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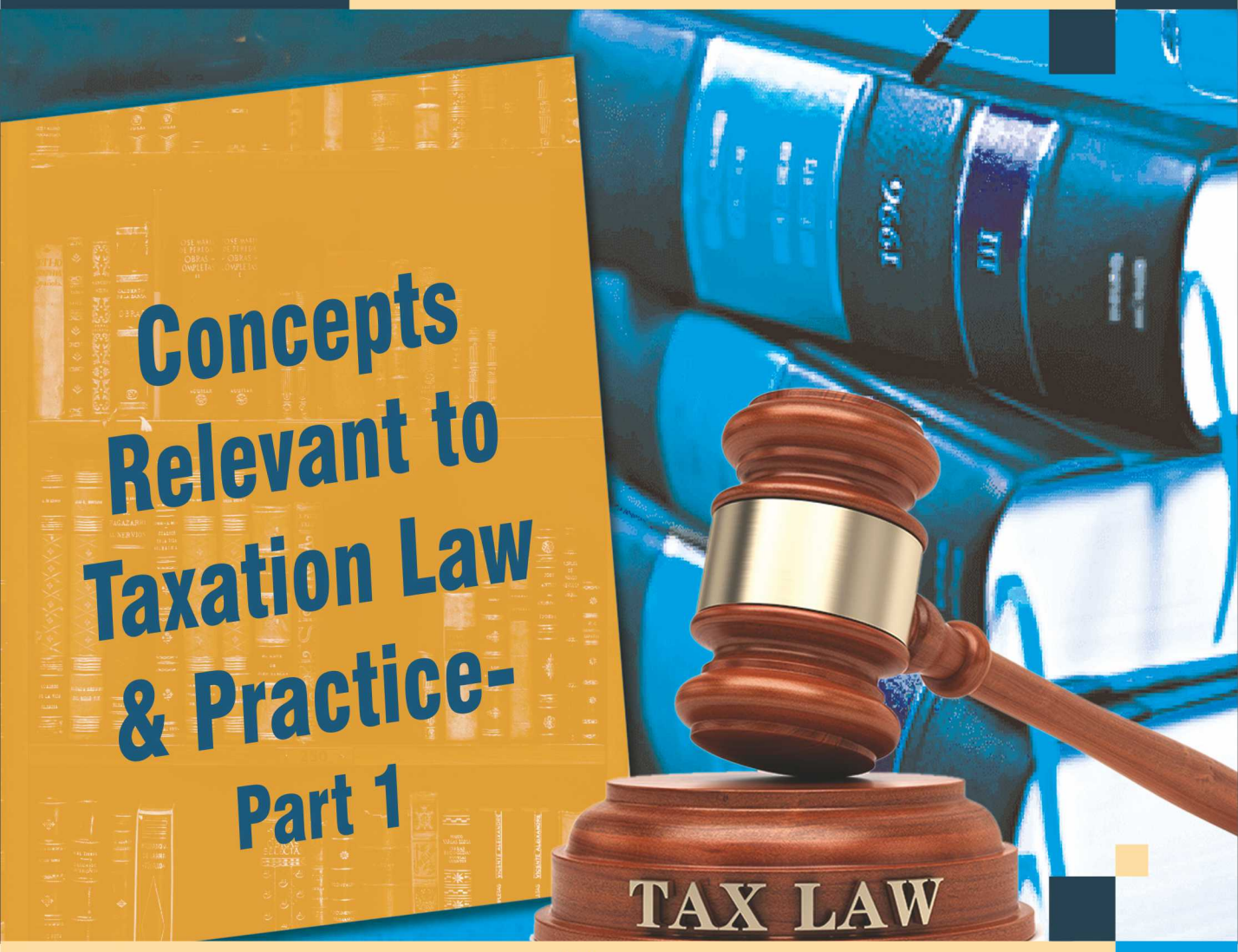

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1. The Banking Codes and Standards Board of India – AAR Maharashtra (2018-TIOL-314-AAR-GST)

Facts, Issue involved and Contention of the Applicant

Applicant is a registered society as well as a registered "Public Trust". It was formed in the year 2006 by the Reserve bank of India (RBI) for the purpose of creating awareness and ensuring the compliance of the Codes and Standards for services provided by the banks of India. For the first 5 years, applicant was fully funded by RBI and the applicant started to raise its own corpus fund for its activities from the member banks from 2007 by way of annual subscription fees depending on the Gross Domestic Assets of the member banks.

Annual subscription is collected only to run the day-to-day activities in the interest of consumer protection. Major part of expenditure is spent on creating consumer awareness of their rights and balance is towards overheads and salaries. No service is provided by applicant to member banks. Membership is voluntary.

Annual subscriptions are credited to corpus and capitalised. The entire operations are carried out only through the interest income and corpus is left untouched at present.

Applicant has sought advance ruling in respect of following questions:

i. Whether the activity of applicant is falling under the definition of "supply", as per Section 7 of the CGST Act, 2017?

ii. Whether the contribution made by the member banks to "Corpus Fund" can be considered as "Consideration", as per Section 2(31) of the CGST Act, 2017, when the said is not the "income" of the applicant?

iii. Supply is meant to be between 2 persons, whether the Applicant association/Trust and its Members are legally distinct from each other?

iv. Whether "Principle of Mutuality" hold well in GST?

v. Whether the activity of Applicant is to be termed as "Business" as provided under Section 2(17)(e) of the CGST Act, 2017?

Applicant contends that activities carried out by it does not fall within the definition of 'Supply' as per Section 7 of the CGST Act, 2017. There

has to be **a supply** of goods or services **by a person** and that too for a **consideration** in the course or furtherance of **business**.

Term 'Business' defined u/s. 2(17)(e) of the CGST Act, 2017 reads as under:

(e) Provision by a club, association, society, or any such body(for a subscription or any other consideration) of the facilities or benefits to its members.

The applicant is not providing any facility or benefit to its members. While becoming the member of the applicant, the banks undertake to adhere to the codes of banks commitment to customers and guidelines prescribed by the applicant. This is an obligation on the banks and applicant is not providing for any benefit or facility to them being a member, in any manner.

The applicant further contends that it is squarely covered under 'Principle of Mutuality' principle and not leviable to GST. The 'Principle of Mutuality' is guided by the gospel that *"No man can trade with himself; he cannot make, in what is its true meaning, taxable profit by dealing with himself".*

Applicant further supported its view with judgment of Supreme Court in case of Bankipur Club Ltd. [1997]. Further it submitted that said principle of mutuality has its relevance in all taxation laws and has universal application. Mere change in taxing statute cannot make change in fundamental concepts.

Jurisdictional officer contended that the essence of this principle of mutuality is present only in situation wherein the group of persons form an association (formal or informal) and pool their surplus income in the associations' common fund, the fund so collected is then used for the benefit of the members when needed.

In the present case, the member banks have not come together pooling their resources to form the **board** (like applicant) to be used for the benefits of the members, there is no compulsion under any enactment for the member banks to become the member of applicant. The member banks may voluntary leave the membership at any time. Thus principle of mutuality is not squarely applicable in present case. Therefore, the applicant is a **"Person"** doing **"Business"** of "Supply" of services for monetary "**Consideration**" received in the form of subscription. Hence, the supply of services by applicant is eligible to GST.

A sum total of analysis of the terms **"Supply"**, **"Consideration" and "Business"** would make it clear that the activity of the applicant falls under aforesaid terms or not.

Discussions by and observations of AAR

Authority observed that activities undertaken by the applicant are only for and in respect of member banks who have voluntarily become their members. Hence, their primary objective is to guide the public and publicise about the codes and standards and commitments of their member banks.

In absence of applicant's codes and standards, all the banks would have been required to formulate their own codes and standards for their services to their customers. Thus it is observed that a very crucial function, which the banks would have been required to perform, is being **performed by the applicant** for their **benefit** in terms of winning confidence of customers about their services.

Secondly, it is to be examined whether **these services are for a consideration or otherwise.** For performing the said activities, the applicant collected funds in the form of annual membership fees and registration fees **("Corpus fund")**. This fund is used to generate interest income which is used for performing their activities. Thus, the consideration is received in form of aforesaid fees.

Further, it was submitted that only those banks who are members will be facilitated and that too for membership fees and annual fees. This is

clearly in the form of benefit to member banks as opposed to non-member banks and these services are clearly with a view **to enhance the credibility of their banking services** and therefore to grow their banking business.

The applicant took a stand that their entire activity is squarely covered under the 'Principle of Mutuality' and not leviable to GST. This argument does not hold good for the present facts.

Ruling of AAR
In respect of question (1), activity of applicant qualifies as "**Supply**".

In respect of question (2), contribution made by the member banks will be considered as "**Consideration**".

In respect of question (3), applicant and its members are **legally distinct** from each other.

In respect of question (4), **"Principle of Mutuality"** does not hold good.

In respect of question (5), activity of applicant will be termed as "**Business**" u/s. 2(17)(e) of CGST Act.

2. Crown Beers India Private Limited – AAR Maharashtra (2018-TIOL-303-AAR-GST)

Facts, Issue involved and Contention of the Petitioner
Applicant has entered into a tie-up Agreement ("Agreement") with Privilege Industries Limited (PIL) whereby PIL undertakes brewing/ manufacturing, packaging and supply of Beer from its bottling unit to buyers / distributors in the territory identified by the applicant.

In order to manufacture Beer at the bottling unit, PIL undertakes the following activities:

- Purchase the required material (inputs); arrange labour and all other facilities.
- Carry out all processes required for brewing/manufacturing, bottling and packing of Beer.
- Maintain physical stock of beer in the Bottling unit or in warehouses.

PIL will manufacture beer in terms of agreement and in strict compliance with the policies, operating procedures and quality and performance parameters and standards laid down by the applicant.

In consideration for the fulfilment of the abovementioned obligations, PIL shall be entitled to a fixed fee for the products so manufactured.

Applicant has sought Advance Ruling for the following questions:

1. *Whether GST can be levied on the payment of fixed fee and costs received by PIL as a consideration for Brewing/Manufacturing, packing and supply of beer, which is in the nature of alcoholic liquor for human consumption and is excluded from the ambit of GST?*
2. *If the supply of beer is held to be a service by way of job work in relation to beer, what shall be the rate of GST that shall be levied to the said Taxable Supply?*

Applicant drew reference from Article 366(12A) which defines "Goods and Service Tax" to mean tax on supply of goods and services except taxes on supply of alcoholic liquor for human consumption.

Entry 54 of List II to Seventh Schedule of Constitution authorises State Government to levy taxes on supply of alcoholic liquor for human consumption.

CGST/MGST/IGST Act provide for levy and collection of GST on supply of goods or services. However, levy section under all the Acts specifically excludes supply of alcoholic liquor for human consumption.

Applicant has not disputed to the fact that the transaction of PIL falls under the scope of supply and is in course or furtherance of its business. However, applicant humbly states that the supply made by PIL is of alcoholic liquor for human consumption. Such supply is excluded from the purview of taxability at the threshold itself.

Applicant also submitted that PIL is not working on another person's goods. PIL purchases required material on its own, then manufactures, and packs the beer out of such goods. It cannot be said as "any treatment or process which is applied to another person's goods" and thereby cannot be deemed as a service under GST legislation.

Discussions by and observations of AAR

Applicant pays various costs to PIL as a consideration for purchasing the required raw materials, arranging labour and all other facilities. As per the agreement applicant would pay to PIL such costs for purchasing the goods mentioned above and therefore they are effectively their own goods.

In respect of the 'costs' paid and received by the two parties, there is no supply of goods or services in the form of sale, transfer, barter, exchange, etc., and therefore there is no requirement to pay GST on such costs paid by the applicant to PIL.

However, in respect of fixed costs paid by applicant to PIL, it is very clear that the fixed costs are paid to PIL because they are providing job work services to the applicant. In this matter of payment of fixed costs there is a supply of service by PIL to applicant in form of brewing / manufacturing, packaging and supplying of beer. For these services rendered there is a consideration which flows from the applicant to PIL in form of fixed costs.

Entire services rendered by PIL and consideration paid by applicant is in course or furtherance of business of both. Hence this amount is liable to tax under GST laws and tax is payable by supplier i.e., PIL.

In respect of second question, AAR was of the view that supply of beer as such is not a service. Service in this case is the entire gamut of brewing/manufacturing, packaging and supplying beer by PIL to the applicant for which PIL receives fixed costs as job work charges.

If the applicant had brewed/manufactured, packaged and supplied beer on their own then their activity would not have been liable to tax under the GST Laws since supply of alcoholic liquor for human consumption is out of the ambit of GST laws. It is very clear that it is a job work service provided by PIL, which is to be taxed under GST.

Ruling of AAR

In respect of question (1), taxes have to be discharged by PIL on fixed fee received and not on costs received.

In respect of question (2), supply of beer *per se* is not taxable under GST. What is taxable in subject case is the job work which is service provided by PIL to the applicant, for which they are receiving the consideration.

3. M/s. Cable Corporation of India Limited – AAR Maharashtra (2018-TIOL-302-AAR-GST)

Facts, Issue involved and Contention of the Petitioner

Applicant is a leading manufacturer and distributor of a wide range of power and control cables in India. Applicant is engaged in the work of Supply, Laying and Terminating of 220kV U/G cables package. The engagement comprises of two separate agreements with respect to the supply of goods and services envisaged, which are as follows:

- A supply of goods contract regarding the engineering, manufacturing, supply and type testing of Cable Package-C ('Goods')

- A Services Contract for Cable Package-C (it includes Route Survey, Planning, **Transportation**, etc., required for complete execution of Cable Package-C) ("Services")

Both contracts contain a "Cross Fall Breach Clause" according to which any breach in either of the contracts would be a breach of the other contract as well and would provide the recipient with an absolute right to terminate both the contracts or claim damages. The aforesaid supplies of both contracts have separate consideration. One of such supplies is that of transportation with separate consideration.

Applicant seeks ruling as to whether the supply of transportation services, rendered by the applicant, will be exempt from the levy of GST in terms of Sl. No. 18 of the Notification No. 12/2017 - Central Tax (Rate) dated 28th June, 2017.

Entry 18 of Notification No. 12/2017 – Central tax (rate) **exempts** *services by way of transportation of goods by road except the services of GTA / courier agency.*

Applicant submits that it is hiring services of GTA to provide aforesaid transportation services but itself is not a GTA, and therefore, is eligible to claim exemption under Sl. No. 18.

Applicant further states that above goods and services are not covered under definition of "Composite Supply" u/s. 2(30) of CGST Act which reads as under:

"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, ***one of which is a principal supply;***

Since in case of applicant's case, there is more than one principal supply [defined u/s. 2(90)], therefore, aforesaid supplies of goods or services cannot be covered under definition of Composite Supply. Applicant stated that the fact that contract envisages different consideration for each supply, it is indicative of parties intention to treat each of them separate and independent. Even though contract stipulates single consideration for transportation and insurance services, the applicant is majorly charging for transportation services.

Discussions by and observations of AAR

Applicant is not transporting the goods but hiring services of GTA to undertake transportation of goods and is discharging GST liability under reverse charge mechanism. Therefore, he is a recipient of service, not the supplier thereof.

Further, the first contract includes ex-works supply of all equipment & materials. The scope of the works include testing and supply of cable package required for successful commissioning.

The second contract includes all other activities required to be performed for complete execution of the cable package. The scope of the work includes transportation, insurance and other incidental services. It is apparent that the first contract has 'no leg' unless supported by the second contract. The contractee is aware of such interdependence of the two contracts. It is abundantly clear that notwithstanding the breakup of the contract price, the contract shall, at all times, be construed as a single source responsibility and the applicant shall remain responsible to ensure execution of both the contract to achieve successful completion. Any breach in any part of first contract will be treated as breach of second contract and *vice versa*.

The two contracts are, therefore, linked by a cross fall breach clause deeming that any breach in either of the contracts to be a breach of the other contract as well, providing the recipient with an absolute right to terminate both the contracts or claim damages. The "cross fall breach clause" settles unambiguously that

supply of goods, their transportation to the contractee's site delivery and related services are not separate contracts, but only form part of an indivisible composite works contract supply, as defined under Section 2(119) of the GST Act, with 'single source responsibility.

Composite nature of the contract is clear from the facts that first Contract cannot be performed satisfactorily unless the goods have been transported and delivered to the contractee's site.

Both these contracts consisting of cross fall breach provisions are in the nature of 'Composite supply of Works Contract' which is a service and would be taxable @ 18% in terms of Sr. No. 3(11) of Notification No. 11/ 2017 — Central tax (Rate) dated 28-6-2017 and artificial bifurcation of contracts & scope of work is not legal and proper.

Ruling of AAR

In view of above, the exemption will not be available to applicant for transportation services. The first and second contracts referred above are in the nature of 'Composite supply of Works Contract which is a service and would be taxable @ 18%.

4. Lear Automotive India Pvt. Ltd.– AAR Maharashtra (2018-TIOL-306-AAR-GST)

Facts, Issue involved and Contention of the Petitioner

Applicant is engaged in the manufacture of automotive seats, which is manufactured in its various plants located in Maharashtra. The present case is filed in respect of valuation of supply of automotive parts (final goods), which are manufactured **out of tools received from the customers on Free of Cost (FOC) basis**.

Applicant manufactures automotive seats for various customers such as Ford Motor Private Limited, Volkswagen India Private Limited, Mahindra and Mahindra Limited, etc., by using tools / moulds either provided or owned by them (customers).

Generally, the applicant gets the tools from the third party as per the requirements of the customers. The property of the tools is transferred to the applicant and eventually to the customer. However, the possession remains with the applicant to use the same to manufacture the products as per the requirements.

Applicant has sought advance ruling as to *whether the amortised value of the tool received on FOC basis from the customer is required to be included in the value of finished goods manufactured and supplied by the applicant to the customer?*

In terms of section 15(2)(b) of the Act, if any amount which the supplier is liable to pay but the same has been incurred by receiver of the supply, then the said amount has to be added while determining the transaction value. Thus, it is a matter of commercial arrangement between parties as to what is in the scope of both the parties. Once it is clear that a particular activity is in the scope of receiver of supply, then there is no question of adding the value of the same in determining the transaction value.

The only question, which requires examination, is whether the price paid by customers is sole consideration for the supply of parts made by applicant. In this regard, providing the tool which is in the domain of receiver of the supply as per the terms of contract cannot be said to be non-monetary consideration provided by the receiver of the supply to the provider of supply since upon paying the tool development charges, customers are not incurring any expenses, which the applicant was liable to incur. Ownership of the tool remains with the customers and development of tools was always meant to be borne by the customers.

Applicant also relied on Circular 47/21/2018 – GST dated 8-6-2018 issued by CBIC which

clarified that value of moulds, jigs, etc. shall not be factored or amortised in value of supply in a situation where the contract stipulates that recipient shall supply moulds, jigs, etc.

Discussions by and observations of AAR

Issue to be decided in present proceeding is whether the goods which are claimed to be supplied FOC would form part of value of taxable supply.

Several representations were received by CBEC seeking clarification on issue 'whether moulds and dies owned by the Original Equipment Manufacturer (OEM) that are sent FOC to Component Manufacturer (CM) is leviable to tax and whether OEM's are required to reverse ITC?

CBEC *vide* its circular 47/21/2018 – GST dated 8-6-2018 clarified that goods owned by OEM that are provided to CM on FOC basis does not constitute a supply as there is no consideration. Value of goods provided on FOC basis will not be added to the value of supply of components. However case is different if contractual obligation to provide the tools is cast on CM but the same is supplied by OEM and in such case, amortised cost of tools need to be added to the value of supply of component.

AAR scrutinised various purchase order's and agreements entered into by the applicant with the customers. On scrutiny of various agreements, AAR was of the view that customer is liable to pay applicant the tool cost for development and manufacture of tooling. It is clearly indicated that the tools procured by the applicant from third party vendor are ultimately supplied to customers for which tax invoice is raised and applicable GST has been charged. Thus the absolute ownership of tools get transferred to OEM. However physical possession of the tool remains with the applicant during manufacturing process.

Tools which are supplied by applicant to customers on payment of GST and which are further supplied by customers to applicant for use in process of the manufacture clearly indicate that supply of tool is of goods owned by customers which is on FOC basis and the transaction is not covered u/s. 15(2)(b).

Ruling of AAR

In respect of question on which ruling is sought, the amortised value of the tool received on FOC basis from the customer is not to be included in the value of final goods.

5. Merck Life Science Private Limited – AAR Maharashtra (2018-TIOL-308-AAR-GST)

Facts, Issue involved and Contention of the Petitioner

Applicant has entered into a Business Transfer Agreement dated 21st June 2018 with Merck Limited (seller) wherein the seller has agreed to sell, transfer, convey, assign and deliver to the applicant or to any affiliates as directed by applicant for the BPL business (constituting of BP business, LS business and PM business) which would be transferred as a **slump sale on going concern basis**.

Pursuant to the above, seller, **on the direction of the applicant,** entered into an agreement with:

- Merck Specialties Private Limited (MSPL) for transferring its BP business;
- Merck Performance Materials Private Limited (MPMPL) for transferring its PM business; and
- Applicant for transferring its LS business.

Applicant has sought advance ruling for the following questions:

i. Whether applicant's direction to the seller (directed in agreement dated 21st June 2018) for direct transfer of BP business to MSPL and PM business to MPMPL, respectively would qualify as a 'supply between the applicant' and 'MSPL/MPMPL'?

ii. *If the above question is 'affirmative' then as the parties are related, even in absence of the actual consideration does the applicant have to attribute a notional consideration and charge GST in line with Schedule 1 of GST Act to be compliant?*

iii. *If the answer to both the questions are 'affirmative' then as the recipients (MSPL/ MPMPL) are eligible to avail full input tax credit (ITC) then the notional consideration (percentage of the business transfer value) would be only academic and will the invoice value be considered as open market value?*

Applicant's understanding was as under:

- Applicant has only directed the seller to sell its BP and PM business to MSPL and MPMPL respectively.
- There is no separate activity flowing between applicant and MSPL / MPMPL.
- Consideration would be received by seller directly from MSPL / MPMPL.
- There would be no separate consideration flowing from MSPL / MPMPL to the applicant.
- Applicant does not qualify as intermediary under the instant case
- Transaction is not in course or furtherance of business
- Transaction will also not qualify under Schedule II
- Transaction is revenue neutral in hands of the government.

Even if above transaction was considered to be taxable, then open market value should be the value declared in invoice. Further as the transaction would be used or intended to be used in course or furtherance of business by MSPL and MPMPL, both the parties are eligible to claim ITC of GST charged by applicant.

Discussions by and observations of AAR

In respect of the agreements entered into, the applicant has only directed the seller to transfer BP business and PM business as going concern on slump sale basis to the affiliates i.e. MSPL and MPMPL.

In order to ascertain whether direction given by the applicant qualifies as a supply between the applicant and MSPL/MPMPL, AAR referred to the scope of supply, Schedule I and Schedule II of CGST Act.

Act of direction on part of applicant needs to be examined in respect of it being service under para 5(e) of Schedule II which reads as:

"(e) Agreeing to the obligation to refrain from an act or to tolerate an act or a situation or to do an act."

AAR examined the terms of various agreement (entered into between the applicant and seller and the affiliates) in order to ascertain whether the act of giving direction by the applicant would fall in the scope of supply. It was of the view that:

- Role of applicant is very crucial in respect of various agreements entered into.
- Without the directions of the applicant, the agreement between seller and affiliates could not have materialised.
- Applicant is an active party to all the agreements and its directors have active role in all aspects of the agreement.

Role of applicant is clearly a service covered in para 5(e) of Schedule II wherein the applicant is doing the act of giving direction to the seller for transfer of its businesses to the affiliates. The transfer of business as well as the terms and conditions thereof are as per the direction of the applicant.

Sale and purchase could only have been taken place because of the applicant and thus the act of direction is very crucial and further sale to affiliates cannot take place without the direction

of the applicant. The applicant is the central pillar of the slump sale.

Since it is provision of service between related persons, value needs to be determined in accordance with Rule 28 of CGST Rules.

Ruling of AAR

In respect of the questions (1), the direction provided by the applicant would qualify as supply between 'the applicant' and 'MSPL/ MPMPL'.

In respect of question (2) and (3), the value would be determined as per Rule 28 of CGST Act, 2017.

6. M/s. Sir J. J. College of Architecture Consultancy Cell (2018-TIOL-313-AAR-GST)

Facts, Issue involved and Contention of the Petitioner

Applicant is consultancy cell formed as per the guidelines of the Council of Architecture which is a statutory body under the Act of Parliament and University of Mumbai. Government of Maharashtra has permitted the applicant to render services of Architecture. Applicant provides services only to Government bodies, State corporations and PSUs in relation of comprehensive architecture services which include project design, structural design, MEP design, drawings, study reports, etc.

Applicant has entered into an agreement with Municipal Corporation of Greater Mumbai (MCGM) for an upcoming project of establishment and development of a Textile Museum in Mumbai. Applicant will provide comprehensive architecture services and project management services, which include project design, structural design, MEP design, drawing, study reports, reviewing tender document for inviting contractors, site supervision and certifying bills of contractors paid by MCGM.

As per Notification No. TPB 4312/789/CR-27/2013/UD-11 of urban land department, the textile museum is treated as part of recreational ground area and ancillary facilities of recreation like exhibition, fashion show, cafeteria, etc. have been allowed to be developed in the said area.

*Applicant seeks ruling as to whether it is liable to charge GST on the **consultancy services** rendered to MCGM for an upcoming project of establishment and development of textile museum in Mumbai.*

Above question relates to applicability of Sl. No. 3 of Notification No. 12/2017-Central Tax(Rate) which exempts - *"**Pure services (excluding works contract service** or other composite supplies involving supply of any goods) provided to Central Government, State Government or Union Territory or local authority or a governmental authority by way of any activity **in relation to any function entrusted** to a panchayat under **Article 243G** of the Constitution or in relation to any function entrusted to a Municipality under **Article 243G** of the Constitution."*

Applicant submits that agreement entered with MCGM has been registered after payment of stamp duty with State Government under Article 63/63 as works contract agreement as advised by MCGM. Further, establishment of museum and recreation ground is not considered as function entrusted under aforesaid Articles of Constitution, therefore, GST is chargeable.

Discussions by and Observations of AAR

Applicant provides comprehensive architecture services to MCGM. It involves heritage restoration and adoptive use of various structures such as textile museum, library building, back office support for staff, underground public parking, etc.

Agreement entered into by applicant and MCGM has been registered after payment of stamp duty with State Government under articles 63/63 as works contract agreement.

Applicant in its application have stated that establishment and development of museum and recreation ground is not considered as a function listed in 12th schedule to be read with Article 243W of Constitution.

Applicant has not provided detailed copy of contract entered into with MCGM which would in detail give exact nature of activities being done by them and which would be very crucial in deciding whether the services provided by applicant are in nature of pure services or works contract services.

Jurisdictional officer has submitted copy of receipt of stamp duty paid for registration of contract wherein the contract is clearly shown to be works contract. Further, the applicant also stated in their submissions that agreement is registered as works contract agreement.

Thus services provided by applicant are in nature of works contract services and not eligible for exemption.

Ruling of AAR

In respect of question raised by the applicant, GST is leviable on consultancy services rendered to MCGM for an upcoming project of establishment and development of textile museum in Mumbai.

7. M/s. GGL Hotel and Resort Company Ltd. – AAR West Bengal (2019-TIOL-07-AAR-GST)

Facts, Issue involved and Contention of the Applicant

Applicant is engaged in the hospitality and real estate business and is contemplating a new project (construction of resort) on a leasehold land acquired from Bengal Housing Infrastructure Development. The project is proposed to be completed within a period of two years from the date of foundation of the project. The applicant shall capitalise lease rent paid during the pre-operative period in the books of account.

Applicant seeks ruling as to *whether ITC is available for lease rent paid during pre-operative period for the leasehold land on which the resort is being constructed to be used for furtherance of business, when the same is capitalised and treated as capital expenditure.*

The concerned officer submits that credit of tax paid on goods and services used for construction of immovable property is allowed only if such immovable property is in the nature of plant and machinery. The expression plant and machinery has been defined *vide* explanation to section 17 to mean apparatus, equipment , and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services and includes such foundation and structural supports but excludes *inter alia* land, building, or any other civil structures. The input tax credit is, therefore, not admissible for the lease rent paid during the pre-operative period for the leasehold land on which a resort is being constructed.

Applicant submitted that it is eligible to avail ITC in respect of lease rent paid for leasehold land in terms of Section 16(1). Further, Section 17 of the CGST Act deals with apportionment of credit and blocked credit. Sub-section 5(d) of the said Section reads as under:

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

The expression "construction" is explained to include reconstruction, renovation, additions, alterations, or repairs, to the extent of capitalisation, to the said immovable property. GST Act does not define the exact nature of goods or services received that are deemed to relate to construction of immovable property,

therefore, meaning in common parlance is to be considered.

The lease rent for the pre-operative period is capitalised under the head 'Leasehold Land' and not under the head 'Building Block'. Therefore, it can be inferred that the lease rent is not used for construction of the resort. Hence, the renting services cannot be said to be received for the construction of immovable property as there is no nexus, direct or indirect, between the construction of the hotel and banquet and the rental service availed. Further, mere capitalisation of the lease rental cannot make such services as received for the construction of immovable property.

Discussion by and observation of AAR

The moot question is whether the lease rental paid during the pre-operative period should be treated as part of the cost of goods and services received for the purpose of constructing an immovable property (other than plant and machinery) on the applicant's own account.

Para 23 of Accounting Standard 10 is relevant. It says that the cost of a self-constructed asset should be determined using the same principles as for an acquired asset, and it is usually the same as the cost of constructing an asset for sale. When an immovable property like a building is sold, the profit is computed by deducting the cost of the property, including the land, from the sale proceeds. The cost of constructing the immovable asset, therefore, includes the lease rental paid for right to use the land on which the asset is to be built.

Construction of the hotel etc., is impossible unless the applicant enjoys uninterrupted right to use the land. It is clear from the agreement that applicant cannot enjoy that right if he fails to pay the lease rental. Construction of the immovable property is, therefore, critically dependent on the supply of the leasing service. The nexus between them is, therefore, direct and the two are inseparable. The leasing service for right to use the land is, therefore, a supply for construction of the immovable property.

The prohibition from availing input tax credit, as provided under section 17(5)(d) of the GST Act extends to the immovable property in general (other than plant and machinery), which includes the supplies received for retaining the right to use and develop the land. Such supplies are essential for construction of the civil structure on the piece of land.

The applicant will admittedly capitalise the lease premium. The property is, therefore, admittedly being constructed on the applicant's own account and treated as fixed asset, including the lease rental paid. Whether the lease rental paid for the pre-operative period is capitalised under the head 'Leasehold Land' or 'Building Block' is of little significance in this context.

Ruling by AAR

Input Tax Credit is not available to the applicant for lease rent paid during pre-operative period for the leasehold land on which the resort is being constructed on his own account, when the same is being capitalised and treated as capital expenditure.

❍□❍

What is the use of living a day or two more in this transitory world? It is better to wear out than to rust out – specially for the sake of doing the least good to others.

— Swami Vivekananda