax Credit (ITC) of any goods or services received by him, which are further used or intended to be used **'in the course or furtherance of his business'**
- **Section 16(2)** of the Act enlists the abovementioned conditions to avail ITC like possession of tax invoice, actual receipt of goods, payment of tax to the government etc.
- **Further, Section 17(5)** of the Act restricts or blocks the availment of ITC in respect of certain specified supplies like works contract services for construction of immovable property, goods disposed off by way of gifts/free samples etc.
- **Section 140** of the Act allows transition of credit under pre-GST regime into GST

M/s DMR Constructions- MADRAS HC

INDIA EXPERT

Transition of accumulated credit of TDS under VAT regime to GST regime allowed

- Any deduction made towards anticipated tax liability it would assume the character of tax and wouldn't change whether held as credit or adjustment
- As the amount collected has been **captured in the returns** of the turnover filed under VAT regime, the amount of TDS would be included for the purposes of transition under Section 140, CGST Act
- Reliance placed on **Magma Fincorp Ltd** where relief granted based on similar facts

M/s Dwarikesh Sugar Industries Ltd-U.P. AAR

INDIA EXPERT

ITC allowed for supplies made as part of CSR activities and ITC disallowed for goods or services used for constructions to to the extent capitalised

- CSR activities become an **essential part of business** and thus to be treated as incurred "in the course of business", and not 'gifts' under GST
- While 'gifts' are **voluntary** and occasional, the CSR is obligatory and regular in nature, and thus do not qualify as "gifts" and hence, its credit is not restricted under Section 17(5)(h) of the CGST Act.
- ITC on construction services as part of CSR activities disallowed to the extent capitalized in books
- Tribunal decision in ***Essel Propack Ltd*** and High Court decision in ***Millipore India (P) Ltd*** followed

M/s BMW India Pvt. Ltd.- HAR. AAR

INDIA EXPERT

Items suppled for the purposes of sales promotion on "Free of cost" basis to be treated as "Gifts" under Section 17(5)(h), CGST Act

- Goods procured and supplied during promotion/ marketing events qualify as being used in the course of furtherance of business in terms of CGST/ HGST Act, 2017

- Items distributed FOC treated as "Gifts", hence no ITC available on it in terms of sepcific exclusion under Section 17(5)(h) of CGST Act

M/s Page Industries Limited-KAR. AAR

INDIA EXPERT

ITC available on items supplied to franchisees/distributors who are related parties on payment of GST;

ITC not available on capital goods and items supplied 'FOC' to retailers who are not related parties and capital goods

- **Non Distributable items**: Items which have been capitalized in the applicant's books, are held to be capital goods in respect of which ITC is eligible. However, such ITC is liable to be reversed as and when these goods are destroyed or written off in terms of Rule 43 of CGST Rules
- **Distributable items:** ITC is restricted under Section 17(5)(h) when such items are provided free of cost to other retailers which are not related parties. However, franchisees/exclusive selling showrooms are deemed to be related persons by virtue of clause (c) to Explanation to 15(5) of the CGST Act due to their association in the business of one another. Hence, ITC available on goods as it constitutes supply even in the absence of consideration under Sched

INDIA EXPERT

EXTENDED PERIOD OF LIMITATION

LIMITATION PERIOD

INDIA EXPERT

WHAT IS LIMITATION PERIOD?

The law of limitation prescribes the time-limit for different suits within which an aggrieved person can approach the court/authority to seek redressal. Any suit, appeal or application initiated beyond the period if limitation shall be barred from being adjudicated

SOME LIMITATIONS PERIODS UNDER CGST ACT

- As per Section 54, refunds can be filed within 2 years from relevant date
- As per Section 107, Appeals to Appellate Authority can be filed within three months from the date on which such decision or order appealed against in communicated to such person

Order dated March 27, 2020

INDIA EXPERT

In view of the outbreak of Covid-19 pandemic in March 2020, the Supreme Court of India vide an order dated March 27, 2020 extended the period of limitation prescribed under the general law or special laws with effect from March 15, 2020 till further orders.

In Re:Cognizance for Extension of Limitation- SC

INDIA EXPERT

In view of the difficulties faced by the litigants in filing applications/ appeals/ suits/other proceedings within prescribed limitation, the following order has been issued

- In computing the period of limitation for any suit, appeal, application or proceeding, **period from 15.03.2020 till 14.03.2021 shall stand excluded**
- Where limitation would have **expired** during the period between **15.03.2020 till 14.03.2021**, irrespective of the actual balance period of limitation remaining, **a limitation period of 90 days** with effect from 15.03.2021 shall be given to all persons
- If the remaining balance is **greater than 90 days**, then that **longer period** shall apply in such cases

Manner of Computation of Limitation

The Supreme Court order dated 08.03.2021 prescribes the following manner of computation of limitation:

1. **For computing limitation period, the period from March 15, 2020 to March 14, 2021 to be excluded**

The period from March 15, 2020 to March 14, 2021 (**Exemption Period**) shall be excluded while computing the period of limitation for filing of any suit, appeal, application or proceeding

Illustration:

- For filing a suit for any cause of action arising on February 1, 2020 where the limitation is two years, the period of limitation will be computed as follows:
  a. February 1,2020 to March 14, 2020 (42 days)
  b. The balance 688 days will be computed from March 15, 2021

Manner of Computation of Limitation (Contd.)

2. Where limitation period expires between March 15, 2020 and March 14, 2021

Where the actual limitation period has expired during the exemption period, it will be extended by the ***higher of***:

a. the balance number of days remaining in the limitation period from March 15, 2021, and

a. 90 days, regardless of the actual balance period of limitation, from March 15, 2021

Manner of Computation of Limitation (Contd.)

Illustration 1:

If the cause of action for filing of a suit took place on May 15, 2017 and the limitation period is three years (i.e. ending on May 15, 2020), the computation of such period will pause on March 15, 2020. Regardless of the actual balance period being **61 days** (March 15, 2020 to May 15, 2020), the limitation for filing the suit will expire after 90 days from March 15, 2021 i.e. **June 13,2021**

Illustration 2:

If the period of limitation for filing a suit is due to expire on June 30, 2021, the entire balance period of limitation remaining as on March 15, 2021 i.e. **107 days** (being more than 90 days) will become available from March 15, 2021 onwards

INDIA EXPERT

RECOVERY OF LIQUIDATED DAMAGES AND TOLERANCE OF AN ACT

LIQUIDATED DAMAGES/PENAL CHARGES

INDIA EXPERT

UNDER SERVICE TAX

- **As per Section 66E(e) of the Finance Act 1994 ,** 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' has been prescribed as a 'Declared service'

UNDER GST

- **As per Para 5(e) of Schedule II to CGST Act** 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' will be treated as services

M/s South Eastern Coalfields Ltd.-CEST DEL

INDIA EXPERT

Amount collected from the customers for short-lifted/ un-lifted quantity, does not amount to consideration for "tolerating an act" under service tax

- Consideration in a service should from the recipient to the supplier and should accrue to the benefit of service provider
- There is a difference between 'conditions to a contract' and 'consideration to a contract' and determined that neither of the parties could have intended to flout the terms of contract in order to attract penal clauses, hence penal amount would not form consideration for "tolerating an act" under service tax

M/s Honda Cars India Ltd- CEST. DELHI

INDIA EXPERT

Cancellation fee paid for termination of Technical Collaboration agreement cannot be considered as provision of "consulting engineer service"

- In the absence of any advice, consultancy or technical assistance, the question of providing consulting engineer service does not arise as the agreement was terminated prior to any advice

- Amount paid by appellant under termination agreement is actually in the nature of a cancellation fee and not towards any consideration for a taxable service

M/s Poorva Kshetra Vidyut Vitran Co. Ltd- CEST DEL

INDIA EXPERT

Service tax not payable on recovery of Liquidated Damages/ penalty under "Tolerating an act"

- Recovery of liquidated damages/penalty due to defaults made supplier cannot be said to be towards any service per se, since neither the appellant is carrying on any activity to receive compensation nor there is any intention of the other party to breach or violate the contract and suffer a loss

- The decisions rendered in **South Eastern Coal fields Ltd, Lemon Tree Hotels Ltd and K.N. Foods Ltd** were upheld and followed.

M/s Ratnamani Metals and Tubes Ltd- CEST AHM

INDIA EXPERT

Liquidated damages are not consideration towards any service and hence are not liable to tax under service tax

- The vital point raised by the appellants that 'liquidated damages' are not "consideration" towards any service has not been considered by either of the lower authorities

- The decisions in **K.N Foods Industries Pvt Ltd, Repco Home Finance and GE T&D India Ltd** shall apply directly only after verifying facts of the case, hence matter remanded back to adjudicating authority

M/s Haryana State Warehousing Corporation-HAR.AAR INDIA EXPERT

Recovery of interest as holding charges for delay in delivery liable to GST in the nature of 'Tolerating an Act'

- Activity of recovering interest for delayed delivery would fall under Entry 5(e) of Schedule II of CGST Act as "tolerance of an act"
- There is an agreement as well as an obligation to deliver goods timely
- The Applicant is tolerating the act of delayed delivery for which it is charging an amount in the form of interest instead of taking legal recourse of specific performance

M/s Amneal Pharmaceuticals Pvt. Ltd.- GUJ AAR

INDIA EXPERT

Recovery from employees in the form of Notice Pay liable to GST

- 'Notice pay' treated as consideration to the employer for agreeing to the obligation of letting the employee go and hence covered as declared service under Clause 5(e) to Schedule II of CGST Act, 2017

- The AAR ruled contrary to the settled precedents regarding Notice pay under service tax like **M/s. Gujarat State Fertilizers & Chemical Ltd, M/s. HCL Learning Systems** and **GE T&D India Limited** reasoning that those decisions were of service tax regime and do not apply to GST regime

M/s Rattan India Power Ltd- DELHI HC

INDIA EXPERT

Amount received in the nature of penalty/ compensation for short offtake of coal are not towards any supply under GST

- GST was recovered on penal charges/compensation amount under clause 5(e) of Schedule II of the CGST Act, 2017
- Hon'ble High Court held that Prima facie, CGST Act does not permit levy of GST on penalty, without the sale of any goods
- Notice has been issued and accepted by respondents

INDIA EXPERT

E-WAY BILL

LEGAL PROVISIONS RELATED TO E-WAY BILL

INDIA EXPERT

ISSUANCE OF E-WAY BILL:

- **Rule 138** of the CGST Rules, 2017 mandates every registered person to issue an E-way Bill in FORM GST EWB-01 when any goods are moved, **consignment value of which exceeds Rs. 50,000**

CONSEQUENCES OF NON-ISSUANCE:

- **As per Section 129** of the CGST Act, where goods are being transported in contravention of any provisions of the Act or its Rules, such goods/conveyance are liable to detention, seizure, tax and penalty.

M/s Bon Gargo Private Limited- GUJ HC

INDIA EXPERT

Threshold of Rs.50,000/- under Rule 138 for issuance of E-way bill to be examined on the basis of "Consignment value" and not the invoice value

- 'Consignment value' to be seen for the threshold of Rs. 50,000/- under Rule 138, CGST Rules for issuance of E-way Bill and not the 'invoice value'
- Otherwise, could result in consignors issuing multiple small invoices for the same goods thereby defeating the purpose of provisions of issuance of E-way Bill

M/s Anandeshwar Traders- ALL HC

INDIA EXPERT

Cancellation of E-way not mandatory on non-commencement of transportation within 24 hours

- Rule 138(9) of the CGST Rules, 2017 does not provide for consequences if cancellation of E-way Bill is not done in case if transportation does not commence within 24 hours of its generation
- Rule in fact permits the dealer to cancel the e-way bill if the transportation does not take place within 24 hours of its generation

M/s Tirthamoyee Aluminium Products Vs. State of Tripura- TRIPURA HC

INDIA EXPERT

Mentioning of wrong distance in E-way Bill due to clerical error is a minor lapse and GST with penalty cannot be demanded for the same

- Reference made to to ***CBIC Circular No. 64/38/2018-GST dt. 14.09.2018,*** according to which *in cases* of minor lapses on the part of the consignor, specifically where the error relates to one or two digits of the document number mentioned in the e-way bill, proceedings under Section 129 may not be initiated
- Separate order passed much before appearance date confirming tax grossly unjustified on the part of State Tax officer

INDIA EXPERT

RECOVERY FROM EMPLOYEES

SUPPLIES TO EMPLOYEES

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS/SERVICES:

- **Schedule II to CGST Act** specifies certain activities or transactions to be treated as supply of goods or supply of services, once they constitute a 'supply' under Section 7(1) of the Act
- Thus to be a 'supply' under sub-section (1) of Section 7, it has to be for a consideration and **in course or furtherance of business**
- **Business, as defined under Section 2(17) of the** Act includes inter-alia:-
  - Any trade, commerce, profession, vocation etc. whether or not for any pecuniary benefit or any activity incidental to the aforementioned
  - Services by a person as a holder of an office in course of business, trade etc.
  - Admission of persons to any premises for a consideration

M/s Amneal Pharmaceuticals Pvt. Ltd- GUJ AAR

INDIA EXPERT

Provision of canteen facilities to employees at subsidised rate qualifies as supply under GST

- Supply of food by the applicant to its employees would fall under clause (b) of Section 2(17) to CGST Act, as a transaction 'incidental or ancillary' to the main business, falling under the purview of 'in furtherance of business'
- Such supply shall fall within the ambit of Section 7(1)(a) of the CGST Act, even though no profit is earned by the applicant.
- Element of 'consideration' also present since the applicant recovers cost of food from its employees

M/s North Shore Technologies Private LTD.-U.P.AAR

INDIA EXPERT

Arranging subsidized transport facility for employees cannot be treated as a "supply of service" under GST

- Activity of arranging transport not integrally connected to the functioning of Applicant's business and hence the same cannot be said to be in 'furtherance of business'
- Reliance placed on rulings in **Posco India, Ion Trading India Pvt Ltd** And on **CBIC press release dated 10.07.2017** to rule that such recovery in terms of employment contract cannot be considered as a supply of service in course of business

M/s Ion Trading India Private Ltd.- U.P. AAR

INDIA EXPERT

Employer will qualify as a pure agent in case of amount recovered from the employees towards car parking charges payable to building authorities

- The activity provided by the appellant squarely falls under the Schedule II i.e. "Activities to be treated as Supply of Goods or Supply of Services" of the CGST Act, 2017, specifically, under Para 2(a) which reads *"**any lease, tenancy, easement, license to occupy land...**"*
- The value of the services in the present case will be NIL, as the appellant is providing the same in the capacity of a pure agent under Rule 33 of CGST Rules

MISCELLANEOUS

INDIA EXPERT

HIGH COURT DECISIONS

M/s Zaveri and Co. Pvt Ltd. – GUJ HC

INDIA EXPERT

Retrospective applicability of Rule 96(10) of CGST Rules as made vide Notification No. 54/2018-CT dated 09.10.2018 challenged

- Gujarat HC in ***Cosmo Films*** upheld the constitutionality and retrospective validity of the said Notification as well as Rule 96(10) which deals with restriction on exporters to claim refund of IGST on export of goods or services where exporters have received exemption benefits on imports by way of AA/EOU
- Retrospective applicability of Rule 96(10), CGST Rules scheme challenged and proceedings initiated against petitioner staye

M/s G.K. Trading Company- ALL HC

INDIA EXPERT

Summons under CGST and SGST Act can be issued simultaneously

- Summons under **Section 70** of the CGST Act are issued merely for **inquiry** whereas **Section 6(2)(b)** deals with the **proceedings**
- Word "inquiry" in Section 70 not synonymous with word "proceedings" under Section 6(2)(b)
- No proceedings have been initiated by a proper officer against the petitioner on the same subject- matter referable to Section 6(2)(b) of the U.P.G.S.T. Act. It is merely an inquiry by a proper officer under Section 70 of the CGST Act

M/s Dayamay Enterprise- CAL HC

INDIA EXPERT

Cancellation of GST registration without passing any order and based on SCN without citing any particular is improper

- The Hon'ble High Court held that the Superintendent of taxes **cannot block** the petitioner's GST account on the official portal without passing any order for cancelling the petitioner's GST registration
- Further, any such order would prevent the petitioner from carrying on his business in a lawful manner

M/s Skyscrapers Infracon Private Limited- CAL HC

INDIA EXPERT

Suspension/cancellation of GST Registration without giving opportunity of personal hearing is bad in law

- The personal hearing before suspension is a statutory requirement and non compliance of same is bad in law
- The authority was directed to give a personal hearing to the petitioner in terms of Section 29(2) of the CGST Act for the purpose of adjudicating the cancellation issue in terms of show cause notice for cancellation of registration and shall pass a reasoned order

M/s Deepak Print Vs. UOI – GUJ HC

INDIA EXPERT

FORM GSTR-3B can be rectified for the relevant period to which the error relates

- The Hon'ble High Court relying on the ratio as dictated in the case of **Bharti Airtel Limited Vs. Union of India & Ors** wherein the petitioner was permitted to rectify FORM GSTR-3B for the period for which the error related and not the period in which error is noticed
- Therefore, in the present case the petitioner should be permitted to rectify FORM GSTR-3B in respect of the relevant period

M/s Pentacle Plant Machineries Pvt Ltd – MAD HC

INDIA EXPERT

In the absence of GSTR-2 and GSTR-1A, GSTR-1 allowed to be rectified on account of bonafide human error

- Errors in GSTR-1 allowed to be rectified, since Forms GSTR-1A and GSTR-2A are yet to be notified and the petitioner should not be fastened with any liability on account of bonafide human error

- Reliance placed on the decision of the Hon'ble Supreme Court in the case of **Sun Dye Chem** wherein the court allowed the recipient to avail credit on account of error arose relating to the distribution of credit as IGST/CGST/SGST and held that the error committed by the petitioner was an inadvertent human err

INDIA EXPERT

GST Appellate Authority Orders

M/s Transformative Learning Solutions Pvt. Ltd- DELHI APPELLATE AUTH.

INDIA EXPERT

Group companies which are separate legal entities are not 'mere establishment of distinct persons' under GST

- Services provided by Indian subsidiary to foreign holding qualifies as export and eligible for refund of IGST paid
- Explanation 1 to Section 8 of the IGST Act refers to two establishments of the same person, one in India and one outside India shall be treated as establishment of distinct persons
- However, a subsidiary company is not a branch or a part of its holding company and both entities are two separate legal entities having their own independent existence
- Decision in ***Linde Engineering India Pvt Ltd*** followed
- Group companies can at best be said to be 'related persons' under GST
- Presence of a single common director cannot make both entities 'establishments of a single person'

INDIA EXPERT

Rulings of Appellate Advance Authority

M/s Kalani Infrastructure Private Limited- RAJ.AAAR INDIA EXPERT

Supply of various other services along with hostel accommodation service is a 'Mixed Supply' under GST

- Reliance placed upon WB AAR in the case of Sarj Educational Centre, wherein it was held that provision of hostel accommodation could be a principal supply, but ancillary like food, gym cannot be said to arise naturally with the principal service of hotel accommodation
- All these components are independent of each other and therefore not naturally bundled
- Ruling passed by Rajasthan AAR upheld

M/s Clay Craft (India) Pvt. Ltd.- RAJ.AAAR

INDIA EXPERT

GST implications on salaries, fees or other remuneration paid to the Directors of a company

- Remuneration paid to independent directors is taxable on reverse charge basis pursuant to Notification No. 13/2017-CT(R) dt. 28.06.17
- The part of Director's remuneration which is declared as salary and subjected to TDS are not taxable, being consideration of services in course of employment in terms of Schedule III of the CGST Act
- The part of Director's remuneration which is declared separately "other than salaries" shall be outside the scope of Schedule III and is taxable

M/s Abhishek Darak- UK AAAR

INDIA EXPERT

Sale of developed land is taxable under GST

- Activities undertaken by applicant mandatory under RERA and enhances value of land
- Applicant is realizing the value of land as well as value of such services from its customers
- Applicant does not propose to sell land per se and the very character of land will be changed as a result of the undertaken development activities, hence it is not a sale of land alone

INDIA EXPERT

Advance Rulings

M/s Wilhelm Fricke Se- HAR AAR

INDIA EXPERT

Reimbursement of expenses and salary paid by overseas company to the Liaison establishment in India falls out of the preview of supply of service under GST

- Liaison office cannot undertake any activity of trading, commerce etc. and hence there cannot be any flow of services between HO and LO
- HO and LO cannot be treated as separate persons
- Reimbursement of expenses made by the HO cannot be treated as a consideration towards any service, hence no GST is payable as it is not a supply under GS

M/s Ashiana Housing Ltd – GUJ AAR

INDIA EXPERT

External Development charges (EDC) and Infrastructural Development charges (IDC) to be included in the taxable value of supply

- Section 15(2)(a) of the CGST Act specifically provides that the value of supply shall include any taxes, duties, cesses, fees and **charges** levied under any law for the time being in force
- The conditions of a **'pure agent'** under Rule 33 of CGST Rules are not met
- Reliance in this regard placed on **Circular no. 334/1/2010- TRU** clarifying that development charges, to the extent they are paid to State Government or local bodies, would be excluded from the taxable value levy for Service Tax purposes was misplaced as it nowhere mentions that developer qualifies as pure agent

Manoj Mittal- W.B. AAR

INDIA EXPERT

Supply from restaurant counters where there is no element of service to be treated as "supply of goods" and catering services provided to an educational institute are exempt in terms of exemption

- Supplies from sweetmeats parlour without the element of service cannot be considered as a 'composite supply' and to be treated as "supply of goods" and shall attract tax accordingly
- Supply of food and beverages in eating section from the restaurant counter having an element of service qualify as "composite supply" and attract 5% tax accordingly
- Catering services provided to an educational institution are exempt under Exemption Notification No. 12/2017-CT(R) dt 28.06.2017
- However, catering services to auditor, parents on programme days and functions are occasional in nature and fall under "outdoor catering" services, which shall attract 5% GST without benefit of ITC

INDIA EXPERT

PRE-GST DECISIONS

M/s Kafila Hospitality & Travels Pvt Ltd- CEST DEL

INDIA EXPERT

Target-based/CRS incentives cannot be termed as 'consideration' for business promotion services and are not leviable to service tax

- Travel agents are only providing options to the passenger and not promoting services of any particular airlines, rather it is the passenger who determines the airline for travel
- Reliance placed on the decision of Madras High Court in **Airlines Agents Association** wherein it was held that commission earned by travel agents has a direct nexus with the service of booking of air tickets and not with promotion or marketing the business of airlines
- In regard to target based incentives, relying on the decision of **Rohan Motors Ltd,** it is clear that incentives paid for achieving targets cannot be termed as "consideration" as travel agent is not promoting anyone's business and hence, are not liable to service tax.

CRS incentives- Travel agents promote their own business and not the business of any CRS companies and therefore are providing travel agency services and not business auxiliary services

About Us

INDIA EXPERT

Offers its clients a full range of services. the company has been setup by a group young ,enthusiastic highly skilled and motivated professional who has taken experience from the top consulting firm and are extensively experienced in their chosen fields has providing a wide array of consultancy in the field of accounting. ,taxation assurance and business advisory service to various clients and other stakeholder.

We are the exclusive member in India of the association of international tax consultants an association of independent professional firm represented throughout Europe, us, Canada, south Africa, Australia and Asia

DISCLAMER- No part of this article may be reproduced, reprinted or utilized in any form or by any means electronic or mechanical without prior permission of the publisher. While every care is taken in compilation of information contained herein, the publisher cannot accept any responsibility for error or omission or for the use of trademark, copyrights, brand name , logos or other identifying symbol provided in supporting and participating companies and organizations however all possible and reasonable care has been taken to ensure that the information in this newsletter is as accurate and up-to-date at the time of printing this newsletter is for internal use only

INDIA EXPERT

CORPORATE OFFICE

P-6/90, Connaught circus
Connaught Place New Delhi 110001
Phone no.9555555480
Email.info@indiaexpert.in
www.indiaexpert.in

aitc
association of international tax consultants

We are the exclusive member of in India of the Association of international tax consultants, an association of independent professional firms represented throughout worldwide