



Advance Rulings and Jurisprudence under GST

# N. A. SHAH BULLETIN

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## JUDGEMENTS AND ADVANCE RULINGS ON GST

We are pleased to draw your attention to following important decisions and advance rulings on GST which might be useful for you to take call on tax position.

### Executive Summary:

Case & Citation	Issue involved	Decision
M/s GNC INFRA LLP [2022-TIOL-55-HC-MAD-GST]	Whether Supreme Court's Order dated 27.04.2021 [2021- TIOL-222-SC-MISC-LB] for extension of limitation period applies to refund application filed after expiry of two years from the relevant date?	High Court ruled that Supreme Court's Order for extension of limitation period squarely applies to refund applications filed by the petitioner.
M/S EMCURE PHARMACEUTICALS LTD [2022-TIOL-10-AAR-GST-MAHARASHTRA]	Whether GST is payable on amount recovered from employees towards the following: i. Canteen facilities provided at subsidized rate at factory and office; ii. Bus transportation facility; and iii. Non-serving / short-serving of notice period.	Applicant is not providing any canteen and transportation facility to its employees. GST is already discharged on the gross value of bills raised by third party vendors on the applicant and partial amounts recovered by applicant from its employees are part of the amount which has already suffered GST. Hence, recovery of such amounts would not be liable to GST. Further, recovery of notice pay from employees who could not serve notice period does not constitute a supply and hence, recovery thereof would <b>not</b> be liable to GST.

Please refer to brief analysis of above referred decisions / rulings given below along with our comments and views thereon.

**Case 1 - M/s GNC INFRA LLP [2022-TIOL-55-HC-MAD-GST]**

<p><b>Facts in brief &amp; Issues involved</b></p>	<ul style="list-style-type: none"> <li>• Petitioner had filed two refund applications pertaining to June'18 and August'18 tax periods on 19.04.2021 i.e. after the expiry of time limit of two years from the relevant date.</li> <li>• Authorities rejected the refund applications filed by petitioners vide orders dated 26.07.2021 and 28.07.2021 respectively stating that refund applications should have been made within two years from the relevant date.</li> </ul>
<p><b>Contentions of Petitioner</b></p>	<ul style="list-style-type: none"> <li>• In the light of suo-moto orders of Hon'ble Supreme Court wherein all limitation periods across the Board are extended, it may not be necessary to go into interpretation of the expression 'relevant date' qua CGST (Amendment) Act 2018.</li> <li>• Refund applications made on 19.04.2021 needs to be entertained and the order of Hon'ble Supreme Court clearly ensures benefit of the writ petitioner in the case on hand.</li> <li>• Further, reasons for refund rejection should have been recorded in the impugned orders as required under Rule 92(3) of CGST Rules, 2017.</li> </ul>
<p><b>Observations &amp; Decision of High Court</b></p>	<ul style="list-style-type: none"> <li>• Impugned orders dated 26.07.2021 and 28.07.2021 respectively are set aside solely on the ground that reasons for rejection of refund have not been recorded in writing in accordance with Rule 92 of said Rules.</li> <li>• Impugned order stating that the refund applications are beyond two years qua relevant date is set aside owing to the discussion and dispositive reasoning contained supra in this order i.e. refund applications made on 19.04.2021 needs to be entertained and the order of Hon'ble Supreme Court clearly ensures benefit of the writ petitioner in the case on hand.</li> <li>• Respondent shall examine the refund applications de novo and make orders afresh inter alia in accordance with Section 54 of CGST Act and Rule 92 of said Rules.</li> </ul>
<p><b>NASA Comments</b></p>	<ul style="list-style-type: none"> <li>• This is well directed decision by High Court wherein it has extended the benefit of Supreme Court order (extending the limitation period) even for filing of refund applications.</li> </ul>

	<ul style="list-style-type: none"> <li>Further, Honourable Bombay High Court has also held that benefit of Supreme Court order (extending the limitation period) applies for filing of refund applications [M/s. Saiher Supply Chain Consulting Pvt. Ltd. – W/P (L) No. 1275 of 2021].</li> </ul>
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**Case 2 - M/S EMCURE PHARMACEUTICALS LTD [2022-TIOL-10-AAR-GST-MAHARASHTRA]**

<b>Facts in brief &amp; Issues involved</b>	<ul style="list-style-type: none"> <li>Applicant is providing canteen and bus transportation facility to its employees as a part and parcel of its employment arrangement. Applicant initially pays the entire amount to its vendors and subsequently as per company policy, recovers partial amount from its employees towards such facilities.</li> <li>Further, there are instances where employees resign and leave the company without serving mandated notice period. For such instances, applicant is entitled to recover notice pay from its employees.</li> <li>Applicant had sought an advance ruling as to whether following amount recovered from its employees is liable to GST:             <ul style="list-style-type: none"> <li>Canteen facility;</li> <li>Bus Transportation facility; and</li> <li>Non-serving or short-serving of notice period.</li> </ul> </li> </ul>
<b>Contentions of Applicant</b>	<ul style="list-style-type: none"> <li>Applicant's business is to manufacture and market pharmaceuticals products and not to provide any canteen and transportation facility to its employees. Such activity is not in course of or furtherance of applicant's business. Thus, recoveries from employees is not a supply and thereby not liable to GST.</li> <li>Applicant placed its reliance on following judgements / rulings:             <ul style="list-style-type: none"> <li>Panacea Biotech Limited (Delhi HC);</li> <li>M/s Jotun India Private Limited (Maharashtra AAR); and</li> <li>POSCO India Pune Processing Centre Private Limited (Maharashtra AAR).</li> </ul> </li> <li>Applicant contended that Entry (1) of schedule-III covers services provided by employee to its employer in the course of employment or in relation to employment.</li> </ul>

	<p>Thus, any activity/transaction undertaken in course or in connection with it has been specifically excluded from ambit of supply and consequently not liable to GST.</p> <ul style="list-style-type: none"> <li>• Applicant placed its reliance on the following judgements / rulings:                             <ul style="list-style-type: none"> <li>○ GE T&amp;D India Limited (Madras HC);</li> <li>○ Sundaram Finance Limited (Supreme Court); and</li> <li>○ South Eastern Coalfields Ltd (Delhi CESTAT).</li> </ul> </li> </ul>
<p><b>Observations &amp; Decision of AAR</b></p>	<ul style="list-style-type: none"> <li>• Applicant is not engaged in the business of supplying any canteen and transportation services to its employees. The third-party vendors are providing canteen and transportation services to applicant and its employees.</li> <li>• Arranging canteen and transportation facilities for the employees is neither an activity incidental or ancillary to the activity of manufacturing and marketing of pharmaceuticals products nor can it be called an activity done in the course of or in furtherance of business. Hence, GST is not payable on the same.</li> <li>• Further, amount recovered from employees on account of non-serving / short-serving of notice period does not constitute a supply and subsequently is not liable to GST.</li> <li>• AAR relied upon following judgements / rulings to support its stand:                             <ul style="list-style-type: none"> <li>○ GE T&amp;D India Limited (Madras HC);</li> <li>○ Bharat Oman Refineries Limited (Madhya Pradesh AAAR)</li> </ul> </li> </ul>
<p><b>NASA Comments</b></p>	<ul style="list-style-type: none"> <li>• This is a favorable ruling. Quite a few favorable rulings have now been pronounced on the same lines. It is an indication that even tax administering authorities do not intend to tax amounts recovered by employer for various facilities provided to its employees.</li> <li>• As ruling of AAR does not have binding precedence, one has to take a considered call for taking position on issue of recovery made from employees in respect of canteen facility, transportation facility and notice pay.</li> </ul>

We will be glad to provide any further elaboration or elucidation you may need in this regard.

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