GST – Recent Judgments and Advance Rulings

CA Naresh Sheth & CA Jinesh Shah

A. WRIT PETITIONS

1. *M/S. BRAND EQUITY TREATIES LIMITED VS. THE UNION OF INDIA – DELHI HIGH COURT [2020-TIOL-900-HC-DEL-GST]*

Facts, Issue involved and Contention of the Petitioner

Petitioner forms a part of bigger conglomerate and the tax operations are undertaken at the group level. Owing to dependence at group level in the context of tax compliance and multiple entities involved, petitioner was unable to file the declaration in Form GST TRAN-1 within the prescribed due date. As a result, it was deprived of taking forward the accumulated credit amounting to ₹ 72,80,529/- in GST regime.

Contentions of Petitioner

GST system at the relevant point of time, and even presently, is in a nascent 'trial and error' phase. Petitioners should not be made suffer on account of inefficiency in system by denying them carry forward of accumulated CENVAT credit under GST regime. Accumulated CENVAT credit is property of the assessee and a constitutionally protected right under Article 300A of the Constitution which cannot be taken away by framing Rules without there being any substantive provision in this regard under the Act.

Time limit specified under Rule 117 of CGST Rules is procedural in nature and not a mandatory provision. Accumulated credit is a vested right which cannot be taken away on account of failure to fulfil conditions which are merely procedural in nature.

Reliance was placed on following two judicial pronouncements:

- *A.B. Pal Electricals vs. Union of India [2019-TIOL-2930-HC-DEL-GST]*
- *SCG Contracts India Pvt. Ltd. vs. KS Chamankar Infrastructure Pvt. Ltd. [2019 SCC OnLine SC 226]*

Discussions by and Observations of High Court

CENVAT Credit stood accumulated, acquired and is a vested right on the appointed day

Section 140(1) provides for transition of accumulated CENVAT credit under GST regime. This pre-supposes that CENVAT credit of eligible duties has therefore accrued and is existing as reflected in the CENVAT credit register. This credit in every sense stood accumulated, acquired and vested on the appointed date as it was reflected in the said CENVAT credit register in the previous regime.

Rules cannot override the substantive provisions of the Act

The manner and procedure to carry forward the said CENVAT credit u/s 140(1) was to be 'prescribed'. This brings us to Rule 117 of CGST Rules, the relevant provision prescribing the manner in which the CENVAT credit has to be transitioned. Further, Rule 117 also imposed time limit of 90 days (From the appointed day i.e. 1st July, 2017) to carry forward the accumulated CENVAT credit. This time limit was extended several times until finally it was notified as 27th December, 2017.

Only the manner i.e. the procedure of carrying forward was left to be provided by use of the words "in such manner as may be prescribed" u/s 140(1). There is no provision in the Act which prescribes the time limit for transition of CENVAT credit and the same has been introduced only by way of Rule 117. CENVAT credit stood accrued and is the vested property of the assesse. It is a constitutional right under Article 300A of the Constitution. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision in the GST Act.

Rule 117 is procedural and directory, and cannot affect the substantive right of the registered taxpayer to avail of the existing / accrued and vested CENVAT credit. The procedure could not run contrary to the substantive right vested under sub Section (1) of Section 140.

Rule 117 is directory and not mandatory and hence, read down

There is no consequence provided in Rule 117 on account of failure to file GST TRAN-1. In absence of any consequence being provided u/s. 140, to the delayed filing of TRAN-1 Form, Rule 117 has to be understood as directory and not mandatory. Hence, Rule 117 has to be read down insofar as it prescribes the time-limit for transitioning of credit. Therefore, non-compliance with time limit prescribed u/r 117 would not result in the forfeiture of the rights.

There is nothing sacrosanct about the time limit so provided

Notification 48/2018-CT dated 10th September, 2018, the government inserted Sub-rule (1A) to Rule 117, whereby, commissioner (on recommendation of council) was empowered to extend the time limit in case where the taxpayer faced technical difficulties on common portal. Thus, for a specific class of persons, the time limit has gone way beyond the period originally envisaged, and has still not expired.

Thus, there is nothing sacrosanct (meaning - regarded as too important or valuable to be interfered with) about the time limit so provided.

Sub-rule (1A) of Rule 117 is a patchwork

The purpose for which Sub-Rule (1A) to Rule 117 has been introduced was to save and protect the rights of taxpayers to avail of the CENVAT credit lying in their account. That objective should not be restricted only to the class of persons who are facing technical difficulties on common portal. The time limit for transitioning the CENVAT credit into GST regime cannot be discriminatory and unreasonable. There has to be a rationale forthcoming and, in absence thereof, it would be violative of Article 14 of the Constitution.

It is not as if the Act completely restricts the transition of CENVAT credit in the GST regime by a particular date, and there is no rationale for curtailing the said period, except under the law of limitations. The arbitrary classification, introduced by way of sub Rule (1A), restricting the benefit only to taxpayers whose cases are covered by "technical difficulties on common portal" subject to recommendations of the GST Council, is arbitrary, vague and unreasonable.

The introduction of Sub-rule (1A) in Rule 117 is a patchwork solution that does not recognize the entirety of the situation.

Time limit to carry forward CENVAT credit into GST has to be construed as per Limitation Act

Transitioning of CENVAT credit into GST cannot be in perpetuity. In absence of any specific provisions under CGST Act, a period of three years, as prescribed by Limitation Act, 1963, from the appointed date would be the maximum period for availing of such credit (i.e. 30th June, 2020).

Judicial pronouncements analysed and cited by Hon'ble High Court are:

- ***Blue Bird Pure Pvt. Limited vs. Union of India [2019-TIOL-1564-HC-DEL-GST]***
- ***Bhargava Motors vs. Union of India [2019-TIOL-1060-HC-DEL-GST]***
- ***Kusum Enterprises Pvt. Limited vs. Union of India [2019-TIOL-1509-HC-DEL-GST]***

Decision of HC

In absence of any provision under CGST Act, Rule 117 cannot prescribe time limit of transitioning CENVAT credit into GST regime. Further, in absence of any time limit under CGST Act, time limit of three years (as prescribed under Limitation Act, 1963) from the appointed day has to be construed as time limit for transitioning CENVAT credit into GST regime. Also, sub-rule (1A) to Rule 117 is held to be ultravires to Article 14 of the Constitution of India.

2. ***M/S. BHARATI AIRTEL LIMITED VS. THE UNION OF INDIA AND ORS. – DELHI HIGH COURT [2020-TIOL-901-HC-DEL-GST]***

Facts, Issue involved and contention of Petitioner

Petitioner is engaged in providing telecommunication services in India. With the advent of GST, petitioner remoulded its system from centralized registration under the erstwhile service tax regime to multiple registrations under GST in order to bring it in conformity with the new laws.

During the period July, 2017 to September, 2017 ('relevant period'), the petitioner in its monthly GSTR-3B recorded the ITC on estimated basis. As a result, the petitioner had to discharge GST liability for relevant period in cash. The exact ITC available for the said period were known only in the month of October, 2018 when the government had operationalised Form GSTR 2A. Thereupon, the precise details of ITC was computed and they realised that ITC for the relevant period was under reported and excess payment of tax in cash was done to the tune of Rs. 923 crores. Petitioner desired to correct its return for the relevant period, but was being prevented from doing so as there was no enabling statutory procedure implemented by the Government.

Circular 7/7/2017-GST dated 01.09.2017 specifically reiterated the fact that any differences in the details of outward supplies and ITC will be corrected in that particular month to which the details pertain. However, on 29.12.2017, Government, vide circular no. 26/26/2017–GST ('relevant circular') kept Circular 7/7/2017–GST in abeyance. Para 4 of Circular No. 26/26/2017–GST dated stated that FORM GSTR-3B can be corrected only in month in which errors were noticed.

Petitioner's grievance is that there is no rationale for not allowing rectification in the month for which the statutory return has been filed. This is also totally contrary to the statutory scheme of the CGST Act - which provides that the data filled by a registered person will be validated in that month itself, and thereafter any unmatched details be rectified in the month in which it is noticed. Accordingly, Petitioner impugns Rule 61(5), Form GSTR-3B and Circular No. 26/26/2017-GST dated 29.12.2017 as ultra vires the provisions of CGST Act to the extent, they do not provide for the modification of the information to be filled in the return of the tax period to which such information relates. Further, due to reduced output tax liability on account of low tariff, ITC could not be fully adjusted against the liability in

subsequent month. They also seek refund of the excess tax paid through cash.

Contentions of Petitioner

As per section 37 to 43 of the Act, a scheme for filing details of outward supplies (Form GSTR -1), inward supplies (Form GSTR-2), return of inward and outward supplies, ITC availed and tax paid (Form GSTR-3) was to be followed. However, while implementing the law, government could not operationalise Form GSTR-2 & 3 and, as a result a summary scheme of filing Form GSTR-3B was introduced. This form is filled in manually and, therefore, has no inbuilt checks and balances that could ensure that the data uploaded by the Petitioner was accurate, verified and validated. The summary scheme introduced by Rule 61 (5) being in complete variance with the machinery originally contemplated under the GST Scheme, stifled the rights of the Petitioner by not permitting the validation of the data prior to the same being uploaded. In absence of such validation, the chances of incorrect data being uploaded cannot be eliminated.

Circular No. 7/7/2017-GST dated 01.09.2017, provided for system based reconciliation of information furnished in Form GSTR-1 and Form GSTR-2 with Form GSTR-3B. Para 6 of the said circular states that any differences between the outward supplies and ITC shall be corrected in that particular month to which the details pertain. However, due to non-operationalisation of Form GSTR-2 & 3, Circular 26/26/2017–GST was issued wherein it was stated that Form GSTR-3B can be corrected only in the month in which errors were noticed. It also further clarified that amount remaining unadjusted can be adjusted in Form GSTR-3B for subsequent periods.

There is no rationale for not allowing rectification in the month for which the statutory return has been filed. This is also contrary to the statutory scheme of the CGST Act.

Reliance was placed on the following judicial pronouncements

- ***APP & Company Chartered Accountants [2019-TIOL-1422-HC-AHM-GST]***
- ***Panduranaga Stone Crushers [2019-TIOL-1975-HC-AP-GST]***
- ***Adfert Technologies Pvt. Ltd. [2019-TIOL-2519-HC-P&H-GST]***
- ***Lease Plan India Pvt. Ltd. [2019-TIOL-2164-HC-DEL-GST]***
- ***Blue Bird Pure Pvt. Ltd. [2019-TIOL-1564-HC-DEL-GST]***

Discussions by and Observations of High Court

Statutory scheme of return filing as envisaged in GST law

Section 37(1) requires taxpayer to furnish details of outward supplies in Form GSTR-1. These details are communicated to recipient in auto-populated Form GSTR-2A.

Section 38(1) enables recipient to verify, validate, modify or delete the details auto-populated in Form GSTR-2A. Subsequent to such verification and modifications, the recipient is required to furnish details of inward supplies in Form GSTR-2. These details are communicated to supplier's u/s 38(3) and the suppliers can either accept or reject such details and Form GSTR-1 shall then stand amended accordingly.

Section 38(5) and 39(9) of the Act provide that details that have remained unmatched shall be rectified in the return to be furnished for the month during which such omission or errors are noticed. Section 39 of the Act provides for furnishing of return in Form GSTR-3 detailing inward supplies, outward supplies, ITC, tax payable and paid.

On perusal of the above provisions, it is clear that statutory provisions of the Act provide for

facility for validation of monthly data through government's IT system. Under GST law, the information submitted by taxpayer is not only auto-populated but is also verified and confirmed by recipient in the same month. The statutory provisions provided a right to a registered person for rectifying the details in the very same month to which they pertain.

Form GSTR-2A was made operational only in September, 2018 by the Government. If the statutorily prescribed mechanism i.e. Form GSTR-1, 2A, 2 and 3 had been operational, the petitioner with reasonable certainty would have known the correct ITC available to it in the relevant period, and could have discharged its liability through ITC instead of Cash.

Adjustment of tax liability in the subsequent period would not recompense the petitioner

High Court took a note of the impugned circular which provides for adjustment of liability/ITC in Form GSTR-3B of subsequent period. Court held that possibility of adjustment of accumulated ITC in future, cannot be a ground to deprive petitioner from fully utilising the available ITC which it is statutorily entitled to do so. Further, it observed the calculations placed on record by the petitioner and held that adjustment of tax liability in subsequent period cannot recompense the petitioner.

Impugned circular to be read down

Para 4 of the impugned circular is not in consonance with the provisions of CGST Act. The restriction introduced by the impugned circular has to be in conformity with the scheme of the Act and the provisions contained therein. Circular issued by the board cannot be contrary to the Act. In this regard, following judicial pronouncements were cited by the Hon'ble court:

- ***Commissioner of Central Excise, Bolpur vs. Ratan Melting and Wire Industries***
- ***Kalyani Packaging Industry vs. Union of India [2004-TIOL-82-SC-CX]***

In light of the above discussion, Court read down para 4 of the impugned circular to the extent it restricts rectification of Form GSTR-3B for the period to which the error relates.

Excess tax paid in cash admissible as refund

High Court, taking note of refund provisions, held that while government may be correct in stating that the petitioner's case does not qualify as 'payment of excess tax', however, the circumstances under which the petitioner made excess payment of tax cannot be ignored. Since the Respondents could not operationalize the statutory forms envisaged under the Act, resulting in depriving the Petitioner to accurately reconcile its input tax credit, the Respondents cannot today deprive the Petitioner of the benefits that would have accrued in favour of the Petitioner, if such forms would have been enforced. The Petitioner, therefore, cannot be denied the benefit due to the fault of the Respondents.

Decision of High Court

Hon'ble court allowed the petitioner to rectify Form GSTR-3B for the period to which the error related i.e. July, 2017 to September, 2017. The court also directed government to verify the claim made by petitioner and give appropriate effect to the order within two weeks of filing of rectified Form GSTR-3B by petitioner.

3. ***UNION OF INDIA; STATE OF KARNATAKA; VS. M/S. LC INFRA PROJECTS PRIVATE LIMITED [2020-TIOL-827-KAR-GST]***

Facts, Issue involved and Contentions of the Petitioner

Revenue ('Petitioner') has preferred the present appeal against order passed by a single bench in Writ Petition filed by ***M/s. LC Infra Projects Private Limited [2019-TIOL-1660-HC-KAR-GST]*** ('impugned order').

Background of the judgement delivered by single judge bench in above referred writ petition

M/s. LC Infra Project was registered under GST legislation and was entitled to claim input tax credit in respect of GST paid to its sub-contractor. Some of its sub-contractors failed to file their returns and hence department addressed an email seeking clarification as to availment of ITC on such invoices. It was contended by department that there was excess availment of ITC to the tune of ₹ 2.62 crores. Department proceeded to collect interest amounting to ₹ 81.29 lakhs and sought for attachment of bank account of the assessee without issuing any show cause notice. Assessee, therefore, preferred a writ before Hon'ble High court to set aside the demand of interest and order attaching the bank account.

High Court took note of relevant provisions of CGST Act ('the Act') as well as submissions made by assessee as well as revenue to arrive at following decision:

- Issuance of SCN is sine qua non to proceed with the recovery of interest payable u/s 50 of the Act.
- Demand of interest without issuing SCN is breach of principle of natural justice.
- It is trite law that any order passed by quasi-judicial authorities in contravention of the principle of natural justice, cannot be sustained.
- Section 75(12) of the Act is applicable only to the self-assessment made by the assessee and not to quantification or determination made by the Authority.

Revenue preferred an appeal on the ground that demand of interest is on account belated payment of tax based on the self-assessment and hence it is not necessary to issue a show cause notice u/s. 73(1) for demand of interest only u/s. 50(1).

Discussions by and Observations of High Court

Under sub section (1) of Section 50 of the GST Act, interest can be demanded if an assessee fails to pay the tax or any part thereof within the specified period.

On the factual aspect, whether there was a failure on the part of the assessee to pay the tax or any part thereof within the period prescribed, the assessee is entitled to be heard as he could always point out on the basis of the material on record produced that there was no delay in payment of tax.

On plain reading of sub section (1) of Section 73 of the GST Act, it is applicable when any tax has not been paid or short paid. It contemplates that a Show cause Notice is to be issued to the assessee calling upon him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 of the GST Act.

However, before penalizing the assessee by making him pay interest u/s 50(1), the principles of natural justice ought to be complied with. The impugned demand is to be set aside only on the ground of the breach of the principles of natural justice by granting liberty to the revenue to initiate action in accordance with law.

Decision of High Court

Two Judge bench upheld the order of Single Judge stating that show cause notice is sine qua non to proceed with recovery of interest payable u/s. 50(1).

B. APPELLATE AUTHORITY OF ADVANCE RULING

4. *KM TRANS LOGISTICS PRIVATE LIMITED – AAAR RAJASTHAN (2020-TIOL-20-AAAR-GST)*

Facts and Issue involved

Appellant ("KTLP") is engaged in providing transport services to various manufacturers of motor vehicles for carrying their vehicles from factory to various cities in India where authorized dealers are located. The appellant has entered into an agreement with these parties and will be providing transportation services with own vehicles but without issuing any consignment note (LR/GR).

Appellant had sought advance ruling for the following:

1. *Whether transportation by own vehicles on the basis of Invoice(s) and E-way Bill without issuing the consignment note (LR/GR) will be covered under Exempted supply / Non-GST supply.*
2. *Whether Rule 42 of the CGST Rules 2017 will apply in case where there is GST and Non-GST supplies and there is a common consumption of input and input services?*

Discussions by and observations of AAR

The definition of Goods Transport Agency (GTA) as per Notification No. 11/2017-CT(R) dated 28.06.2017 is as under:

*"**Goods transport agency**" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.*

Where a consignment note is issued, it implies that the lien on the goods has been transferred and the transporter of the goods becomes responsible for the goods until its safe delivery to the consignee. Further, the appellant is carrying supplier's invoice and e-way bill while providing transport service and the e-way bill format as per 12/2018-CT dated 07.03.2018 indicates that the Transport document number is nothing but goods receipt number (GRN) and without mentioning the same, E-way bill cannot be generated. Therefore, it is mandatory for the GTA to issue the transport document.

The appellant is, therefore, a GTA under the Act and is not exempted from paying GST in as much as they are liable to pay GST under 11/2017-CT (R) read with 13/2017-CT (R).

Ruling of AAR

Appellant is a registered GTA service provider under GST and is not exempted from paying GST.

Where the goods or services or both used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies. The amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies as per provisions and procedure prescribed under Section 17(2) of GST Act read with Rule 42 of GST Rules, 2017.

Appeal to AAAR and further submissions made by appellant

The appellant aggrieved by the ruling of AAR has preferred an appeal before AAAR. It contended that the findings of AAR that without issuing Consignment note (LR/GR), goods cannot be transported or E-Way Bill cannot be generated is wrong as practically on GST portal the E-Way bills are being generated without having consignment note no. (LR/GR). Since appellant did not issue any consignment note, its services are out of the purview of GST and will be categorized as non-taxable service/non-GST supply.

Discussions by and findings of AAAR

The appellant is claiming on its official website that they are serving about 90% of car makers and has a vast network all over India for

transportation of goods. They are providing services to various manufacturers of motor vehicles involving transportation of motor vehicles, which are carried from the factory to the various cities in India where the authorized dealers are located.

In this process of transportation, two types of services either by way of activity described as goods transport agency services or by way of rental services of transport vehicles can be provided.

If the lien of the goods is transferred and the appellant becomes responsible for the goods until its safe delivery to the consignee, the services shall be classifiable as goods transport agency services and issuance of consignment note or its non-issuance does not make any difference as far as the nature of the activity carried out by them is concerned. Mere non-issuance of the consignment note in such cases does not make them entitled for exemption from payment of GST.

However, if the vehicles are provided to the client on rental, the services will be classifiable as **"rental services of transport vehicles"**. The nature of activity carried out by appellant has no connection whatsoever, with format of E-way bill. In any case, mere non-requirement of mentioning of any detail in E-way Bill does not affect liability of payment of GST on any service unless the service has been exempted through an exemption notification issued by the Government.

Ruling by AAAR

AAAR rejected the appeal filed by the appellant and held that the services to be provided by the appellant are leviable to GST, as specified under Notification No. 11/2017-CT(R) dated 28.06.2017 (as amended).

5. SIEMENS LIMITED – AAAR MAHARASHTRA (2020-TIOL-24-AAAR-GST)

Facts and Issue involved

M/s Siemens Limited (hereinafter referred as "the appellant") has entered into six contracts with one of the major PSU in Haryana (herein after referred as "the customer") for onshore and offshore supply of goods and services on a joint venture ("JV") basis.

Appellant sought advance ruling as to whether the freight charges recovered from the customer under the aforesaid contract without issuance of consignment note will be eligible for exemption from CGST as prescribed in Serial no. 18 of Notification no. 12/2017 - CT(R) dated 28 June 2017?

Appellant's contentions

The six contracts cover specific and detailed nature of supply of various goods and services. Out of which two contracts are required to be executed by the appellant as a JV's Associate. The third Contract (hereinafter referred to as "Onshore supply contract") provides for supply of goods on ex-works basis. The third Contract is in relation to supply of Voltage Source Converters (VSC) based HVDC Terminals between Pugalur and North Trichur. This involves supply of equipment and services, both on offshore as well as onshore basis.

The fifth Contract termed as "Onshore service contract" (VSC part). The scope of work under fifth contract is as follows:

a. Local transportation, insurance and other incidental services

b. Installation charges

c. Training charges

Appellant, through this independent service contract, is entrusted with the responsibility of delivery of the goods at customer's site. For this, the appellant engages local transporters who

issue consignment notes for such transportation of goods and issue their freight invoices on the appellant. In turn, the appellant discharges the GST liability under RCM on such freight amount being paid to these transporters. The appellant charges local transportation from the customer as per the terms of the service contract. However, since the transporters engaged by the appellant already issue the consignment note, the appellant issues no subsequent additional consignment note.

Appellant submitted that in terms of Serial no. 18(a) of Notification no. 12/2017-CT(R) services by way of transportation of goods by road except the services of a GTA and courier agency are exempt from tax.

Term GTA has been defined under the aforesaid notification as “"Goods transport agency” means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

Appellant is of the view that since it is not issuing a consignment note it doesn’t fall under the definition of GTA and hence its transport services are exempt under Serial no. 18(a) of Notification no. 12/2017-CT(R).

Discussions by and observations of AAR

The scope of work is a package i.e. for performance of all activities inter alia including port handling of the Plant and Equipment including mandatory spares, loading, inland transportation and insurance for delivery at site, unloading, storage and handling at site, installation including civil works, testing and commissioning including performance testing in respect of all Plant and Equipment supplied. There is no breakup of the contract price and any breach in any part of the contract shall be treated as a breach of the entire contract.

The first contract including on-shore supply of all equipment and materials cannot be executed independent of the second contract, which is for the on-shore supply of services. It is further observed that there cannot be any “supply of goods” without a place of supply. As the goods to be supplied under the First Contract involves movement and/ or installation at the site, the place of supply shall be location of the goods at the time when movement of goods terminates (Sec 10(1)(a) of IGST Act) for delivery to the recipient or moved to the site for assembly or installation (Section 10(1)(d) of IGST Act). The First contract however does not include the provision and cost of such transportation and delivery. Therefore, it does not amount to a contract for “supply of goods” unless tied up with the Second Contract.

That although awarded under two separate contract agreements, clauses under both them make it abundantly clear that notwithstanding the breakup of Contract Price, the contract shall, at all times, be construed as a single source responsibility and the appellant will be responsible to ensure execution of both the contracts.

The two contracts are linked by a cross fall breach clause which provides the recipient with a right to either terminate both the contract or claim damages. The recipient has, therefore, contracted for composite supply of works contract for supply for VSC based FIVDC Terminal and DC XLPE Cable System and not for ex-factory supply of material.

Ruling of AAR

The transportation services provided by the appellant being part of the whole works contract will be taxable @ 18% as works contract services. It will not be eligible for the exemption of Serial no. 18 of the above referred notifications.

Appeal to AAAR and further submissions made by appellant

The appellant aggrieved by the ruling of AAR has preferred an appeal before AAAR on the following grounds:

- Appellant is purely providing the service of transportation of goods to the customer and is not issuing any consignment note. Accordingly, the services provided are that of transportation of goods by road and not that of GTA and hence it is eligible for exemption contained in Serial no. 18.
- As exclusive clauses and conditions are clearly outlined in the third and fifth contracts, the two contracts are separate and distinct in nature. The third contract governs supply of goods and the fifth contract governs supply of services.
- Both the contracts are divisible contracts with different pricing mechanism and invoice. Hence, it cannot be said that appellant is providing a composite supply of services in the nature of works contract.
- The customer had the option/ to engage any other person for availing the service of goods transportation by road. However, the customer has chosen to enter into the service contract with the appellant in an independent capacity.
- Unless the authorities can provide evidence to the contrary, an agreement is required to be read on the basis that it reflects the true intention of the parties thereto as regards their respective roles and obligations. The intentions of the parties are clear to the extent that both contracts are independent in nature.

Discussions by and findings of AAAR

The term **"Composite supply"** is defined u/s 2(30) of the CGST Act 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;*

"Principal supply" *means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;*

Above contracts involve two supplies i.e. supply of goods and supply of services. The contracts fulfill the conditions of the "Composite supply". There is supply of goods and services. They are naturally bundled in the sense that both the goods and services may require to fulfill the intention of the buyer in giving the contract. If one or more were removed, the nature of the supply would be affected. Even if the considerations for two taxable supplies are separately quoted or there is single consideration, both scenarios are covered under composite supply since above conditions for composite supply are fulfilled.

Before deciding the taxation of aforesaid composite supply as per section 8 of CGST Act, we have to examine whether the contracts before us is a "works contract" as defined u/s. 2(119) of the CGST Act or otherwise.

The definition of works contract is reproduced below:

"works contract" *means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;*

Considering the above discussion, it can be said that completion of the installation, erection of the total project is resulting into immovable property. Hence the total project assigned to the appellant is composite supply of works contract defined u/s 2(119).

Ruling by AAAR

AAAR confirmed the order passed by the advance ruling authority.

C. AUTHORITY OF ADVANCE RULING

6. *M/S ANIL KUMAR AGRAWAL – AAR KARNATAKA (2020-TIOL-95-AAR-GST)*

Facts, issue involved and contention of the Applicant

Applicant is an unregistered person and is in receipt of various pes of income / revenue, mentioned as under:

Partner's salary as partner from my partnership firm,	Salary as director from Private Limited company	Interest income on partners fixed capital credited to partner's capital account
Interest income on partners variable capital credited to partner's capital account	Interest received on loan given	Interest received on advance given
Interest accumulated along with deposit/ fixed deposit	Interest income received on deposit/ fixed deposit	Interest received on Debentures
Interest accumulated on debentures	Interest on Post office deposits	Interest income on National Savings certificate (NSCs)
Interest income credited on PF account	Accumulated Interest (along with principal) received on closure of PF account.	Interest income on PPF
Interest income on National Pension Scheme (NPS)	Receipt of maturity proceeds of life insurance policies	Dividend on shares
Rent on Commercial Property	Residential Rent	Capital gain / loss on sale of shares

Applicant has sought an advance ruling for the following:

1. *Out of the given sources of Income/ Revenue which all revenue income shall be considered for Aggregate Turnover for registration?*

2. *Out of given nature of income / revenue, when the supply, even if exempted, need to be considered?*

Applicant's contentions

Partner's salary, as a partner, from the partnership firm and income received towards salary as Director from a Private Limited Company are not includable in the aggregate turnover for the reason that any type of salary is not in the purview of GST as the same needs to be treated neither as supply of goods nor as supply of services.

Income received towards rent on commercial property is a taxable service and is to be included while calculating aggregate turnover.

Income received towards residential rent, though exempted, but is includible for the calculation of aggregate turnover.

All other types / categories of income are not includible in the aggregate Turnover as they are not under the purview of GST and do not amount to supply under GST law.

Discussions by and observations of AAR

Aggregate turnover is the sum value of all taxable supplies, exempt supplies, export of goods or services or both and inter-state supplies of persons

having same Permanent Account Number, to be computed on all India basis. Any income to be included in the aggregate turnover need to be related to any transaction that amounts to supply in terms of Section 7 of the CGST Act.

Section 7(1)(a) of the CGST Act 2017 stipulates that any transaction must consist the following three components to get qualify as 'Supply'.

i. The transaction must involve a supply, of goods or services or both, such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made.

ii. The transaction must before a consideration by a person

iii. The transaction must be in the course of furtherance of business.

In view of the above, income received from each source has to be examined as to whether it is in relation to any transaction that amounts to supply or not.

Interest income received from different sources

Applicant is in receipt of various type / category of interest income from different sources as mentioned in the facts. All these interest incomes are out of the deposits / loans extended by the applicant. Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services), falling under SAC 9971, are exempted under Entry No.27(a) of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. Therefore, interest income earned on deposits/ loans/ advances by the applicant is nothing but exempted service.

Thus these amounts are to be included in the aggregate turnover for registration, under the provisions of GST Act.

Partner's salary, received as partner, from applicant's partnership firm

Applicant is in receipt of certain amount termed as partner's salary from the firm where he is a partner. Applicant has not furnished any documents relevant to the issue, such as copy of agreement, appointment order etc., so as to decide whether the applicant is an employee of the partnership firm or not. In case. if the applicant is a working partner and is getting salary then the said salary is neither supply of goods nor supply of service in terms of clause 1 of Schedule III of CGST Act 2017. Further, in case if the applicant is in receipt of the amount towards his share of profit from the said partnership firm, then also the said income is not under the purview of GST as the share of profit is nothing but application of money and hence the said salary is not required to be included in the aggregate turnover for registration under the provisions of GST Act.

Salary received as Director from a Private Limited Company

Applicant is in receipt of certain amount termed as salary as Director of a private limited company. Two possibilities may arise with regard to the instant issue of amount received by the applicant. The first possibility that the applicant is the employee of the said company (Executive Director), in which case the services of the applicant as an employee to the employer are neither treated as supply of goods nor as supply of services, in terms of Schedule 111 of CGST Act 2017.

Second possibility that the applicant is the nominated director (Non-Executive Director) of the company and provides the services to the said company. In this case the remuneration paid by the company is exigible to GST in the hands of the company under reverse charge mechanism under section 9(3) of the CGST Act 2017, in the hands of the company, under entry no. 6 of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017.

In view of the above, the remuneration received by the applicant as Executive Director is not includable in the aggregate turnover.

Remuneration received by the applicant being a Non-Executive Director is includable in the aggregate turnover, as it is the value of the taxable services supplied by the applicant, though the tax is discharged by the private limited company, under reverse charge mechanism.

Rental income on Commercial Property

Rental/ Lease of commercial property is squarely a supply u/s 7 and is in the course or furtherance of applicant's business. Value of such supply is to be included in the aggregate turnover, for registration.

Rental income on Residential Property

Rental/ Lease of residential property is squarely a supply u/s 7 and is in the course or furtherance of applicant's business. However, "Services by way of renting of residential dwelling for use as residence, classified under SAC 997211" are exempted from the tax (GST) in terms of entry number 12 of the Notification No. 12/2017 dated 28.06.2017. Thus the impugned supply of service of renting of residential property becomes an exempted supply. Aggregate Turnover includes the value of the exempted supplies also. Therefore, the income received by the applicant towards rent of residential property is to be included in the aggregate turnover.

Dividend on shares and capital gain/ loss on sale of shares

The term 'Securities' as defined in clause 2(h) of Securities Contracts (Regulation) Act 1956 read with Section 2(101) of the CGST Act includes shares, scrips, stocks, bonds, derivative instruments etc. Securities have been explicitly excluded from the purview of GST, by virtue of its exclusion from the definition of 'goods' and 'services' respectively. Therefore, dividend income and capital gain / loss earned out of shares also gets excluded from the said definition of goods / services. Hence, they are not required to be added to the aggregate turnover for registration under the provisions of GST Act.

Maturity proceeds of life insurance policies

The impugned income would be received on maturity of the insurance policies i.e. on closure of the insurance contract consequent on maturity of the said policies. The insurance premium of policies is taxable under GST, being the consideration for the services provided by the insurance companies. Therefore, on completion of the said contract / maturity of the policy, there would not be any service involved between the policy holder and the insurance company. Therefore, the amounts received on maturity of the insurance policies are not a supply under GST and hence are not required to be added to the aggregate turnover for registration under the provisions of GST Act.

Ruling of AAR

The incomes received towards (i) salary/ remuneration as a Non-Executive Director of a private limited company, (ii) renting of commercial property and (iii) renting of residential property and (iv) the values of amounts extended as deposits/ loans/ advances out of which interest is being received are to be included in the aggregate turnover, for registration.

7. *M/S. SAN ENGINEERING LOCOMOTIVE COMPANY LIMITED – AAR KARNATAKA (2020-TIOL-91-AAR-GST)*

Facts, issue involved and query of the applicant

Applicant is engaged in the business of manufacturing power packs and supplying installation and commissioning services. Applicant has sought advance ruling as to *whether supply of power packs, freight and insurance service and commissioning and installation services has to be treated as composite supply or these services can be treated independent of supply of power packs given that*

installation and commissioning takes place after 4-5 months of supply of power packs?

Applicant submitted that it has received Purchase order (PO) placed by M/s. Integral Coach Factory, Chennai to supply 18 Power Packs and installation & commissioning of the same in High Speed Self Propelled Accident Relief Train (HS SPART).

The value for supply of goods and services were separately mentioned in the PO. The applicant raised invoices for supply of power packs and charged IGST at 5%. For value of 'freight and insurance charges' and 'installation and commissioning', the applicant raised separate invoices charging IGST at 5% and 18% respectively.

Applicant submitted that all above supplies are not naturally bundled and post supply of power packs, the installation & commissioning can be carried out by M/s. Integral Coach Factory themselves or they can avail such services from other supplier. It is to be noted that invoices for installation and commissioning services can be raised only when the concerned customer issues completion certificate in this regard.

Hence supply of installation & commissioning service would be an independent service and it not a part of the composite supply. Therefore, the rate of tax applicable to the installation and commissioning service needs to be applied for such supply of services.

Discussions by and observations of AAR

The authority observed based on the submissions of applicant that supply of installation & commissioning is independent to the supply of power packs and is not a part of composite supply.

Regarding other two components i.e. freight and insurance, authority observed that power packs are to be delivered via road and therefore both the expenses are incidental to such supply of power packs. The authority took note of Section 15(2) of CGST Act, 2017 which provides that the value of supply shall include incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply. Therefore, freight and insurance charges should form the part of the supply of power packs. The same would be covered under the definition of "Composite supply" as per section 2(30) of CGST Act, as they are naturally bundled and supplied in the ordinary course of business. Further, Section 8 provides that the tax liability on a composite supply shall be determined by treating them as a supply of principal supply. In the present case, the supply of power pack is the principal supply, hence the composite supply of power packs and the supply of freight and insurance would be treated as "Supply of power packs " only as per section 8 of the CGST Act, 2017.

Ruling of AAR

In response to the above question, the authority ruled that the supply of power packs and the freight & insurance charges would be composite supply where principal supply will be supply of power packs.

The supply of commissioning & installation services supplied by the applicant are independent of the supply of power packs and will be taxed accordingly.

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