



1. ADVANCE RULING

▪ **Sanghvi Movers Limited [2018-TIOL-230-AAR-GST]**

The Applicant is engaged in the business of providing medium-sized heavy-duty cranes on rental/lease/ hire basis (exclusive of 'right to use') to its customer. The Applicant sought a ruling on (i) Whether Interstate movement of goods from Head Office ("HO") in Maharashtra to its branches in other states, for further supply of goods on hire charges to its customers, is a "taxable supply" and attracts levy of GST, if yes, then determination of assessable value. (ii) Whether movement of goods to other registered office for upkeepment and maintenance attracts levy of GST?

The AAR referred to TRU Circular dated November 22, 2017 and ruled that, where these goods are moved merely for upkeepment and maintenance then such interstate movement is neither a supply of goods nor supply of services and thus would not attract levy of GST, besides GST is indeed leviable on 'repairs and maintenance' activity. The AAR further ruled that, if such movement is made for making further supply to an unrelated customer, it would partake the character of a 'supply' in view of Section 25(4) read with Schedule I of the CGST Act.

While the Applicant thereafter sought a ruling for acceptance of assessable value based on first proviso to Rule 28, (which allows a supplier to assess the supply at 90% of the value at which these are supplied by recipient), the Authorities preferred to refer to second proviso (without deliberating first proviso) and ruled that , any assessable value for movement of goods between distinct persons of SML is deemed acceptable as 'open market value'. Applicability of second proviso was however based on an assumption that recipient unit is eligible to avail '*full ITC*' of GST leviable on movement of cranes. In these circumstances, it becomes imperative to evaluate availability of '*full ITC*' to the recipient unit if the position of law as laid in the present ruling is to be adopted.

▪ **North American Coal Corporation India Private Limited [TS-586-AAR-2018-NT]**

The Applicant is a wholly owned subsidiary of M/s North American Coal Corporation, USA ("NACC, USA") and is engaged in providing technical consultancy to coal mining industry in India. NACC, USA had entered into an association agreement with M/s Sasan Power Limited ("SPL"), rights and obligations of which were re-assigned by NACC, USA in favour of Applicant.

During the subsistence of agreement tenure, SPL discontinued to make stipulated payment to Applicant and which resulted in accrual of a right to terminate the contract and recover damages in favour of Applicant. Presently, right to recover damages is being disputed before International Chamber of Commerce ("ICC") by way of arbitration. The Applicant thus sought clarity as to whether receipt of such damages qualify as consideration for 'supply', if yes what would be the time and value of such supply.

The Authorities ruled that such damages are indeed compensation for tolerating the act of defaulting party which qualifies as 'supply of services' as per entry no 5(e) of the Schedule II of the CGST Act read with Section 7(1) of the CGST Act. Further, time of supply was ruled to be the time of arbitral award by ICC while the value to be the quantum of damages as determined thereunder.

▪ **HP India Sales Private Limited [TS-587-AAR-2018-NT]**

The Applicant is engaged in supplying printing ink and other consumables (such as oil, bib, blanket, etc.) which are used in Indigo Press machines supplied by Applicant to its customer. The contract between Applicant and its customers stipulate that ink and such other consumables would remain a property of 'Applicant' until the customer uses it for printing. Once these articles are used, Applicant would charge a consolidated amount to customer for purchase of ink and consumables on per print basis. Such purchase of ink and consumables is bundled together under 'Reseller purchase programme' under the contract which stipulates that ink and consumables are to be purchased only in prescribed bundled form and cannot be purchased separately. Further, such supply of ink and consumables is to be made on recurrent basis and running invoice for the same is to be raised within 15 days from end of each calendar month.

A Ruling was sought to determine (i) whether consumable and ink supplied together will be considered as 'naturally bundled' and be treated as a 'composite supply' in which supply of ink would be principal supply; (ii) Whether recurrent supply for which invoice is to be raised periodically be treated as a 'continuous supply of goods'. The authorities ruled that ink and each of the consumable are not dependent on each other and neither constituent supply which gives one of the essential character of bundle. Therefore, such supply cannot be treated as a naturally bundled supply and fails to qualify as composite supply. On the other hand, it qualifies as a 'mixed supply' since all the conditions under Section 2(74) of the CGST Act are fulfilled. Further, supply of goods fulfils the basic conditions of 'continuous supply' considering that supplies are made on continuous basis and invoice for the same is raised on periodic basis. Therefore, the time of supply shall be earlier of the 'date of invoice' or 'date of payment'.

2. APPELLATE AUTHORITY FOR ADVANCE RULING

▪ Caltech Polymers Private Limited [TS-584-AAAR-2018-NT]

Caltech Polymers Private Limited ('Appellant/Applicant') is engaged in manufacture of foot wear and is providing canteen facility to its employees in factory as per The Factories Act, 1948. The facility is being operated and managed by Applicant on its own and is being provided to employees on 'no profit – no loss' basis. Applicant contended that, such facilitation of canteen need not be treated as 'supply' as it is not in the course or furtherance of business and Applicant is only complying with statutory requirement without making any profit. The Authority for Advance Ruling ruled that such activity is covered under Entry No. 6 of Schedule – II of CGST Act as being a composite supply irrespective of whether it is undertaken for profit or not.

The ruling was appealed based on the contention that any consideration (such as canteen facility) received by employee from employer in the course of its employment is outside the purview of GST. However, Appellate Authority upheld the Authority's ruling as the transaction fulfilled the conditions provided under Section 7(1)(a) inasmuch as it is an activity for which consideration is being recovered from employee and thus qualifies as 'supply'.

It is worthy of noting here that, Ruling authority as well as Appellate authority did not refer to 'employer-employee' relation which is treated as 'related persons' and thereby stated transaction would qualify as 'Supply' even in absence of any consideration being recovered from employees.

3. JUDICIAL UPDATE

▪ RSPL Ltd. vs. Union of India & Ors [WP (C) No: 22056 of 2017]

The Hon'ble High Court of Gujarat held that the petitioner is not allowed to avail ITC with respect to Excise duty paid on capital goods which were in transit as on the date of GST implementation based on the following

- The legislature has specifically allowed ITC in respect of input and input services which are in transit in terms of Section 140(5). However, similar provision with respect to capital goods is absent which is indicative of parliamentary intension to treat inputs and capital goods distinctly;
- Capital goods and inputs used in manufacturing process have always been treated differently under the earlier statutes. Thus, differential treatment by the legislature under GST cannot be considered as artificial or arbitrary;
- While, enabling credit of tax and condition applicable therefor is domain of legislature; it is also imperative to strictly construe any condition for a benefit.

4. NOTIFICATIONS

▪ Notification No. 58/2018 – Central Tax dated October 26, 2018 (Extension of due date of FORM GSTR-10)

- The persons whose registration has been cancelled on or before September 30, 2018 by the proper officer, shall furnish the final return in **FORM GSTR-10** till **December 31, 2018**.

▪ Notification No. 59/2018 – Central Tax dated October 26, 2018 (Extension of due date of FORM GST ITC- 04)

- The Ministry of Finance has extended time limit for filing **FORM GST ITC-04** for the period July 2017 to September 2018 till **December 31, 2018**.

5. CIRCULAR

▪ Circular No. 70/44/2018-GST dated October 26, 2018 (Clarification on refund related issues)

- Earlier, the Authorities had clarified that once a deficiency memo has been issued against refund application, the amount of ITC debited is required to be re-credited to the electronic credit ledger by using FORM GST RFD-01B and the taxpayer is expected to file a fresh application for refund. However, the said facility has not been made available on GSTN portal. Given this, it has now been clarified that when a deficiency memo has been issued against an earlier refund application, the taxable person is required to file a rectified refund application under the earlier Application Reference Number till the time GSTN portal does not provide the facility of re-credit.

- It is clarified that for the exports made up to October 9, 2018 - the exporter shall be eligible to claim refund of the IGST paid on exports even though inputs or capital goods have been received under EPCG, Advance Authorization. Post October 9, 2018; if goods have been received against Advance Authorization or the exporter is an EOU, the option of exports on payment of IGST is not available. However, exporters who are claiming exemption from payment of IGST on capital goods against EPCG shall be eligible to claim refund of IGST paid on exports.
- **Circular No. 71/45/2018-GST dated October 26, 2018 (Clarification on issues related to casual taxable person and excess ITC distributed by Input Service Distributor (“ISD”))**
 - The amount of advance tax which is required to deposit at the time of registration by Casual Taxable Person, should be calculated after considering eligible ITC, if any available to such person.
 - The taxable person is required to take a normal registration instead of Casual Taxable Person for an exhibition running for a period more than 180 days as registration of Casual Taxable Person can be valid for 180 days only. While applying for normal registration, the tax payer should upload allotment letter granting permission to use the premises for the exhibition as proof for his place of business.
 - In case the ISD has distributed excess ITC to recipients, such excess credit shall be recovered from such recipients along with interest and penalty in Form GST DRC-07 by the Authorities. However, the recipient can use Form GST DRC-03 to voluntarily deposit excess ITC received from ISD along with interest. It is also clarified that ISD would also be liable for general penalty as mentioned under Section 122(1)(ix) of the CGST Act.
- **Circular No. 72/46/2018-GST dated October 26, 2018 (Procedure and documentation for return of goods]**
 - The Ministry of Finance has clarified the procedure for return of time expired drugs or medicines. The procedure has been categorized in two of the following methods of documentation:
 - **By way of issuing fresh invoice**
 - A registered recipient can return the expired goods under the cover of a fresh invoice and treat the same as an independent supply.
 - On receipt of such return of expired goods, supplier (in the capacity of a recipient of expired goods) shall be eligible to avail ITC on such return of expired goods. If these expired goods are to be destroyed, ITC is required to be reversed under Section 17(5)(h) of the CGST Act limited to the tax charged on such fresh invoice.
 - **By way of Credit note**
 - A registered recipient can return the goods on the basis delivery challan and the supplier can issue a corresponding credit note under Section 34 of CGST Act. Tax adjustment is permissible as long as the credit note is issued within time limit prescribed under Section 34(2) of the CGST Act i.e. prior to the September of next financial year and the recipient has reversed the ITC availed.
 - If such returned goods are destroyed by supplier, it needs to reverse the ITC attributable to the manufacture of such goods as per Section 17(5)(h) of the CGST Act.

Disclaimer: The information provided in this update is intended for informational purposes only and does not constitute legal opinion or advice. Readers are requested to seek formal legal advice prior to acting upon any of the information provided herein. This update is not intended to address the circumstances of any particular individual or corporate body. There can be no assurance that the judicial/ quasi-judicial authorities may not take a position contrary to the views mentioned herein.



**ECONOMIC
LAWS
PRACTICE**
ADVOCATES & SOLICITORS

MUMBAI | NEW DELHI | BENGALURU | AHMEDABAD | PUNE | CHENNAI

Email: elplaw@elp-in.com

© Economic Laws Practice 2018