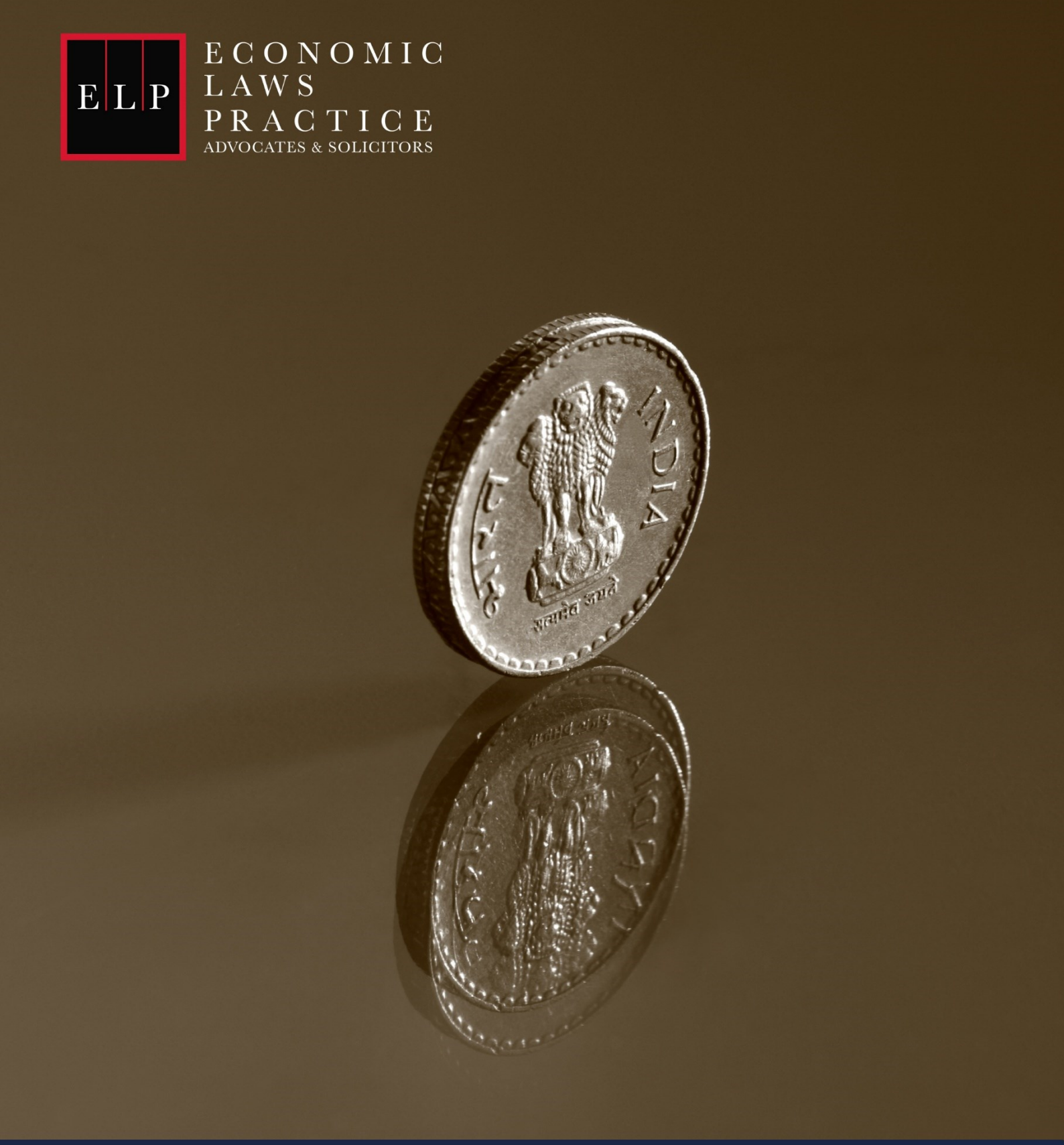
ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS



INDIRECT TAX NEWSLETTER

January 2023

Contents

NOTIFICATION/CIRCULARS

S. No	Reference	Particulars
		GST
1	Notification No. 01/2023- Central Tax dated 04.01.2023	Vide Notification No.14/2017 – CT dated 01.07.2017, the CBIC has appointed various officers in Directorate General of Goods and Services Tax Intelligence ('DGGI'), Directorate General of Goods and Services Tax ('DGGST') and Directorate General of Audit ('DG Audit') as central tax officers. Further, the notification also provides the said officers with the powers equivalent to that of the central tax officers of the corresponding rank mentioned in the notification. Notification No 01/2023 – CT dated 04.01.2023 amends Notification No. 14/2017 (supra) wherein the powers of the Superintendent of Central Tax have been assigned to the Additional Assistant Directors in DGGI, DGGST and DG Audit.
2	Circular No. 189/01/2023-GST Dated: 13.01.2023	Vide this circular, the following has been clarified: ▪ "Rab" is classifiable under heading 1702 and is liable to 18% GST under SL No. 11 in Schedule III of Notification No. 1/2017-CT(R) dated 28.06.2017. ▪ The by-products of milling of Dal/Pulses such as Chika, Khanda and Churi/Chuni shall be exempt from GST w.e.f. 01.01.2023 irrespective of its end use. Further, the taxability of said products prior to 01.01.2023 is to be regularized on "as is" basis from the date of issuance of Circular No. 179/11/2022-GST dated 03.08.2022. ▪ The 6-digit HS Code for the 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice' is "220299". The said goods attract GST at the rate of 28% and Compensation Cess at the rate of 12%. Further, the said goods include carbonated beverages that contain carbon dioxide, irrespective of whether the carbon dioxide is added as a preservative, addictive, etc. ▪ 'Snack pellets' (such as "fryums") produced through the extrusion process are classifiable under tariff item "1905 9030," which includes goods with the description "Extruded or expanded products, savory or salted." As a result, such snack pellets are subject to GST at the rate of 18% (S.No 16 of Schedule III of Notification No. 1/2017 - CT(R)). ▪ Compensation Cess ('Cess') of 22% is applicable on motor vehicles falling under the heading 8703. However, there are four specifications (one of the specifications is that they should be popularly known as SUVs) which if cumulatively satisfied would attract Cess. ▪ Doubts arose with respect to the goods specified in the list annexed to the Notification No. 3/2017-IT (Rate), dated 28.06.2017, which are liable to IGST @ 12% as per the said notification. However, these goods are also eligible for the benefit of lower rate of IGST under Schedule I of the Notification No. 1/2017-IT (Rate), dated 28.06.2017. It has been clarified that the importer can claim the benefit of the lower rate of tax under Notification No. 1/2017-IT (Rate), dated 28.06.2017 or any other Integrated Goods and Services Tax rate notification .
3	Circular No. 190/02/2023-GST Dated: 13.01.2023	***Clarification regarding applicability of GST on incentive paid by Ministry of Electronics and Information Technology (MeitY) to acquiring banks under the***

<table>
<tr><th>S. No</th><th>Reference</th><th>Particulars</th></tr>
<tr><td></td><td></td><td>Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions

It has been clarified that the incentives that are paid by MeitY to acquiring banks as part of the incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, do not constitute any form of consideration that is paid by the Government for any service that is provided by the acquiring bank.

The Board has further clarified that the incentives take the form of a subsidy and are directly linked to the price of the service. Accordingly, in terms of Section 15 of the CGST Act, such incentives do not form part of the taxable value of the transaction and are therefore not taxable.

Clarification regarding applicability of GST on accommodation services supplied by Air Force Mess to its personnel:

It has been clarified that exemption from payment of GST (provided under Sl. No. 6 of Notification No. 12/2017 – CT(Rate) dated 28.06.2017) which is applicable to services supplied by the Central Government, State Government, Union territory or local authority to any person other than business entities, is also applicable to the accommodation services provided by Air Force Mess and other similar messes such as Army mess, Navy mess, Paramilitary and Police forces mess to their troops or any person other than a business entity.

This exemption is available, provided the services offered by such messes qualify to be treated as services supplied by the Central Government, State Government, Union territory or local authority.</td></tr>
<tr><td colspan="3">FOREIGN TRADE POLICY</td></tr>
<tr><td>4</td><td>Notification No: 53 /2015-2020 dated 09.01.2023</td><td>Revisions made to 432 HS codes on account of recommendations of the RoDTEP Committee in relation to apparent errors or anomalies in the earlier notified rates/caps made vide DGFT Notification No.19 dated 17.08.2021. This is applicable for exports made from 16.01.2023.

<u>Some key products</u>

<table>
<tr><th>HSN</th><th>Product</th><th>Old</th><th>New</th></tr>
<tr><td>55092100</td><td>Single yarn</td><td>Cap – INR 1.8 per Unit Quantity Code (UQC)</td><td>Cap – INR 5.8 per UQC</td></tr>
<tr><td>55092200</td><td>Multiple or cabled yarn</td><td>Cap – INR 1.8 per UQC</td><td>Cap – INR 5.8 per UQC</td></tr>
<tr><td>87032291</td><td>Motor cars</td><td>Rate – 1%</td><td>Rate – 1.5%</td></tr>
</table></td></tr>
<tr><td>5</td><td>Public Notice No. 52/2015-2020 dated 18.01.2023</td><td>DGFT simplifies ‘Composition Fee’ for Export Obligation extension under Advance Authorization (AA) Scheme

Currently composition fee is levied as a percentage of the unfulfilled Freight On Board (FOB) value.

Para 4.42 of HBP 2015-20 has been amended to simplify the process of levying 'Composition Fee’ in case of extension of Export Obligation Period (EOP) under the Advance Authorization Scheme which is as follows:</td></tr>
</table>

<table>
<tr><th>S. No</th><th>Reference</th><th>Particulars</th></tr>
<tr><td></td><td></td><td>
<table>
<tr><th>Cost, Insurance & Freight (CIF) Value of AA Licenses</th><th>Composition fees to be levied</th></tr>
<tr><td>Upto INR 2 crores</td><td>INR 5000/-</td></tr>
<tr><td>Between INR 2 cores to INR 10 crores</td><td>INR 10,000/-</td></tr>
<tr><td>Over INR 10 crores</td><td>INR 15,000/-</td></tr>
</table>
It has been further stated that exporters can request for an extension of upto 6 months (exporters are allowed to do this twice) subject to payment of the specified composition fees.
In cases where a further extension of 6 months (after the first extension) is sought, the same will be subject to the payment of composition fees outlined in the table below:
<table>
<tr><th>CIF Value of AA Licenses</th><th>Composition fees to be levied</th></tr>
<tr><td>Upto INR 2 crores</td><td>INR 10,000/-</td></tr>
<tr><td>Between INR 2 cores to INR 10 crores</td><td>INR 20,000/-</td></tr>
<tr><td>Over INR 10 crores</td><td>INR 30,000/-</td></tr>
</table>
</td></tr>
<tr><td>6</td><td>Public Notice No. 53/2015-2020 dated 20.01.2023</td><td>
The Government has announced a one-time relaxation for maintaining an average export obligation and has provided an option to extend the EOP for certain sectors under the Export Promotion Capital Goods (EPCG) Scheme.
A. For Hotel, Healthcare & Educational Sector

For the years 2020-21 and 2021-22, the hotel, healthcare and educational sector will not be required to maintain average export obligation for EPCG authorizations issued.
The EOP would be extended from the date of expiry - for the duration equivalent to the number of days the EOP falls - within 01.02.2020 and 31.03.2022. This extension will be granted without payment of composition fees.

B. Other than Hotel, Healthcare & Educational Sector
The EOP may be extended for the number of days the existing EOP falls within 01.02.2020 and 31.07.2021. This extension will be granted without payment of composition fees, but with a 5% additional export obligation in value terms on the balance export obligation as on March 31, 2022.
</td></tr>
<tr><td colspan="3">CENTRAL EXCISE</td></tr>
<tr><td>7</td><td>Notification No. 03/2023 - Central Excise dated 16.01.2023</td><td>
There is a change in the special additional excise duty rate of petroleum crude and aviation turbine fuel.
The rate of duty is as below:
<table>
<tr><th>Product</th><th>Rate</th></tr>
<tr><td>Petroleum crude</td><td>INR 1,900/- per tonne</td></tr>
</table>
</td></tr>
</table>

S. No	Reference	Particulars
		Aviation Turbine Fuel — INR 3.5/- per litre
8	Notification No. 04/2023 - Central Excise dated 16.01.2023	There is a change in the special additional excise duty rate of diesel. The rate of duty is INR 3.5/- per litre.

RECENT CASE LAWS

Whether rectification of GSTR-1 is permissible even for FY 2019-20?

M/s. Wipro Limited India v. The Assistant Commissioner of Central Taxes Bengaluru

[Writ Petition No. 16175 of 2022 – Karnataka High Court]

FACTS OF THE CASE

- The Petitioner supplied goods to M/s. ABB Global Industries and Services Private Limited. However, while issuing the invoice, the GST number mentioned was that of ABB India Limited which is a completely different and independent legal entity. On account of the same, the actual recipient of the supply viz. M/s. ABB Global Industries and Services Private Limited could not avail credit.
- Accordingly, the Petitioner filed a writ to issue order(s), directions, writ(s) in the nature of mandamus, directing the Respondent (tax authorities) to allow the Petitioner access to the GST portal in order to rectify Form GSTR-1 with respect to relevant invoices issued to the recipient (so as to enable the recipient to take credit of the tax so paid).

JUDGMENT

- The Karnataka High Court ruled that the invoice issued by the Petitioner indicates that while the supplies were made to M/s. ABB Global Industries and Services Private Limited, the GSTIN Number mentioned has been incorrectly shown as that of ABB India Limited, which is a completely different and independent legal entity. The error committed by the Petitioner in showing the wrong GSTIN number in the invoices (which was carried forward in the relevant forms) as that of ABB India Limited is clearly a bonafide error, which has occurred due to bonafide reasons, unavoidable circumstances and sufficient cause.
- Under these circumstances, the Court placed reliance on Circular bearing no. 183/15/2022-GST dated 27.12.2022 **('Circular')** which provides clarifications including the procedure to deal with difference in input tax credit availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19. The Court further ruled that in the present case, it would be just and proper to dispose of this petition directing the authorities (Respondent) to follow the procedure prescribed in the Circular and apply the said Circular to the facts of the instant case for the years 2017-18, 2018-19 and 2019-20.
- The Court also stated that though the Circular refers only to the years 2017-18 and 2018-19, since there are identical errors committed by the Petitioner not only in respect of the assessment years 2017-18 and 2018-19 but also in relation to the year 2019-20, the Petitioner would be entitled to the benefit of the Circular for the year 2019-20 by adopting a justice oriented approach.

Whether issue of Form GST DRC-01 & GST DRC-01A is mandatory?

Vishaka Exports vs Assistant Commissioner (ST)

[Writ Petition No. 34471 of 2022 – Madras High Court]

FACTS OF THE CASE

- The Petitioner is a registered taxpayer filing statutory returns under GST. The Respondent (tax authorities) on verification of the returns viz. Form GSTR 3B and Form GSTR 1, filed by the Petitioner for the period 2018-2019 observed certain discrepancies pertaining to difference in turnover between Form GSTR 1 and Form GSTR 3B as well as input tax credit mismatch between Form GSTR-3B and Form GSTR-2A. Accordingly, the Respondent passed the impugned order imposing the demand in respect of the said discrepancies.
- The Petitioner filed the writ petition against the impugned order *inter alia* contending the following*:*
  - the impugned order was not preceded by Forms GST DRC-01 and GST DRC-01A;
  - that no Show Cause Notice (**SCN**) was issued by the Respondent before making the impugned order;
  - that the Petitioner has filed a rectification petition under Section 161 of Tamil Nadu Goods and Services Tax Act, 2017 (**TNGST Act**) and the same is pending.

JUDGMENT

- The Hon'ble High Court observed that there is an amendment to Rule 142 of Tamil Nadu Goods and Services Tax Rules, 2017 ('TNGST Rules') which was made effective from 15.10.2020 wherein under sub-rule (1A) of Rule 142 of TNGST Rules, the expression 'proper officer shall' has been amended to read as 'proper officer may'.
- In view thereof, issuance of Form GST DRC-01 and Form GST DRC-01A is optional at the instance of the Respondent.
- With respect to the issuance of SCN , the Hon'ble High Court applied the principle laid down in the case of ***State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner, Chennai-1 in W.P.No.22634 of 2019.*** Here in the context of Tamil Nadu Value Added Tax Act, 2006 ('TNVAT Act'), it was held that issuance of show cause notice is not imperative for a revision u/s 22(4) unlike best judgment method revision u/s 27 of TNVAT Act. By virtue thereof, the Hon'ble High Court expressed that it is not imperative to issue a show cause notice before issuance of the impugned order in the present case.
- Further, the Petitioner's asserted that personal hearing was not held even though the impugned order records that a personal hearing was in fact held. On this issue, the Hon'ble High Court held that since a personal hearing is not statutorily imperative, it does not cut ice with the High Court as regards the Petitioner's campaign against the impugned order.
- With respect to the rectification application, the Hon'ble High Court was of the considered view that the same does not qualify as an error apparent on the face of the record considering that the application deals with the output mismatch qua Forms GSTR 3B and Form GSTR 1 and credit notes not reversed in Form GSTR 3B. The said contention may be grounds of appeal if the Petitioner chooses to file a statutory appeal under Section 107 of TNGST Act but it cannot be said that it is an error apparent on the face of record.

Further, it was held that the expression 'errors apparent on the face of record' has been repeatedly explained to be errors which are so obvious and so palpable (tangible if one may say so) that no inferential process is required or no inferential process need to be applied to detect the error. Though, a careful perusal of these issues indicated that these may not qualify as errors apparent, the Hon'ble High Court refrained from expressing any view or opinion on the same since it intended to preserve the rights of the Petitioner to prefer a statutory appeal under Section 107 of TNGST Act (if the Petitioner desired to do so).

RECENT ADVANCE RULINGS

Whether GST is payable under RCM on services received by an SEZ unit from a Developer?

In re: Portescap India Pvt Ltd

[TS-16-AAAR(MAH)-2023-GST]

FACTS OF THE CASE

- M/s. Portescap India Pvt. Ltd. ('the Appellant') is a private limited company registered under Companies Act, 1956 as well as Goods and Services Tax. The Appellant, situated at an SEZ location, is *inter alia* engaged in manufacturing and exporting customized motors.
- The Appellant procured rental space from 'Santacruz Electronics Export Processing Zone' (hereinafter referred to as "SEEPZ") SEZ Authority.
- A ruling was sought from the advance ruling authorities (**AAR**) on whether an SEZ unit is required to comply with the reverse charge mechanism (**RCM**) as a service recipient for renting of immovable property services procured by the unit from SEZ authority (in accordance with Notification No. 13/2017 – C.T. (Rate) dated 28.06.2017 read with Notification No. 03/2018- C.T. (Rate) dated 25.01.2018).
- The AAR held that the Appellant was receiving renting of immovable property services from SEEPZ SEZ (local authority), hence it was liable to discharge tax liability under RCM as it satisfied all conditions of Notification No. 10/2017 - I.T (Rate) dated 28.06.2017 as amended read with Q.No. 41 of FAQ dated 15.12.2018 issued by CBIC.
- Being aggrieved by the ruling, the Appellant filed the appeal before appellate authority for advance ruling ('AAAR').

AAAR RULING

- The AAAR held that on perusal of the provisions of the zero-rated supply, it was clear that any supply of goods or services or both made to an SEZ developer or SEZ unit for carrying out the authorised operation in an SEZ will be considered as zero-rated supply i.e. the said supply will not attract any GST. The provisions of zero-rated supply will even cover the supply of services which are specified under the reverse charge Notification 10/2017-I.T. (Rate) dated 28.06.2017 as amended.
- Further, it ruled that it was a settled position of law that the specific provisions made in the statute will have greater legal force than that of a notification issued under same or any other provision or the same statute. Hence, the provisions laid down under Section 16(1) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act') will supersede the notification issued under Section 5(3) of the IGST Act, which lists the services which attract GST under reverse charge basis.
- Accordingly, the AAAR held that a unit in SEZ can *inter alia* procure services for use in authorised operation without payment of integrated tax provided the actual recipient i.e. SEZ unit or SEZ developer furnishes a letter of undertaking (LUT) or bond as specified in condition (i) of para 1 of Notification No. 37/2017 – C.T.
- As a result of the above, the Appellant will not be required to pay any GST under RCM on the impugned supply of renting of immovable property services received by SEEPZ, if the Appellant furnishes LUT.

Whether advance ruling can be sought for supplies already undertaken?

In re: Vyom Food Craft Pvt Ltd

[TS-710-AAR(RAJ)-2022-GST]

FACTS OF THE CASE

- The Applicant is a chain of restaurants which offers cooked food, beverages and bakery goods .
- The Applicant sought an advance ruling on whether supply of food and beverages by the eating joints via dine-in, takeaway and delivery would be treated as 'supply of services'; Further, the Applicant sought clarification on classification and applicable tax rate on the supply made by applicant, including clarification on availability of ITC.

AAR RULING

- The AAR ruled that the Applicant filed the application for seeking advance ruling on 17.03.2022 and activities of supply, payment of GST as well as submission of GST returns had taken place long back. Thus, to interfere in the matter which has already taken place, was out of the purview of Advance Ruling and could only be decided by a competent authority under which jurisdiction of GST paid and GST returns had been submitted.
- It was observed that Section 95 of the CGST Act allows the AAR only to decide on matters or on questions in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the Applicant. i
- It was further observed that the purpose of advance ruling was to provide certainty of tax liability in advance in relation to a future activity to be undertaken by the Applicant and help the Applicant in being aware of its t GST liability.
- In the instant facts, the Applicant had already effected the supply in question and GST was already being paid. Hence, the present case was out of the purview of advance ruling.

We hope you have enjoyed reading this update. For further information please write to us at insights@elp-in.com or connect with our authors:

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