ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

INDIRECT TAX NEWSLETTER

July 2023

Contents

NOTIFICATION/CIRCULARS

S. No	Reference	Particulars
		Goods and Services Tax (GST)
1	Circular 192/04/2023-GST	Clarification on charging interest under Section 50(3) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), in case of wrong availment and utilization of IGST credit and reversal thereof.
2	Circular 193/05/2023-GST	Clarification to deal with the difference in Input Tax Credit ('ITC') availed in Form GSTR-3B *vis-à-vis* Form GSTR-2A for the period April 01, 2019 to December 31, 2021.
3	Circular No. 194/06/2023-GST	Clarification on Tax Collection at Source ('TCS') liability under Section 52 of CGST Act in case of multiple E-commerce Operators in one transaction.
4	Circular No. 195/07/2023-GST	Clarification on availability of ITC in respect of warranty replacement of parts and repair services during the warranty period.
5	Circular No. 196/08/2023-GST	Clarification on taxability of shares held in a subsidiary company by the parent company.
6	Circular No. 197/09/2023-GST	Clarification on refund related issues.
7	Circular No. 198/10/2023 - GST	Clarification on issues pertaining to E-invoice.
8	Circular No. 199/11/2023-GST	Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.
		The detailed analysis on the GST Circulars can be accessed here
9	Notification No. 18/2023- Central Tax To Notification No.21/2023 – Central Tax	Following due dates for furnishing GST returns have been extended for registered persons whose principal place of business is in the State of Manipur: • Due date for furnishing Form GSTR-1 & Form GSTR-3B for April, May and June, 2023; • Due date for furnishing Form GSTR-3B for the quarter ending June, 2023 has been extended till July 31, 2023; • Due date for furnishing Form GSTR-7 for the month of April, May and June, 2023 has been extended till July 31, 2023.
10	Notification No.22/2023 – Central Tax	Extension of time limit for waiver of late fees on filling of Form GSTR-4 for FY 2019-20 to 2021-22 from June 30, 2023 to August 31,2023.
11	Notification No. 23/2023 Central tax	Extension of time limit for application for revocation of cancellation of registration under Section 30 of CGST Act from June 30, 2023 to August 31, 2023.
12	Notification No. 24/2023 Central tax	Extension of time limit for special procedure allowed for furnishing of return by non-filler from June 30, 2023 to August 31, 2023 failing which the proper officer shall make assessment under Section 62 of CGST Act.
13	Notification No. 25/2023 Central tax	Extension of waiver of late fees for furnishing of Annual Return in Form GSTR-9 from June 30,2023 to August 31, 2023.
14	Notification No. 26/2023 Central tax	Extension of waiver of late fees for furnishing of Form GSTR-10 from June 30,2023 to August 31, 2023.

S. No	Reference	Particulars
15	Notification No. 27/2023 Central tax	Brought in force the provision of Section 123 of the Finance Act, 2021 - Appointed date October 1, 2023
16	Notification No. 28/2023 Central tax	Appointment of specific date for bringing into force provisions of Finance Act, 2023 • October 1, 2023 – Section 137 to 162 of Finance Act, 2023 (except Section 149 to 154) • August 1, 2023 – Section 149 to 154 of Finance Act, 2023
17	Notification No. 29/2023 Central tax	Provides for a special procedure (manual filing) to be followed by a registered person or an officer under Section 107(2) of CGST Act who intends to file an appeal against the Order passed by the proper officer in respect of the transitional credit pursuant to the directions of the Hon'ble Supreme Court in the case of ***Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018***.
18	Notification No. 30/2023 Central tax	Provides for a special procedure to be followed by a registered person engaged in manufacturing of the goods mentioned in the Schedule appended to the said Notification. The appended Schedule includes goods covered under CTH – 2106 9020 and certain goods falling under Chapter 24 (Pan Masala, Tobacco products)
19	Notification No. 31/2023 Central tax	Notification No. 27/2022 – Central Tax dated December 26, 2022 amended to include the State of Puducherry under the mandatory Biometric-based Aadhaar authentication provided in terms of Rule 8(4A) CGST Rules.
20	Notification No. 32/2023 Central tax	Registered person whose aggregate turnover in the Financial Year 2022-23 is up to two crore rupees are exempted from filing Annual Return.
21	Notification No. 33/2023 Central tax	Notifies 'Account Aggregator' as the systems with which information may be shared by the common portal based on consent under Section 158A of CGST Act, 2017. *'Account Aggregator' means a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the Reserve Bank of India under Section 45JA of the Reserve Bank of India Act, 1934 (2 of 1934) and defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.*
22	Notification No. 34/2023 Central tax	Exempt certain persons from obtaining registration under the CGST Act who supply goods through an Electronic Commerce Operator. However, such exemption is subject to certain conditions prescribed under the said Notification.
23	Notification No. 01/2023 Integrated Tax	Notifies goods or services (except for certain goods) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid. Goods which cannot be exported on payment of integrated tax are ***viz.*** Pan-masala, tobacco, certain essential oils, etc.
24	Notification No. 06/2023 Central Tax - Rate	Amendments to ***Notification No. 11/2017-Central Tax (Rate)*** providing relaxations in filling of declaration for opting payment of tax under reverse charge mechanism by a Goods Transport Agency.

S. No	Reference	Particulars
25	Notification No. 07/2023 Central Tax - Rate	Satellite Launch Services included under the list of exempted supply of services
26	Notification No. 08/2023 Central Tax - Rate	Amendments made to ***Notification No. 13/2017- Central Tax (Rate)*** removing the requirement of obtaining declaration for payment of tax under Forward Charge Mechanism in every Financial Year.
27	Notification No. 09/2023 Central Tax - Rate	Rtae of GST changed/added on the following goods/ services: **Schedule 2.5%**- Fish Soluble Paste, Linz-Donawitz slag, Imitation zari thread or yarn known by any name in trade parlance. **Schedule 6%-** Metalized Yarn like gold and silver thread. **Schedule 9%-** Toasted bread and similar toasted products, Slag, dross and other waste from the manufacture of iron or steel.
28	Notification No. 10/2023 Central Tax - Rate	***Notification No. 13/2017- Central Tax (Rate)*** amended to align with New Foreign Trade Policy-2023.
Note: *Corresponding rate Notification have also been issued under the Integrated Tax (Rate) and respective State/ Union territory Tax (Rate)*		
29	Notification No. 03/2023 Compensation Cess- Rate	Rate of compensation cess for certain products (including Utility Vehicles) provided in ***Notification No. 01/2017 – Compensation Cess (Rate)*** have been amended in line with the recommendations made in 50th GST Council Meeting.
CUSTOMS		
30	Notification No. 40/2023 – Customs	Basic Customs Duty for Liquid Petroleum Gas falling under Tariff heading 2711 1910, 2711 1920 and 2711 1990 under the first schedule has been increased to 15%.
31	Notification No. 41/2023 – Customs	New entry 155A has been inserted in ***Notification No. 50/2017 – Customs*** to prescribe concessional Basic Customs Duty rate of 5% for Liquid Petroleum Gas falling under Tariff heading 2711 1910, 2711 1920 and 2711 1990.
32	Notification No. 42/2023 – Customs	Agriculture Infrastructure and Development Cess of 15% has been imposed on all goods falling under Tariff heading 2711 1910, 2711 1920 and 2711 1990.
33	Notification No. 43/2023 – Customs	Basic Customs Duty for Liquified Propane, Liquified Butane falling under Tariff Heading 2711 1200, and 2711 1300 under the First Schedule has been increased to 15%
34	Notification No. 44/2023 – Customs	New entry 153A has been inserted in ***Notification No. 50/2017 – Customs*** to prescribe concessional Basic Customs Duty rate of 2.5% for Liquified Propane, Liquified Butane falling under Tariff heading 2711 1200, and 2711 1300
35	Notification No. 45/2023 – Customs	Agriculture Infrastructure and Development Cess ('AIDC') of 15% has been imposed on all goods falling under Tariff heading 2711 1200 and 2711 1990. *However, it is not applicable on imports of Liquified Propane and Liquified Butane mixture, Liquified Propane and Liquified Butane by the Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited or Bharat Petroleum Corporation Limited for supply to household domestic consumers or to Non-Domestic Exempted Category (NDEC) customers.*

S. No	Reference	Particulars
		Further, AIDC is not applicable on import of Liquified Petroleum Gas by the Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited or Bharat Petroleum Corporation Limited for supply to household domestic consumers or to Non-Domestic Exempted Category (NDEC) customers
36	**Notification No. 46/2023 – Customs**	Seeks to amend certain Notifications in order to implement recommendation of GST Council in its 50th meeting.
37	**Notification No. 48/2023-Customs (N.T.)**	Exemption from Section 51A of the Customs Act to specified deposits would be available from October 1, 2023.
38	**Notification No. 49/2023-Customs (N.T.)**	Certain deposits into Electronic Credit Ledger are exempted till September 30, 2023.
39	**Notification No. 51/2023-Customs (N.T.)**	Transhipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019 would be applicable to the transshipment of cargo from the ports of Kolkata, Haldia and Vishakhapatnam in India to: a) Birgunj in Nepal by rail (b) Batnaha in India by rail and from Batnaha to Biratnagar in Nepal by road; and (c) Biratnagar in Nepal by rail.
40	**Notification No. 53/2023-Customs (N.T.)**	The amended tariff value for Palm Oil, Palmolein, Soya Bean Oil, and Brass Scrap falling under Chapters 1511 10, 1511 90, 1507 10, and 7404 00 has been notified. In addition, the revised tariff value for gold and silver, in any form falling under Chapter 71 or 98 has also been notified.
41	**Notification No. 55/2023-Customs (N.T.)**	ICD Mulund has been de-notified by way of amending ***Notification No. 12/97-Customs (N.T.) dated 02.04.1997***-
42	**Notification No. 56/2023-Customs (N.T.)**	Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver has been fixed.
43	**Circular No. 18/2023 – Customs**	Due date for mandatory declaration of additional qualifies in export/ import declarations as prescribed in ***Circular No. 15/2023*** is extended to October 1, 2023.
		DGFT
44	**Notification No. 16/2023 (DGFT)**	Import of potatoes falling under Chapter Heading 0701 9000 is allowed from Bhutan without any import license up to June 30, 2024.
45	**Notification No. 17/2023 (DGFT)**	Import of 17,000 Metric tonnes of Fresh (green) Areca Nut without a minimum import price condition from Bhutan shall be allowed through LCS Chamurchi.
46	**Notification No. 18/2023 (DGFT)**	The general notes regarding Import Policy under schedule I (Import Policy) ITC (HS) 2022 have been amended in line with relevant FSSAI Notifications
47	**Notification No. 19/2023 (DGFT) read with Circular No. 3/2023-24**	• The Import Policy for ITC (HS) Code 71131911, 7113 1919 and 7114 1910 has been amended from 'free' to 'restricted'. • However, import under HS code 7113 1911 is permitted freely without any import license under a valid UAE CEPA TRQ. • Import made by SEZ units under HS codes 71131911, 7113 1919 and 7114 1910 are not covered under this Notification and hence restriction is not applicable

S. No	Reference	Particulars
48	Notification No. 20/2023 (DGFT)	Export policy of non-basmati white rice (semi milled or wholly milled rice, whether or not polished or glazed, other) falling under HS code 1006 3090 is amended from 'free' to 'prohibited'.
49	Notification No. 21/2023 (DGFT)	Export Policy of De-Oiled Rice Bran is amended from 'Free' to 'Prohibited' with immediate effect up to November 30, 2023.
50	Notification No. 22/2023 (DGFT)	Policy conditions for Export of Food Supplements containing botanicals under ITC HS code 1302 and 2106 intended for human or animal consumption to European Union and United Kingdom is notified.
51	Public Notice No. 21/2023 (DGFT)	ITC (HS) codes for Cotton under India-Aus ECTA TRQ has been notified in-sync with Ministry of Finance (Department of Revenue) Notification No. 38/2023-Customs dated May 23, 2023.
52	Public Notice No. 22/2023 (DGFT)	With a view to enhance ease of doing business, a relaxation for delay in submission of installation certificate under the EPCG scheme is provided on payment of late fee of INR 10,000/- per Authorization and subject to fulfilment of following: • Authorization has been issued under FTP 2009-14 and FTP 2015-20; • Installation certificate was obtained within prescribed time from the relevant authorities but could not be submitted to RA; • Bonafide reason has been given for delay in submission; • Said EPCG Authorization is not under investigation/ adjudication by RA or customs authority or any other investing agency • Such certificate is submitted on or before December 31, 2023.
53	Public Notice No. 23/2023 (DGFT)	AYUSH Export Promotion Council (AYUSHEXCIL) has been included in the Appendix 2T of FTP, 2023 for issuing RCMC for specified items, with immediate effect.

RECENT CASE LAWS

IGST directed to be refunded considering non-realization of duty drawback at a higher rate by the Petitioner

Sunlight Cable Industries V. The Commissioner of Customs, NS II and 2 Ors. [TS-290-HC(BOM)-2023-GST]

FACTS OF THE CASE

The Petitioner had inadvertently mentioned an incorrect Invoice No. and Port Code with respect to an export transaction made against a Tax Invoice and its corresponding Shipping Bill in GSTR – 1 (filed for the month of August 2017).

The mistake was corrected by way of amending GSTR – 1 for the month of January 2018. Post this, on January 9, 2019, the Petitioner submitted an Annexure in the prescribed format, establishing concordance between the Tax Invoice and Shipping Bill. Thereafter, on March 15, 2019, the Petitioner furnished an application requesting refund of Integrated Goods and Service Tax (IGST) paid on such export transaction.

The refund was rejected on the ground that the Petitioner had availed a higher duty drawback on its exports under the Export Invoice and corresponding Shipping Bill. Whereas it was the case of the Petitioner that higher duty drawback was never availed.

The Petitioner filed a Writ Petition against the rejection of claim of refund,

JUDGMENT

The court observed that there is no dispute regarding the nature of transaction i.e., the transaction is a Zero-Rated supply under Section 16(3) of the IGST Act. This was evident from subsequent amendments made in the return filing of Shipping Bill, invoices and other documents.

However, the only question which remained to be determined was whether it was correct to assert that the Petitioner claimed a higher rate of duty drawback than the amount of IGST sought to be refunded.

In this regard, court relied on the judgments passed by High Court of Gujarat[1] wherein, on similar facts and circumstances, it was held that rates of higher and lower duty drawback remaining the same, refund of IGST cannot be denied when the option to take drawback at higher rate in place of the IGST refund has not been availed.

In the present facts, the Court observed that no evidence was produced by the Respondent to show that the Petitioner availed higher duty drawback. Hence, the Court directed the respondents to refund the Petitioner amount of IGST paid in respect of goods exported along with simple interest of 7% per annum.

Time limit prescribed for availing ITC is constitutionally valid; Return with late-fee not springboard to claim credit

Thirumalakonda Plywoods vs The Assistant Commissioner, State Tax [TS-349-HC(AP)-2023-GST]

FACTS OF THE CASE

The Petitioner being new to a business, could not file the return of March 2020 in time. However, with much difficulty, the Petitioner filed an optional Form of GSTR3B of March 2020 by November 27, 2020. The Petitioner also paid the late fee of INR 10,000 which was accepted by the Department.

As the return was accepted with late fee, the Petitioner presumed that the Department exonerated the delay for claiming Input Tax Credit (ITC) beyond the period prescribed under Section 16(4) of the APGST / CGST Act. However, the Department issued a Show Cause Notice (SCN)which subsequently culminated into an Order disallowing ITC.

The Petitioner filed a Writ Petition challenging Section 16(4) of CGST/ APGST Act as being violative of Article 14, 19(1)(g) and Article 300-A of Constitution of India. The Petitioner argued that the non-obstante clause of Section 16(2) would prevail over Section 16(4).

[1] Amit Cotton Industries vs. Principal Commissioner of Customs (2019) 29 GSTL 200 (Guj.); and Awadkrupa Plastomech Pvt. Ltd. vs. Union of India 2021 (46) G.S.T.L. 31 (Guj.)

JUDGMENT

The Court observed that Section 16(4) being a non-contradictory provision and capable of clear interpretation, will not be overridden by non obstante provision under Section 16(2). Section 16(4) only prescribes time restriction to avail credit. It cannot be said that Section 16(2) over-rides Section 16(4).

The Court further held that while Section 16(1) is an enabling clause for ITC; 16(2) subjects such entitlement to certain conditions and Section 16(3) and (4) restrict the entitlement given under Section 16(1).

It was also observed that conditions stipulated in Section 16(2) and (4) are mutually different and both operate independently. Therefore, mere filing of the return with a delay fee will not act as a springboard for claiming ITC. Collection of late fee is only for the purpose of admitting the returns for verification of taxable turnover. It is however not for consideration of ITC. Such a statutory limitation cannot be stifled by collecting a late fee.

The Court finally held that Section 16(4) does not violate Article 14, 19(1)(g) and 300-A of the Constitution ITC is a mere concession/rebate/benefit but not a statutory or constitutional right. Therefore, imposing conditions, including time limitation for availing the said concession will not amount to violation of the constitution or any statute. It was also observed that operative spheres of Section (16) and constitutional provisions under Article 14, 19(1)(g) and 300-A are different and hence infringement does not arise.

Granting of refund of excess IGST charged inadvertently on goods supplied to Merchant Exporter

Targos Chemicals India Pvt. Ltd. vs Union of India [TS-354-HC(GUJ)-2023-GST]

FACTS OF THE CASE

The Petitioner received a Purchase Order (**PO**) from a registered exporter viz., Quality Biz Chem India Pvt. Ltd. (**Buyer**) to supply goods at a concessional rate of IGST i.e., 0.1% in terms of the Notification No. 41/2017-Integrated Rate dated October 23, 2017, as Quality Biz Chem intended to export goods. Basis the PO, the Petitioner erroneously supplied the goods to the buyer @18% instead of concessional rate of 0.1% and reported the same in GSTR-1 and GSTR-3B.

Subsequently, the buyer exported the goods and reported the details of the Petitioner (GSTIN and tax invoice) on the Shipping Bill by complying with the conditions prescribed in the Notification.

On ascertaining of the mistake (payment of IGST @ 18% instead of 0.1%), the Petitioner issued a Credit Note in the month of March 2020, adjusting the excess amount of tax paid. However, the Petitioner could not reduce the turnover and GST liability as there were no outward supplies during the said month and subsequent months. In view of the above, the Petitioner filed a refund claim pertaining to the payment of excess amount of IGST.

The Respondent issued a deficiency memo in respect of the refund claim. The Petitioner submitted the relevant documents and reuploaded the claim on the portal. The Respondent rejected the contentions put forth by the Petitioner and issued a SCN and subsequently issued an order rejecting the refund claim. Thus, the Petitioner has approached the Gujarat High Court on account of the fact that the Respondent had rejected the refund claim without recording any proper finding on each of its submissions.

JUDGMENT

The Court observed that the Notification pertains to the benefits to be availed on fulfilment of the conditions mentioned therein. There are in all 9 conditions in the said Notification. One of the conditions is that the goods must be exported by the registered recipient within a period of 90 days. In the present case, the Buyer has exported the goods within the stipulated period.

The Court further observed that the Hon'ble Supreme Court[2] has taken a view that merely because a mistake is made by the assessee in paying duties on goods which are exempted from payment, does not mean that the goods would become goods liable for the duty under the Act.

[2] Bonanzo Engineering & Chemical Pvt. Ltd. v. Commissioner of Central Excise [2012(4) SCC 771]

Additionally, the Court further made a reference to the decision passed by the Hon'ble Supreme Court[3] wherein it was observed that *'that even if an applicant does not claim benefit under a particular Notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage'.*

By considering the aforesaid views, the Court allowed the petition and set aside the order passed by the Respondents. Further, the Court directed the Respondents to refund the amount of excess tax (IGST) paid by the Petitioner with interest and within reasonable time.

Imposition of penalty in lieu of confiscation of the vehicle when E-way bill is not generated

Kartar Singh V/s. Commissioner, Uttarakhand State GST Commissionerate, Dehradun & Others

FACTS OF THE CASE

The Petitioner was transporting goods on behalf of a consignor (M/s Om International Company) in a vehicle registered under his own name. The goods were being transported from Punjab to Uttar Pradesh according to the details mentioned on the sales invoice.

During the transportation of goods, the mobile squad authority intercepted the vehicle and statement of the petitioner was recorded. Further, the mobile squad authority physically verified the goods along with documents and found certain discrepancies.

Subsequently, an order for confiscation of goods or conveyance was passed and a penalty was imposed for failure to carry E-way bill. This Order came to be challenged by the Petitioner before the Court.

JUDGEMENT

The Court observed that carrying an E-way bill by the transporter is a requirement under the CGST Rules, which has the sanction of the provisions of the Act. Therefore, it cannot be said that it is the duty of the owner of the goods alone to generate an E-way bill. If an E-way bill is not generated by the owner of the goods, it is the transporter who transports such goods who has to generate they E-way bill. In the instant case, it has not been done.

The Court noted that penalty under Sections 164(4) and 122 of the CGST Act may not come in way of the competent officer to proceed under Section 130, if other circumstances permit the authorities to take action under Section 130 (i.e., when there is an intention to evade tax).

The Court upheld that confiscation made under Section 130 of CGST Act on the ground that (i)transportation was done without E-way bill (ii)Consignment Note was not with the transporter (iii) transaction revealed that purchase is from a doubtful firm (iv) inquiry over route of the vehicle through RFID tracking system showed that vehicle was not on its route to the destination (v)statement in Form GST-MOV-01 revealed that goods were transported from Punjab to Uttarakhand but in the petition it was stated that goods were being transported from a different place.

Thus, on these terms, the Writ Petition was dismissed.

RECENT ADVANCE RULINGS

Charging battery of EV is 'supply of service', taxable at 18%

In the matter of Chamundeshwari Electricity Supply Corporation [TS-330-AAR(KAR)-2023-GST

FACTS OF THE CASE

The Applicant is a limited company, registered under the CGST/KGST Act and engaged in sale of energy and transmission and distribution of electricity. In view of the Applicant's industry , sale of energy is exempt (as per Sl. No. 104 of Notification No. 2/2017-Central Tax (Rate), dated June 28,2017) and also transmission and distribution of electricity is exempt (as per Sl. No. 25 of Notification No. 12/2017-Central Tax (Rate), dated June 28,2017).

[3] ***Share Medical Care v. Union of India [2007(4) SCC, 573]***

The Applicant proposed that it will be setting up various Public Charging Stations (PCS) for charging EVs (2-wheeler or 4 wheeler). All EV users can access these PCS. The Applicant would be issuing tax invoices for collecting 'EV Charging Fee', for two components:

- 'Energy Charges' – number of units of energy consumed; and
- 'Service Charges' – service provided by charging station i.e., cost of setting up the service station and running the same.

India's Ministry of Power issued guidelines dated April 13, 2018, wherein, it was mentioned that the activity of charging of an EV through a charging station involves 'a service' and does not involve sale of electricity.

In view of above, the Applicant sought a ruling on (i) Whether charging of EV involving two components would constitute supply of goods (electrical energy) or supply of services (service charges) (ii) Whether both the components are to be treated as a service in terms of the clarification of Ministry of Power (iii)Whether sale of energy in a PCS for EVs will be qualify as 'goods' and exempted under Sl. No. 104 of Notification No. 2/2017-Central Tax (Rate), dated June 28, 2017

RULING

The Authority observed that supply, in relation to electricity, means sale of electricity to a licensee or consumer. Further, Electricity Act defines 'consumer' to mean '*any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be*'.

It was admitted that the PCS proposed by the Applicant do not have licence as required under the Electricity Act and the consumer lacks any premises for transmission through a service line or otherwise. The consumer is also not supplied with electricity, rather gets his electric vehicle battery charged using the electricity. Thus, even in terms of the Electricity Act, 2003 the activity does not tantamount to supply of electricity.

The Authority ruled that the Applicant's activity does not amount to sale of electricity. Thus, the activity of allowing owners of EVs to use the infrastructure/facilities that are provided by the charging station amounts to supply of service, for which the applicant admittedly collects Electric Vehicle Charging Fee as consideration.

The Authority also ruled that charging stations do not require a licence for charging the battery of an EV and thus, the said stations are not involved in transmission, distribution, or trading of electricity. Therefore, even on this count the activity amounts to supply of service. As the activity amounts to supply of service, the applicability of Notification 02/2017 Central Tax – Rate does not arise.

The activity of the Applicant i.e., charging battery of Electrical Vehicle is treated as 'supply of service' and attracts GST @18% in terms of entry No. 25(ii) of the Notification No. 11/2017-Central Tax (Rate), as amended and under SAC 998714.

Body Building of Motor Vehicle on Customer's Chassis service is taxable @18% GST

In the matter of Aromal Autocraft TS-319-AAR(Ker)-2023-GST

FACTS OF THE CASE

An application was filed by the Aromal Autocraft ('Applicant ')seeking a ruling on taxability on 'treatment or process of body building by fabrication and other processes carried out on the chassis of motor vehicle owned by others'.

The Applicant submitted that customers purchase chassis and them hand over for fabricating the body. The Applicants are providing the service of bodybuilding on motor vehicles by fabrication and charging fabrication charges on a lump sum basis.

The process of the manufacturing activity involved:

(i) receiving chassis at a workshop (ii) purchasing raw steel and receiving it at the workshop; (iii) preparing a cutting plan and drawing; (iv) cutting and bending raw material; (v) welding of all cutting and bending part; (vi) assembly of all fabricated parts; (vii) final product of chassis.

It was contended that the activity of providing service of bodybuilding on motor vehicles/chassis owned by others by fabrication and collecting lump sum fabrication charges should be treated as a supply of service (in terms of Sl. No. 3 of Schedule II of CGST Act). Further, there is no transfer of ownership for providing such services and thus it appears to be supply of service. Reference was placed on Circular No. 52/26/2018-GST dated August 9, 2018, wherein it has been provided that activity of bodybuilding on chassis provided by the owner is in nature of service.

The Applicant argued that nature of the activity of bodybuilding and mounting of the body on the chassis provided by the principal will result in the supply of service under HSN code 9988 and hence should be taxed at 18% rate of GST.

RULING

It was observed that the activity of fabricating the body on the chassis belonging to another person is squarely covered under Sl. No. 3 of Schedule II of the CGST Act as a treatment or process (which is applied to another person's goods) and hence a supply of service.

With regard to rate of tax, it was observed that the Heading under SAC 9988 pertains to manufacturing services on physical inputs (goods) owned by others. In this regard, reference was made to Explanatory Notes wherein it is stated that the services included in the Heading 9988 are services performed on physical inputs owned by units other than the units providing the service.

In this backdrop, it was held that the activity of the Applicant is classifiable Under SAC 998881 which covers manufacturing services in which the output is not owned by the unit providing this service. Accordingly, it was held that the activity is liable to GST at the rate of 18% [9% of CGST + 9% of SGST] as per entry at Sl. No. 26 (ic) of SAC – 9988

Services of product-development and engineering of items specified by foreign entities is zero-rated supply

In the matter of Hilti Manufacturing India Pvt.Ltd. TS-331-AAR(GUJ)-2023-GST

FACTS OF THE CASE

The background of the case and the facts presented by the Applicant were::

- The Applicant has a separate Research and Development ('R&D') unit wherein activities are carried out for their own purposes as well as for other customers. The Applicant also carries out R&D activities on behalf of entities situated outside India i.e., on the product samples/ goods sent by the foreign entities for R&D purposes pursuant to which detailed report is submitted.
- Further, the Applicant stated that it had entered into an agreement with its related party (recipient) for carrying out various R&D activities on the product samples provided to the Applicant in India.. The Applicant stated that it is raising periodic invoices for these services on the foreign customer inclusive of IGST @ 18% for which consideration is received in foreign currency; IGST was also discharged on the R&D services provided to foreign companies.

The application has been filed on the belief that the services rendered by them falls under 'export of service' and is therefore exempt from IGST.

RULING

The Authority observed that the Applicant develops a prototype. Some of the materials/ goods that go into making of the prototype are supplied by its related party (recipient). The prototype is not supplied to the recipient as it gets consumed in the process. After conducting the R&D, testing and engineering activities for developing new products & process, the applicant communicates the result to the recipient. It is on this activity that the applicant has sought ruling from the authority.

The Authority further observed that some materials are provided by the recipient whereas substantial amount of consumable/ goods/ capital goods are procured directly from third parties. These materials get consumed in the process of the said R&D activity. Thus, the parameter listed out in 13(3) of IGST Act, is not met ***i.e.*** that the prototype is developed by the Applicant and is not supplied by the recipient. Thus, the Authority ruled that Place of Supply of Service shall be governed in terms of Section 13(2) of the IGST Act i.e., location of recipient of Service.

However, in cases where the Applicant is providing services related to testing/ R&D on products supplied by the recipient, the same would fall within the ambit of Section 13(3) of the IGST Act.

Against this backdrop, the Authority also held that the services provided by the Applicant would fall under 'export of services' as all the five conditions enumerated under Section 2(6) of the IGST Act are being met.

PG/Hostel rent not exempt, meals, housekeeping, washing machine not 'naturally bundled'

In the matter of Srisai Luxurious Stay LLP [TS-332-AAR(KAR)-2023-GST

FACTS OF THE CASE

M/s. Srisai Luxurious Stay LLP ('Applicant') is engaged in the business of developing, running, subletting and managing paying guest accommodation, service apartments, flats aimed to suit all types of customers. The Applicant rented the rooms from landowners and further provided the same to various inhabitants for residential purpose. The monthly tariff charged to the customers ranged from INR 6,900 to INR 12,500 depending on factors ***viz.*** Size of room, number of people sharing the room, number of beds (cots) required by the inhabitants.

The applicant provided Boarding and Lodging facilities to inhabitants along with ancillary services which ***inter-alia*** includes providing meals, internet facilities and vehicle parking facilities.

The Applicant stated that the services provided by them were covered under entry 14 of Notification No. 12/2017 – Central Tax (Rate) dated June 28, 2017 ('Notification') which exempted GST on accommodation services, of charges upto INR 1,000 per day, provided by hotels, clubs, campsites etc. The Notification was amended and the said entry was deleted vide Notification no. 4/2022 – Central Tax (Rate) dated July 13,2022. Post this amendment, the aforesaid services were taxed @12% GST.

The Applicant submitted that the Hon'ble High Court of Karnataka in the case of *Taghar Vasudev Ambarish V/s. the Appellate Authority of Advance Ruling, Karnataka* has held that private hostels are covered under the category of residential dwellings and therefore covered under entry 12 of the Notification. Description of services as provided under Entry 12 is reproduced below in verbatim:

> *'Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person'.*

Basis the abovementioned submission, the Applicant had sought an advance ruling on whether the service provided by them would get covered under entry 12 of the Notification after deletion of entry 14 of the Notification.

The Applicant has also sought a Ruling on whether the charges collected towards additional allied services would be considered as naturally bundled services with services of renting of residential dwelling for residence services and whether the GST on reverse charge will be applicable on rental services to be paid to landowners.

RULING

The Authority observed that the term residential dwelling is neither defined in the Notification or the CGST Act or rules made thereunder. However, the Education guide issued by CBIC under the erstwhile Service Tax Law has defined the term residential dwelling wherein the term Residential Dwelling is interpreted in terms of normal trade parlance but does not include hotel, motel, inn, guest house, camp-site lodge, houseboat, or like places meant for **temporary stay**. In the present case, the Authority further observed that the Applicant has itself admitted to providing PG/ guest house services which inter-alia refers to paying guest accommodation/ hostel services and are akin to guest house and lodging services and therefore cannot be termed as 'residential dwelling'.

The Authority further observed that the accommodation services provided by the Applicant to the inhabitants are not of residential dwelling but just a room merely on cot basis. Also, the accommodation provided to the inhabitants does not include any individual kitchen facility. The inhabitants are also not allowed to cook in the said accommodation. Kitchen facilities and cooking are an essential characteristic for a permanent stay. The Authority ruled that the accommodation provided by the Applicant does not qualify as a residential dwelling on this count.

The Applicant in an earlier advance ruling admitted that the services provided by them are covered under services of hotel, inn etc. and thereby claimed exemption from GST in terms of entry 14 of the Notification. Now, however, the Applicant was contending that its services are covered under renting of residential dwelling for residence. In this

context the Authority ruled that the Applicant's contention is completely contradictory to their admission and apparently done to circumvent the tax liability.

The Authority further ruled that an appeal has been filed against the judgment of Hon'ble High Court of Karnataka and the issues therein were completely different. It also ruled that the judgment is not applicable in the present case. Basis these findings, the Authority ruled that services provided by the Applicant do not fall under entry 12 of the Notification and thereby are not exempt.

The Authority observed that naturally bundled services have characteristics where one service is the main service, and the other services are combined with such services and the allied/ ancillary services helps in better enjoyment of the main service. There are several factors to determine if services are naturally bundled or not. An important point to consider is whether the different elements are integral to one overall package.

The AAR is this aspect further observed that the Applicant has not furnished any information relating to such ancillary services. However, the AAR ruled that as opting for ancillary services are optional on part of the inhabitants therefore they cannot be termed as naturally bundled and have to taxed separately.

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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