INDIA EXPERT

Legal Zine Volume – IV

Case Law Index

INDIA EXPERT

Party	Citation/Forum	Ratio decidendi	Slide no.
M/s Radha Krishan Industries	**2021-VIL-50-SC**	Power of attachment of property and bank account under section 83 is draconian in nature and should be used sparingly, based on cogent material and with proper procedural safeguards	**8**
In Re Cognizance for Extension of Limitation	**2021-VIL-54-SC**	Restoration of the order dated 23.03.2020 which excludes the period of limitation for filing petitions, suits etc. till further orders	**9**
Anurag Suri vs DGGSTI	**2021-VIL-251-ORI**	Parallel proceedings cannot be initiated by the State tax authorities, if proceedings are already pending before DGGSTI	**11**
H.R. Enterprises	**2021-VIL-252-RAJ**	Once requisite documents relating to goods are present, Anti Evasion/Check post officer cannot kick start an inquiry relating to the genuineness of purchase of such goods	**12**
Devi Prasad Tripathy	**202-VIL-261-ORI**	Notices should not be issued to practicing advocates providing legal services demanded GST/Service tax	**13**
M/s Sri Lakshmi Venkateswara Genral Merchants	**2021-VIL-262-AP**	Appeal can be filed either "electronically" or "manually" under GST, in the absence of any notified method	**14**

Case Law Index

INDIA EXPERT

Party	Citation/Forum	Ratio decidendi	Slide no.
M/s Shrinandhidhall Mills India Pvt Ltd	**2021-VIL-271-MAD**	Voluntary payments made during investigation is not self-assessed tax under Section 74(5) of the CGST Act	**15**
M/s Indian Farmers Fertilizers Co-operative Ltd	**2021-VIL-282-ORI**	GST on ocean freight not payable until decided finally by Supreme Court	**16**
M/s D.Y. Breathel Enterprises	**2021-VIL-308-MAD**	Authorities cannot initiate recovery proceedings against a purchaser of goods due to the omission to remit tax to the Government on part of the seller	**17**
M/s Chaizup Beverages LLP	**2021-VIL-315-MAD**	Substantive benefit of a statutory scheme cannot be denied on the strength of a departmental circular	**18**
M/s Mother Earth Environ Tech Pvt Ltd	**2021-VIL-324-KAR**	Non-sharing of Principal Commissioner's report by AAR with petitioner is violative of principles of natural justice	**19**
M/s Kalyan Jewellers India Limited	**2021-VIL-20-AAAR**	'Voucher' is neither goods not service under GST but a non-monetary instrument of consideration	**21**

Case Law Index

INDIA EXPERT

Party	Citation/Forum	Ratio decidendi	Slide no.
M/s Page Industries Ltd	**2021-VIL-21-AAAR**	Promotional and marketing items distributed free of cost to franchisees and EBO are covered under 'non-taxable supply' and supplies made free of cost to the distributors qualify as gifts ITC of the same is restricted under Section 17	**22**
M/s Erode Infrastructures Pvt Ltd	**2021-VIL-23-AAAR**	A supplier in the capacity of a recipient of his inward supplies only is eligible to seek an advance ruling and not vice versa i.e. as a mere recipient, even if he otherwise may be a supplier of goods or services	**23**
M/s SPSS South Asia Pvt Ltd	**2021-VIL-187-AAR**	Supply of pre-developed or pre-designed software are classified as 'goods' and covered under tariff heading 8523	**25**
M/s Bishops Weed Food Crafts Pvt Ltd	**2021-VIL-188-AAR**	Renting of individual rooms with amenities like housekeeping etc. falls under "accommodation services" as a composite supply which will be entitled for exemption available for accommodation services and leasing of property for further sub-letting is not in the nature of accommodation services or leasing of residential dwelling, hence not entitled for exemption	**26**

Case Law Index

INDIA EXPERT

Party	Citation/Forum	Ratio decidendi	Slide no.
M/s Kou-Chan Technologies Pvt Ltd	**2021-VIL-191-AAR**	Leviability of GST on various transactions of e-commerce platform providing passenger transportation services	**27**
M/s I-Tech Plast India Pvt Ltd	**2021-VIL-205-AAR**	Debit note is always connected to an invoice and does not gain a separate existence for the purpose of taking ITC	**28**
M/s Enpay Transformer Compenents India Pvt Ltd	**2021-VIL-210-AAR**	Delayed payment interest and reimbursement of stamp tax for furnishing corporate guarantee included in the value of supply and hence liable to GST	**29**
M/s SHV Energy Pvt Ltd	**2021-VIL-218-AAR**	ITC for laying of pipelines and pile foundation is restricted under Section 17(5) whereas ITC relating to setting up of water as well as refrigerated storage tank along with structural support allowed	**30**
M/s Hubli-Dharwad Municipal Corporation	**2021-VIL-220-AAR**	An advance ruling can be sought only by the supplier and not the recipient of goods or services or both	**31**
M/s Bowring Institute	**2021-VIL-222-AAR**	Subscription fee paid by members to club is not liable to GST till notification of clause (aa) to section 7(1) of the CGST Act	**32**

Case Law Index

INDIA EXPERT

Party	Citation/Forum	Ratio decidendi	Slide no.
Quantum Coal Energy (P) Ltd	**2021-VIL-229-MAD-CU**	Additional Director of DRI not 'proper officer' under Customs Act to issue SCN under Section 28	**34**
M/s Omaxe New Chandigarh Developers Pvt Ltd	**2021-VIL-277-DEL-ST**	Voluntary Statements given before tax officers do not amount to pre-show cause consultation as mandated by Master Circular dated 10.03.2017	**35**
M/s Sri Sathya Jewellery	**2021-VIL-320-MAD-CU**	Appellate remedies have to be exhausted prior to invoking writ jurisdiction of higher courts	**36**
General Motors Technical Center India Pvt Ltd	**2021-VIL-164-CESTAT-BLR-ST**	No one-to-one correlation required between input services and output services for claiming refund under Rule 5 of the CCR	**37**
Cadila Healthcare Limited	**2021-VIL-169-CESTAT-AHM-ST**	Services provided by a partner to its partnership firm are not liable to service tax under Finance Act, 1994 prior to 01.07.2012	**38**

Supreme Court Decisions

M/s Radha Krishan Industries vs State of HP & Ors. 2021-VIL-50-SC

INDIA EXPERT

Power of attachment of property and bank account under section 83 is draconian in nature and should be used sparingly, based on cogent material and with proper procedural safeguards

Facts:

One of the appellant's suppliers was investigated and found to be involved in GST fraud relating to fake ITC claims. On this basis, the appellant's bank account and receivables amounting to Rs. 5 Crores were provisionally attached by the adjudicating authority under Section 83 of the CGST Act *vide* power delegated to it by the Commissioner. The appellant though filed its objections against such attachment, the adjudicating authority, without affording an opportunity of hearing to the appellant, passed an order for recovery of ITC against the appellant. The appellant then challenged the order attaching its bank account by way of a writ before the High Court, but the High Court dismissed the writ on the grounds of being not maintainable in the presence of an alternative remedy under the Statute. Hence, the appellant has appealed to the apex court against such dismissal.

Held: The Hon'ble Supreme Court, while allowing the appeal and setting aside the orders of provisional attachment, held:–

- Following the ratio in **Whirlpool corporation** and **Harbanslal Sahnia,** it is observed that in appropriate cases, in spite of availability of an alternative remedy, the High Court may still exercise its writ jurisdiction in some contingencies
- Power to order provisional attachment of property and bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled
- The power for ordering provisional attachment must be sparingly used and should be preceded by formation of an opinion by the commissioner on the basis of tangible material, that is **necessary** and not just expedient, to do so in order to protect the interest of the government revenue, i.e. without ordering attachment, government revenue cannot be protected
- As per Rule 159(5) of the CGST Rules, the person whose property is attached is entitled to dual procedural safeguards, viz. entitlement to submit objections and an opportunity of being heard
- In the absence of any proceedings pending against the appellant and merely for the fact that proceedings under section 74 concluded would not satisfy the requirements of section 83 thereby rendering provision attachment order ultra vires Section 83

In Re Cognizance for Extension of Limitation 2021-VIL-54-SC

INDIA EXPERT

Restoration of the order dated 23.03.2020 which excludes the period of limitation for filing petitions, suits etc. till further orders

Facts:

In the light of difficulties faced by the litigants due to widespread pandemic situation in our country, the apex court taking *suo-moto* cognizance of the matter, directed vide. order dated 23.03.2020 that the period of limitation in filing of petitions/applications/suits/appeals/all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand excluded with effect from 15th March, 2020 till further orders. Thereafter on 8th March, 2021, it was noticed that the country is returning to normalcy and since all the Courts and Tribunals have started functioning either physically or by virtual mode, extension of limitation was regulated and brought to an end, with certain directions, such as period from **15.03.2020 till 14.03.2021** shall stand excluded and the balance period of limitation shall become available w.e.f. 15.03.2021 etc. ***(2021-VIL-32-SC).*** In light of the daily surge in COVID cases, the Supreme Court AOR Association has prayed for restoration of the order dated 23.03.2020.

Held:

Taking notice of the extraordinary situation caused by the sudden and second outburst of COVID-19 virus, the Supreme Court restored its order dated 23.03.2020 and in continuation of the order dated 08.03.2021, directed that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended, w.e.f. 14th March 2021 till further orders.

INDIA EXPERT

GST
High Court Decisions

Anurag Suri vs DGGSTI; 2021-VIL-251-ORI

INDIA EXPERT

Parallel proceedings cannot be initiated by the State tax authorities, if proceedings are already pending before DGGSTI

Facts:

A search was conducted at the petitioner's business premises by the DGGSTI, during which, some relevant documents were seized and summons were issued to the petitioner. Further, a show cause notice was issued by the Additional Central Tax officer and GST Officer (state tax officer) to the petitioner under Section 74 to which, the petitioner contended that proceedings are already being undertaken by DGGSTI and hence, proceedings initiated by state tax officer should be kept in abeyance. However, an order was passed by State tax officers alleging wrong availment of input tax credit and determined the tax, interest and liability to the tune of Rs. 1,25,57,922/-. Therefore, being aggrieved by the order, the petitioner by way of present writ petition has challenged the simultaneous action by State tax authorities, in light of the already pending proceedings before DGGSTI.

Held:

The Hon'ble High Court, while allowing the Writ Petition, held the following:

- Circular dated 05.10.2018 issued by CBEC to all GST authorities categorically stated that if the officers of the Central tax authority initiates intelligence / enforcement action against a taxpayer administratively assigned to a State tax authority, then the Central tax authority themselves have to further undertake the investigation and take the case to its logical conclusion and would not transfer the said case to its state tax counterpart
- Further, Circular dated 5th October, 2018 precludes the State GST authorities from proceeding in the matter as long as the Central authorities are seized of it

On this basis, the Hon'ble High Court quashed the show cause notice and the impugned orders and directed that till the conclusion of the proceeding initiated against the Petitioner by the DGGSTI, no coercive action can be taken against the Petitioner by the State GST Authorities.

H.R. Enterprises vs State of Rajasthan 2021-VIL-252-RAJ

INDIA EXPERT

Once requisite documents relating to goods are present, Anti Evasion/Check post officer cannot kick start an inquiry relating to the genuineness of purchase of such goods

Facts:

The consignment of the petitioner which was being transported was intercepted by the Anti Evasion/Check Post Officer. The petitioner furnished all the documents prescribed under law to the officer, yet petitioner was not allowed to move. Thereafter, the officer firstly issued notice in MOV-2 and thereafter got extension to conduct inquiry relating to alleged wrongful availment of input tax credit. Hence, the petitioner by way of present petition have challenged the inquiry and order of detention due to the reason that Anti-Evasion officer/Check Post Officer/flying squad lack jurisdiction to carry out the same under Section 68 of the Act

Held:

The Hon'ble High Court observed the following:

- Once the goods in question are in conformity with the documents of transit, the scope of inquiry under Section 68 of the CGST Act by Anti Evasion Officer/ Check Post Officer or flying squad ends
- If a Check Post Officer or Anti Evasion Officer intercepting the goods and vehicle while in transit, is permitted to carry out such fishing and rowing inquiry, it would impede, rather retard free flow of trade resulting in unnecessary and unwarranted harassment to the carrier of goods, so also to the consignor/consignee
- A Check Post officer or Anti Evasion officer cannot kick start an inquiry relating to the genuineness of purchase and corresponding input tax credit, which essentially relates to purchase of goods

Therefore, the Hon'ble High Court directed the Anti Evasion Officers to release the goods and vehicle on furnishing of appropriate sureties by the petitioner

Devi Prasad Tripathy vs Princ. Commsr., Bhubaneswar 2021-VIL-261-ORI

INDIA EXPERT

Notices should not be issued to practicing advocates providing legal services demanding GST/Service tax

Facts:

The petitioner, a practicing advocate in the High Court of Odisha has been insisted by the GST Commissioner to submit evidence to prove his claim that he is a practicing advocate and does not come under the provisions of GST or service tax. Moreover, similar notices have been received by other individual advocates also, and despite of the department fully knowing that advocates are not liable to pay service tax or GST, such notices continue to be issued to them by GST Commissionerates.

Held:

The Hon'ble High Court, expressing its concern, observed that practicing advocates should not have to face harassment on account of department issuing notices calling upon them to pay service tax/GST when they are exempted from doing so, and in the process also having to prove they are practising advocates

The Court further directed the Commissioner of GST to issue clear instructions to all the officers in the GST Commissionerates in Odisha that no notice demanding payment of service tax/GST should be issued to lawyers rendering legal services and falling in the negative list, as far as GST regime is concerned

M/s Sri Lakshmi Venkateswara General Merchants v State of AP 2021-VIL-262-AP

INDIA EXPERT

Appeal can be filed either "electronically" or "manually" under GST in the absence of any notified method

Facts:

The petitioner, aggrieved with two assessment orders passed against him, filed appeals in the office of the proper officer in time. However, as the orders were not uploaded on the common portal, the petitioner filed these appeals manually instead of uploading them on the portal. The proper officer rejected the appeals solely on the ground that the appeals were not filed electronically, as mandated under Rule 108 of the APGST Rules. The petitioner contended that Rule 108 gives liberty to an appellant to file appeal "either electronically or otherwise as notified by chief commissioner" whereas the revenue contended that it is mandatory to file appeal in the electronic mode.

Held:

The Hon'ble High Court held that:-

- Under Rule 108, since the word "electronically" is prefixed with "either" and the word "otherwise" is prefixed with "or", it can be deduced that the mode of filing is a choice between electronic and other form (manual), as may be notified by the chief commissioner
- If the word "shall" was intended to govern the word "electronically", the word "either" would not have been posited before the word "electronically", as "shall electronically" and "either electronically" are oxymorons
- Reliance placed upon decision in **M/s Ali Cotton Mill** where in light of similar facts and issue, it was held that the appellant can choose to file appeal either electronically or manually in the absence of any directions from Chief Commissioner
- Owing to the discrepancy between Rule 108(1) and (2) with regard to manual filing, the benefit must go to the petitioner as it is a tax law and hence the WP is allowed

M/s Shrinandhidhall Mills India Private Limited 2021-VIL-271-MAD

INDIA EXPERT

Voluntary payments made during investigation is not self-assessed tax under Section 74(5) of the CGST Act

Facts:

Search and investigation was carried out at the petitioner's premises and some voluntary payments were made by the petitioner in view of the wrongly assessed GST liability. However, the petitioner later retracted their statement on the grounds that they were forced to accept the liability and such payments were involuntary in nature. The revenue, per contra, contends that such voluntary payments were made in pursuance of the self-assessed tax under Section 74(5) of the CGST Act and hence should be adjusted against the ultimate tax liability post the conclusion of the full-fledged proceedings.

Held:

The Hon'ble High Court while allowing the petition, held the following:

- Section 74(5) is not a statutory sanction for advance tax payment, pending final determination in assessment
- Merely because an assessee has made a few payments as per his signed statement under stress of investigation, it cannot lead to self-ascertainment or self-assessment of tax
- Had such self-ascertainment been made, in terms of Section 74(6), there would be no further proceedings for show cause under Section 74(1), whereas the both the parties at hand are fully geared towards issuing/receiving show cause notice and taking the matter forward
- Reference made to case of ***M/s Bhumi Associate*** where the bench of Hon'ble Gujrat High Court had formulated guidelines for resolution for similar issue, however the matter is pending for final decision

Therefore, the Hon'ble High Court allowed the petition and directed the authorities to refund the amount deposited by petitioner

M/s Indian Farmers Fertilizers Co-operative Ltd vs UOI 2021-VIL-282-ORI

INDIA EXPERT

GST on ocean freight not payable until decided finally by Supreme Court

Facts:

The petitioner has filed the present petition challenging the applicability of GST on ocean freight. The petitioner contends that as the High court decisions in favour of the assessee have not been stayed by the apex court, even though the one of the same is listed for hearing soon, they should not be required to pay GST on ocean freight till the matter attains finality.

Held:

The Hon'ble High Court held that as no interim order has been passed by the Supreme Court staying operation of the judgment of the Gujarat High Court in the case of **M/s. Mohit Minerals Pvt. Ltd.** or in the case of **Bharat Oman Refineries Ltd. Pvt. Ltd.,** it is clarified that while the question of petitioner being entitled to refund awaits final decision of the Supreme Court in the abovementioned SLPs, the petitioners are not required to pay IGST on ocean freight until further orders

Further, the parties are given liberty to mention their case for listing after disposal of abovementioned SLPs.

M/s D.Y. Beathel Enterprises vs State Tax Officer 2021-VIL-308-MAD

INDIA EXPERT

Authorities cannot initiate recovery proceedings against a purchaser of goods due to the omission to remit tax to the Government on part of the seller

Facts:

The petitioners are traders in Raw Rubber Sheets. They had purchased goods from their seller and made payments thereto, including the tax component. Based on the returns filed by the seller, the petitioners availed input tax credit of the GST paid. Later, during inspection by the authorities, it came to light that the seller did not pay tax to the government, however show cause notice was issued to the petitioner. Consequently, without involving the sellers, the impugned orders came to be passed levying the entire liability on the petitioners to reverse the credit already taken due to non-payment of tax by their seller. Therefore, the petitioner have challenged the said impugned through this writ petition.

Held:

The Hon'ble High Court while allowing the Writ Petition, held the following:

- When it has come out that the seller has collected tax from the petitioners, the omission on part of the seller to remit the tax in question must have been viewed seriously and strict action ought to have been initiated against them
- The impugned orders suffer from fundamental flaws of non-examination of seller in the enquiry and non-initiation of recovery action against seller in the first place

Therefore, the impugned orders are quashed and the matter is remitted back to the file of the authorities

M/s Chaizup Beverages LLP vs Asst. Commsr., Coimbatore 2021-VIL-315-MAD

INDIA EXPERT

Substantive benefit of a statutory scheme cannot be denied on the strength of a departmental circular

Facts:

The petitioner is an exporter of tea and had engaged in export transactions without payment of IGST. Despite the transactions being categorized as zero rated supplies, the petitioner remitted IGST, CGST and SGST on the purchase of tea and such tax was credited in its electronic credit ledger. The petitioner therefore filed an application of refund of credit in terms of Section 54(3). The Assessing Authority, though sanctioned 90% of the refund provisionally, issued a SCN and subsequently the impugned order rejecting whole of the in terms of **para 2.5** of **Board's Circular No.37/18-Customs** dated 09.10.2018, on the ground that there has been an excess claim of duty draw back by the petitioner, pursuant to which, they have renounced their claim for Input Tax Credit (ITC). Hence, the petitioner by way of present writ petition challenged the said appellate orders.

Held:

The Hon'ble High Court while allowing the Writ Petition, held:

- An option has been extended to an assessee engaged in zero-rated sale to either claim the benefit of duty drawback or the benefit of refund of ITC
- Paragraph 2.5 of the Circular No.37/18- Customs dated 09.10.2018 will not stand in the way of such refund since a circular cannot stand in the way of a benefit offered under a statutory scheme
- Paragraph 2.5 of the circular, insofar as it is contrary to the statutory provisions of Section 54(3) is bad in law
- Ratio of Gujarat High court's decision in the case of ***Real Spintex Pvt. Ltd***. and ***Precot Meridian Ltd***. upheld and followed

Therefore, the orders of the appellate authority were set aside and the authority is directed to refund the sanctioned amount

M/s Mother Earth Environ Tech Private Limited vs AAR 2021-VIL-324-KAR

INDIA EXPERT

Non-sharing of Principal Commissioner's report by AAR with petitioner is violative of principles of natural justice

Facts:

The petitioner, engaged in the business for providing services for treatment, storage and disposal of hazardous waste (TSDH), obtained land on lease from the Government of Karnataka and developed Landfilling pit for processing and disposal of hazardous waste. The petitioner had filed an application seeking an advance ruling on the issue whether the term "other civil structure" used in the definition of 'plant and Machinery' restricts the Landfilling pit from considering it as plant and machinery and thereby restricts the ITC under Section 17(5)(d) of the CGST Act. The AAR has passed an order on the basis of a report submitted by the Principal Commissioner of Central Tax. However, the said report was not given to the petitioner at any point of time, and the petitioner had to obtain it through RTI Act. Hence, the order has been challenged being violative of natural justice and fair play.

Held:

The Hon'ble High Court while allowing the Writ Petition, held the following:

- As the report of the Principal Commissioner of Central Tax was never given to the petitioner at any point of time, therefore in the present case principles of natural justice and fair play have certainly been violated
- The petitioner, now in possession of the said report of the Pr. Commissioner of Central Tax, is free to argue the matter afresh
- The earlier ruling passed by the AAR is set aside and the AAR shall be free to pass an appropriate order in accordance with the law, without being influenced by its own earlier order

INDIA EXPERT

GST Appellate Advance Rulings

M/s Kalyan Jewellers India Limited; 2021-VIL-20-AAAR

INDIA EXPERT

'Voucher' is neither goods not service under GST but a non-monetary instrument of consideration

Facts:

The applicant is engaged in the business of manufacturing and trading of jewellery products. As a part of sales promotion, it introduced a facility of different pre-paid instruments (PPI's) through its retail outlets and online portals to its customers, which are generally called "Gift vouchers/Gift cards" in trade practice. The appellant has sought advance ruling firstly as to whether issuing of own closed PPI's would be be treated as supply of goods or services or not. Secondly, whether, the issue of PPI's by the third party and the amount received by applicant from third party is subject to GST or not. Thirdly, how would the discount be treated in hands of issuer and whether the applicant is liable to pay GST on differential value or not. The AAR had ruled that such closed PPI's are 'vouchers' under GST and in case of paper based gift vouchers, applicable rate is 6% whereas in case of gift cards, applicable rate is 18%. Aggrieved by the above ruling, the appellant has sought appellate advance ruling.

Held:

The AAAR ruled that:-

- Vouchers are neither goods nor services, as they are merely means of advance payment of consideration for a future supply
- In terms of Section 12(4) of the CGST Act, the time of supply of such gift vouchers shall be the date of issue of vouchers as such gold vouchers indicate that they can be redeemed for gold jewellery only, i.e. specific to a particular good
- Taxing of vouchers at the time of issuance of vouchers would not amount to double taxation as subsequently when the gold will be transferred to the person redeeming the voucher, it will not be subject to tax and supply would have been deemed to have been done at the time of issue of voucher itself in terms of Section 12(4)
- Since voucher in only an instrument of consideration, the same cannot be classified separately and only the supply associated with such voucher i.e. gold jewellery shall be classified and attract the applicable rate of tax

M/s Page Industries Ltd; 2021-VIL-21-AAAR

INDIA EXPERT

Promotional and marketing items distributed free of cost to franchisees and EBO covered under 'non-taxable supply' and ITC of the same is restricted under Section 17(2)

Facts:

The Appellant, manufacturing and distributing garments and swimwear under the brand names JOCKEY and SPEEDO respectively, had sought advance ruling related to eligibility of ITC in respect of promotional materials and marketing items distributed to their franchisees and other retailers. The AAR ruled that ITC on procurement of distributable items like pens, carry bag, diary etc. are allowed as the same are distributed to franchisees and EBOs, being 'related party' under explanation to Section 15, CGST Act qualify as supply under GST. Further, the 'non-distributable goods' like hangers, cupboards, stands etc. qualify as 'capital goods' and ITC is allowed, however if they are disposed by way of writing off or destruction, then the same has to be reversed under Rule 43 of CGST Rules. Aggrieved by the said ruling, the appellant has filed this appeal.

Held:

- With regard to hangers, display stands etc., as per the agreements, there is a contractual obligation on the appellant to provide these promotional materials to their franchisees/EBO and other distributors. As these items are never capitalized in the appellant's books but are always shown as revenue expenditure, they cannot be termed as 'capital goods' as ruled by AAR
- Provision of these promotional materials is neither covered within scope of taxable supply under section 7 (being provided free of charge), nor covered under clause (b) schedule I (franchisees and distributors, being independent entities, not related to the appellant under explanation to section 15)
- Thus provision of such items is a **'non-taxable supply'** under GST and credit relating to the same is not eligible in terms of section 17(2), CGST Act
- In case of pens, diary etc., as there is no contractual obligation on the appellant to provide these items, these are supplied free of cost at appellant's free will, and hence these acquire the character of **'gift',** credit of which is barred under S. 17(5)(h).

M/s Erode Infrastructures Private Limited 2021-VIL-23-AAAR

INDIA EXPERT

A supplier in the capacity of a recipient of his inward supplies only is eligible to seek an advance ruling and not vice versa i.e. as a mere recipient, even if he otherwise may be a supplier of goods or services

Facts:

The appellant was awarded a tender by the Rail Land Development Authority for development of Multifunctional Complex (MFC) which involves Long term lease of 45 years for Lease of 3140 Square meter of railways land. The Advance Ruling Authorities refused to admit the application of the appellant as the supply based on lease agreement between the applicant and RLDA for which the applicability of the Notification is sought is not undertaken or proposed to be undertaken by the applicant and applicant is a mere receiver of leasing services. Being aggrieved, the appellant has filed the present appeal.

Held:

The Hon'ble Appellate Authority for Advance Authority while disposing of appeal, ruled that:

- The appellant has mainly relied on the wordings of S.97(2)(d) of the CGST Act, on the ground that since admissibility of ITC paid or deemed to have been paid can be sought as a question for obtaining advance ruling, unless the appellant as a receiver is permitted to seek such ruling, the admissibility of ITC will not be known to him otherwise
- As section 103 of the CGST Act provides that the ruling pronounced is binding only on the appellant, it flows that if a recipient obtains a ruling on taxability of his inward supplies, the supplier shall not be bound by such ruling and will be free to assess the supply on his own, resulting in the ruling losing its relevance and applicability
- On a conjoint reading of the provisions of section 95(a), 97(2) and section 103, it is opined that a supplier in the capacity of a recipient of his inward supplies only and not vice versa, is only eligible to seek an advance ruling and not a mere recipient of goods or services in question even when he may otherwise be a supplier of his own goods or services

On the basis of the above, the ruling of AAR confirmed and upheld.

INDIA EXPERT

GST
Advance Rulings

M/s SPSS South Asia Pvt Ltd; 2021-VIL-187-AAR

INDIA EXPERT

Supply of pre-developed or pre-designed software are classified as 'goods' and covered under tariff heading 8523

Facts:

The Applicant is a pure trader of various IMB SPSS Software in India. Such software is used for advanced statistical modelling and assists various scientific and research institutions. The Applicant provides a download link to the software that provides the software license code to its customer. The Applicant also provides a physical backup CD containing software which is helpful for inventory record purposes and in times of bandwidth fluctuation. The Applicant has stated that they are currently billing the software under the HSN code 997331. However, the Applicant has sought ruling as to whether supply of internet downloaded software fall within ambit of Notification No. 47/2017-IT(R) and Notification No. 45/2017-CT(R) both dt. 14.11.2017 or not

Held:

The Authority for Advance ruling ruled that:

- The software supplied by the applicant is a pre-developed or pre-designed software which will be ready to use through encryption keys, therefore it satisfies all conditions related to the definition of 'goods'
- Further, the goods can't be used without the aid of the computer and has to be loaded on a computer for activation purposes after which it would become usable and hence the goods supplies are "Computer Software", specifically "Application software"
- The Explanatory Notes to the Scheme of Classification of Services stipulates that the services of limited end-user licence as part of packaged software are excluded from the SAC 997331, that covers Licensing services for the right to use computer software and databases

Hence the supply of software made by the applicant is squarely covered under the ambit of "Supply of goods" and the said supply is covered under tariff heading 8523, taxable at the concessional rate of 5% in view of the cited Notifications.

CC

M/s Bishops Weed Food Crafts Private Limited 2021-VIL-188-AAR

INDIA EXPERT

Renting of individual rooms with amenities like housekeeping etc. falls under "accommodation services" as a composite supply and leasing of property for further sub-letting is not entitled for exemption

Facts:

The applicant is engaged in the business of leasing of residential units (room) for use as residence to tenants, with basic amenities such as housekeeping, security, maintenance and provided as a comprehensive bundle. In addition, applicant is also engaged in leasing the residential units to service providers who are engaged in sub-letting the residential units for use as residence by tenants. The applicant had sought advance ruling as to whether the leasing of property with basic amenities would classify as composite supply and whether the same is covered under Sl. No. 12 or 14 of exemption notification-12/2017. Further, whether leasing of property for sub-letting would be covered under exemption as "Residential Dwelling" or not.

Held:

The Authority for Advance Ruling ruled that :–

- Renting of residential dwelling room by the applicant gets covered under "accommodation services" under SAC 996311 and not under "renting of residential dwelling" and such accommodation services along with basic amenities such as housekeeping, maintenance, security qualify as composite supply under Section 2(30) of the CGST Act, with the principal supply being "accommodation services" which shall be taxed as per principal supply in terms of Section 8 of the Act
- Benefit of exemption under Sl. No. 12 of Notification 12/2017-CT(Rate) is not available to applicants as the exemption is only for renting of "residential dwelling for use as residence" and not for "accommodation services". However, such services will qualify for exemption under Sl. No. 14 of the above notification which exempts accommodation services if value of supply is less than or equal to Rs. 1000/- per day
- Further, leasing of property to another business entity for further sub-letting to tenants would not be covered under Sl. No. 12 of Exemption Notification as there is no renting of residential dwelling for use as residence by such business entity. Furthermore, transaction between such business entity and tenant will also not qualify for exemption under Sl. No. 12 above

CC

M/s Kou-Chan Technologies Pvt Ltd 2020-VIL-191-AAR

INDIA EXPERT

Leviability of GST on various transactions of e-commerce platform providing passenger transportation services

Facts:

The applicant provides an E-commerce platform for facilitating taxi services between drivers registered with the applicant and the passenger-customers. To upscale the business of the applicant and take care of the wellbeing of the passengers, there are various associate partners of the applicant as district in-charge. In addition to the basic fare, drivers are paid pick-up costs by the applicant and as the drivers are covered by an insurance program, the premium amount is collected from the passengers. Further, passengers also give voluntary 'goodwill bonus' to drivers on which, the applicant collected service charges. GST on gross value of all these charges is collected by the applicant. Lastly, the when a passenger requests a ride (indicative of fare), various drivers either accept the offer or participate in a virtual bidding with counter-offers of fares, for which, they pay a fractional amount per bid as 'participation fee' to the applicant, irrespective of the fact that whether the bid is successful or not. Now, the applicant has sought advance ruling for determining the leviability of GST on the above transactions.

Held:

- **Insurance coverage** provided to passenger is optional and not related to the online platform services provided to them. Hence, both these supplies are not naturally bundled and do not amount to 'composite supply'
- **Pick up charges and basic fare** are part of the service of transportation of passengers and hence in terms of Notification no. 17/2017-CT(R), the e-commerce operator i.e. the applicant is liable to pay GST @5% on such services and pick-up charges
- **Support services** like upscaling the business and wellbeing of passengers provided by associate partner are not covered under Section 9(5) of the CGST Act. Hence, GST on such services is payable by registered associate partners
- **Bidding charges** being out of the fold of the passenger service, are separately liable to GST @ 18% as other support services
- **Service charges** collected on goodwill amount paid to drivers forms 'consideration' u/s 2(31) and hence is liable to GST @18%
- **Cancellation Charges** recovered from passengers attract 18% GST as a service of tolerating an act

CC

M/s I-Tech Plast India Pvt Ltd
2021-VIL-205-AAR

INDIA EXPERT

Debit note is always connected to an invoice and does not gain a separate existence for purpose of taking input tax credit

Facts:

The applicant, engaged in the supply of plastic toys, has sought advance ruling to determine under which sub-heading toys made up of plastic shall be classified and consequently, at what rate GST is to be payable. Further, the applicant seeks to ask whether it can claim Input Tax Credit of the tax component of the debit notes issued to him by his supplier in FY 2020-21 in relation to the transaction/original invoice pertaining to period 2018-19, in light of the amendment brought out by Finance Act 2020 in Section 16(4) of the CGST Act?

Held:

The Authority for Advance Ruling ruled that:-

- As the toys manufactured by the applicant are primarily made up of plastic, they are correctly classifiable under Tariff heading 95030030 of Chapter 95 of the First Schedule to the Customs Tariff Act, attracting GST of 12% in terms of Sr. No. 228 of Schedule –II of Notification No. 01/2017-CT(R)
- The amendment brought out by Finance Act 2020 to Section 16(4) of the CGST Act by omitting the words "invoice in relation to" earlier connected with the words "debit note pertains" was not intended to disconnect the debit note from the original invoice so that the debit note gains independent existence
- Referring to the e-flyer issued by CBEC and provisions relating to debit note contained in the CGST Act, it is clear that debit note is not an independent document or an invoice in itself and is always connected to an invoice as it is issued in pursuance to change in value of an invoice
- Hence, the applicant is not entitled to claim ITC of the tax component of the debit note issued in FY 2020-21 relating to an invoice of FY 2018-19 as the timeline for the same had expired in 2019

CC

M/s Enpay Transformer Components India Pvt Ltd 2021-VIL-210-AAR

INDIA EXPERT

Delayed payment interest and reimbursement of stamp tax for furnishing corporate guarantee included in the value of supply and hence liable to GST

Facts:

The applicant imported goods from its holding company in Turkey, for which, if the payment is not made by the applicant, then the holding company charges interest on such late payment. Further, the holding company has furnished corporate guarantee on behalf of the applicant so that the applicant can avail credit facilities, and for the same, the holding company had paid stamp duty tax under the laws of Turkey, which has been reimbursed by the applicant to its holding company at actuals. In this regard, the applicant has sought advance ruling firstly as to whether the applicant is liable to discharge GST on RCM basis on the amount paid as interest on late payment to its holding company. Secondly, whether GST in payable on such reimbursement of stamp tax made to its holding company.

Held:

The Authority for Advance Ruling held that:-

- The foreign holding company has 'tolerated' the act of receiving late payment in respect of goods supplied by them to the applicant and hence, such toleration shall be treated as a supply of service under Para 5(e) of Schedule II to the CGST Act
- However, in terms of Section 15(2)(d), as the value of supply includes any ***"interest or late fee or penalty for delayed payment of any consideration for any supply",*** such interest shall be liable to GST at the same rate of IGST as applicable to the imported goods
- As regards the reimbursement made for furnishing corporate guarantee, the applicant neither satisfies the conditions envisaged in Rule 33(i) to (iii) nor satisfies the conditions (a) to (d) under Explanation to Rule 33 of the CGST Rules, which pertains to 'Pure agent' as contended by the applicant
- As "reimbursements" are not specifically excluded from the value of supply under Section 15(3) of the CGST Act, therefore it undoubtedly forms a part of 'consideration' i.e. value of supply of goods and hence liable to GST

CC

M/s SHV Energy Pvt Ltd; 2021-VIL-218-AAR

INDIA EXPERT

ITC for laying of pipelines and pile foundation is restricted under Section 17(5) whereas ITC relating to setting up of water as well as refrigerated storage tank along with structural support allowed

Facts:

The applicant, engaged in the supply of LPG, has sought advance ruling as to whether they are eligible to avail ITC of GST paid on goods and services for-

i) Laying of transfer pipelines for transportation of propane/butane
ii) Construction of refrigerated storage tank for storing propane/butane to manufacture LPG
iii) Construction of fire water reservoir tank as part of fire fighting system
iv) Construction of foundation/structural support through piling

As per the applicant, as the pipelines are not laid for outward supply and are integral to transportation within the factory, its credit is not barred under explanation to section 17. Further, the applicants contend that storage tank and water reservoir are to be construed as "plant & machinery" and hence should be excluded from the restriction prescribed under section 17.

Held:

- Relying on the minutes of 10th GST Council meeting and explanation to section 17(5) of the CGST Act, it is clear that neither credit of 'pipelines laid outside the factory premises' is available to the applicant, nor the credit of foundation/structural support for such pipelines is available
- With regard to refrigerated storage tanks, relying on the purchase orders, it can be said that the applicant is entitled to the credit of setting up of these tanks (including structural support) in as much as, such tanks stand accounted as 'plant & machinery' in the books of the applicant
- The applicant is also eligible to take credit of the 'water storage tanks', as the said tanks are accounted as 'plant & machinery' in their books and not as an 'immovable property'
- However, the applicant is not eligible to take credit of 'pile foundation' in respect of both refrigerated and water storage tanks

CC

M/s Hubli-Dharwad Municipal Corporation 2021-VIL-220-AAR

An advance ruling can be sought only by the supplier and not the recipient of goods or services or both

Facts:

The applicant, a municipal corporation, is availing services from KEONICS by way of supply of IT professionals for information Technology System Development and Maintenance for Municipal Corporation activities and is also availing security services from M/s Gemini Security. In view of the above, the applicant has sought an advance ruling as to whether supply of man power services provided by its vendors M/s KEONICS and M/s Gemini Security to the applicant which are in the nature of pure services in terms of Notification No. 02/2018 CGST(Rate) are exempted from GST or not.

Held:

The Authority for Advance Ruling while rejecting the application, has observed the following:

- In terms of section 95(a) read with section 95(c) of the CGST Act, any person desirous of seeking an advance ruling can seek advance ruling only in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by him
- In the instant case, HDMC i.e. who have filed the instant application is not a supplier of either goods or services or both but is only a recipient of services

Thus, on the basis of the above, the AAR has found the instant application to be inadmissible and hence was rejected in terms of Section 98(2) of the CGST Act 2017

M/s Bowring Institute
2021-VIL-222-AAR

INDIA EXPERT

Subscription fee paid by members to club is not liable to GST till notification of clause (aa) to section 7(1) of the CGST Act

Facts:

The applicant is a members-club and an NPO, which provides services like library, sports facilities etc. to its members, from whom it collects a regular subscription fee and a one-time admission fee. Although the applicant is discharging GST on such amounts collected from its members, the applicant has sought advance ruling as whether such amounts collected from its members are liable to GST or not. The applicant has placed reliance on the Supreme Court judgement in ***Calcutta Club Limited*** to contend that in view of the doctrine of mutuality, these amounts should not be liable to tax.

Held:

The Advance Ruling Authority ruled that :

- Section 108 of the Finance Act 2021 has brought in a retrospective amendment in **section 7(1)** of the CGST Act, 2017 by inserting **clause (aa)**, according to which, the activities or transactions by a person to its members or constituents or *vice-versa* for cash or other valuable consideration, are to be included within the scope of '**supply'**
- Further, Explanation added to the said clause (aa) overrules what the courts have held till now and has countered the principle of mutuality, according to which, club and its constituents are two separate persons for the purposes of section 7
- However, in terms of section 1 of the Finance Act 2021, section 108 shall come into force on such a date as the Central Government may, by notification in the Official Gazette, appoint
- Thus, unless the amended section 7 of the CGST Act is notified, the applicant is not liable to pay GST on subscription fee and one time admission fee collected from its members in light of the apex court judgement in Calcutta Club Limited

CC

INDIA EXPERT

SERVICE TAX/CUSTOMS

Quantum Coal Energy (P) Ltd vs Commsr., Tuticorin 2021-VIL-229-MAD-CU

INDIA EXPERT

Additional Director of DRI not 'proper officer' under Customs Act to issue SCN under Section 28

Facts:

Petitioner's classification of imported coal was accepted by the customs authority and goods were also cleared. Subsequently, Additional Director General, DRI issued a SCN under Section 28 of the Customs Act in relation to recovery for misclassification of the coal. After considering their reply, impugned order was passed against the petitioner levying duty and penalty on the importer company as well as on the MD of the importer company. Hence, this writ petition was filed, contending that the SCN issued by DRI lacked the requisite jurisdiction.

Held:

The Hon'ble High Court relying upon the recent decision of Supreme Court in the case of ***Canon India Pvt Ltd (2021-VIL-34-SC-CU)*** set aside the SCN issued by DRI which held that the Additional Director of DRI was not 'proper officer' to exercise power under Section 28(4) of the Customs Act and hence initiation of recovery proceedings by such DRI officer was without any jurisdiction

M/S Omaxe New Chandigarh Developers Pvt Ltd 2021-VIL-277-DEL-ST

INDIA EXPERT

Voluntary Statements given before tax officers do not amount to pre-show cause consultation as mandated by Master Circular dated 10.03.2017

Facts:

The petitioner has filed the petition contending that in view of of Paragraph 5 of the Master Circular dated 10.03.2017, the respondents were mandatorily required to hold pre-show cause notice consultation with the petitioners prior to initiation of the proceedings under the Finance Act, 1994. However, they have failed to do the same, and hence suitable directions are sought. On the contrary, the revenue contends that the voluntary statements made by officials of petitioner to the Senior Intelligence Officer should be treated as pre-show cause consultation and in that sense, the obligation of department had been discharged.

Held:

The Hon'ble High Court while disposing off the petition, held the following:

- **"Voluntary statements"** recorded before the Officers cannot constitute pre-show cause notice consultation as envisaged in paragraph 5 of the 2017 Master Circular
- A voluntary statement is at best a one-way dialogue made before an authority which does not take a decision as to whether or not next steps in the matter are required to be taken, and cannot be considered as pre-show cause notice consultation
- Directions issued to the proper officer to service appropriate communication for holding pre-show cause consultation, allow submissions and a personal hearing and pass an order whether the case is fit for continuing proceedings or not

M/s Sri Sathya Jewellery vs Princ. Commr., Chennai 2021-VIL-320-MAD-CU

INDIA EXPERT

Appellate remedies have to be exhausted prior to invoking writ jurisdiction of higher courts

Facts:

A batch of common writ petitions were been filed before the Hon'ble High Court alleging that as the show-cause notices in all these cases were issued by authorities which were incompetent to issue the SCN, as held by the Hon'ble SC in the case of ***M/s Canon India Private Limited,*** therefore all impugned orders were sought to be quashed on jurisdiction point alone. However, the department contended that without exhausting the appellate remedies against such orders as provided by the statute itself, invoking writ jurisdiction of High Court under Article 226 to avoid pre-deposit in appellate forum cannot be entertained.

Held:

After considering the contentions of the department, the Hon'ble High Court held that:-

- In light of the decisions of **Fourceess Diamond Pvt. b Ltd and Anr.** And **M/s Hyundai Motor India Limited,** the High Court, under Article 226 is not expected to usurp the powers of the appellate authorities by adjudicating the merits of the matter
- In **Canon India Pvt Ltd,** the matter went to the apex court by way of regular appeal, and by citing the finding of the apex court in **Canon India (supra)**, the appellate remedy otherwise provided under statute cannot be dispensed with, otherwise all such litigants will approach High Court by way of writ petition bypassing the appellate remedy
- Statutory violations, if any, can be dealt with by the appellate authority or appellate tribunals also and quashing of such orders without any remand, would cause injustice to the spirit of the Statute enacted for the benefit of public at large
- The Courts shall not provide an unnecessary opportunity to the assessee to escape from liability merely on ground of jurisdictional error, which is rectifiable
- The petitioners, are thus, at liberty to approach the appellate authority and file an appeal within 60 days of this order

General Motors Technical Center India Pvt Ltd vs Commsr. Of Central Tax, Bengaluru; 2021-VIL-164-CESTAT-BLR-S

INDIA EXPERT

No one-to-one correlation required between input services and output services for claiming refund under Rule 5 of the CCR

Facts:

The appellant is engaged providing consulting engineer services to their clients located outside India, and is availing CENVAT credit of service tax paid on input services which are required for providing output service. The appellant filed a refund claim for unutilized credit in respect of service tax paid on various input services like repair and maintenance, rent-a-cab services, commercial coaching and training services, security agency services etc., said to have been used for providing output services exported outside India. The adjudicating authority, partially allowing the refund, rejected the balance claim on the ground of lack of nexus between the abovementioned input services used and output services exported. Hence, the current appeal.

Held:

The Hon'ble Tribunal held that:-

- It has been consistently held by the tribunals in various decisions that in view of amendment of Rule 5 of CENVAT Credit Rules, 2004, there is no need for one-to-one correlation between the input services and the output services
- **Board's Circular dated 16.03.2012** also clarified that no correlation is required because the intention of the Government is to allow refund to the exporters and the clarification issued on this subject has to be viewed with the object of allowing refund
- In view of the decision of this Tribunal in ***K Line Ship Management India Pvt Ltd,*** the department is not permitted to question the correctness of the claim of refund, once it has not questioned payment services tax on input service when CENVAT credit was taken by the assessee
- Rent-a-cab service have been used by the appellant for bringing and dropping employees and this service has been used for providing output service in the present case

On the basis of the above, the refund claim filed by the appellants were allowed by the Hon'ble Tribunal

Cadila Healthcare Limited vs C.S.T - Service Tax 2021-VIL-169-CESTAT-AHM-ST

INDIA EXPERT

Services provided by a partner to its partnership firm are not liable to service tax under Finance Act, 1994 prior to 01.07.2012

Facts:

The Appellant, a public limited company engaged in business of manufacturing of pharmaceutical products and various services, entered into a partnership with two other partners to form the partnership firm M/s Zydus Healthcare. As per the terms of the addendum to the agreement, the appellant agreed to provide certain services to the partnership firm and in return, received consideration on which applicable service tax was regularly paid by the appellant. However, the appellant filed refund claims of such tax paid on the grounds that services provided by a partner to the firm are not liable to service tax, as neither the partner can be termed as a 'service provider' nor the 'partnership firm' can be termed as a 'service receiver', in the absence of which, such service cannot be taxed under the Finance Act, 1994. The department however, contended otherwise.

Held:

The Hon'ble High Court, after considering the issue at hand and hearing both the sides, held that:-

- The activities carried out by the appellant for its partnership firm were undertaken in the capacity of a 'partner' and was a part of its duties as a partner, in which case, it cannot be said that the partner is a service provider and the partnership firm is a service recipient
- The term 'person' which includes a 'firm', was defined under the Finance Act only after 01.07.2012, and as the case at hand is of a period period, such definition which was included later cannot be given a restrospective effect
- Even the definition of 'person' as contained in the General Clauses Act does not include within its ambit a 'firm'
- The observations of the Hon'ble Supreme Court in the cases of **Dulichand Lakshminarayan (supra)** and **R.M. Chidambaram Pillai (supra)** relied upon to support that partnership firm and its partners are one and the same in law

Based on the above observations, the refund appeals filed by the appellant were allowed by the Hon'ble High Court

About Us

INDIA EXPERT

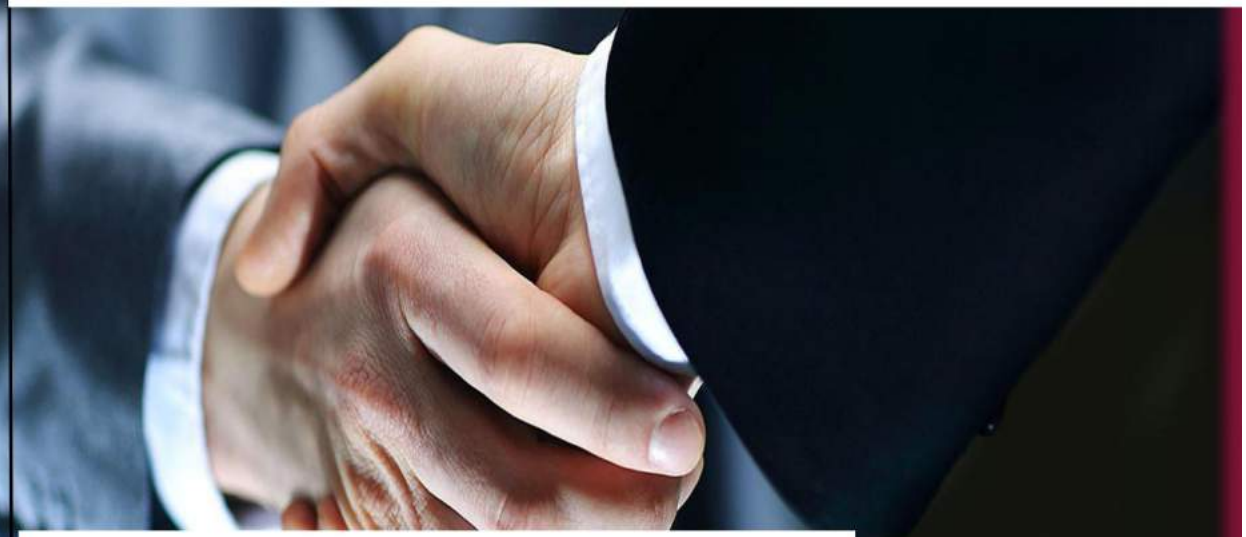
Offers its clients a full range of services. the company has been setup by a group young ,enthusiastic highly skilled and motivated professional who has taken experience from the top consulting firm and are extensively experienced in their chosen fields has providing a wide array of consultancy in the 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

CORPORATE OFFICE

P-6/90 Connaught circus
Connaught place New Delhi
110001 India

Phone no. 9555555480
Emai;Info@carajput.com
www.indiaexpert.in



aitc
association of internation 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