



Advance Rulings and Jurisprudence under GST

N. A. SHAH BULLETIN

December 2021 - Volume 1

N. A. SHAH ASSOCIATES LLP
Chartered Accountants

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
SBI Cards and payment Services Ltd [2021-TIOL-2141-HC-P&H-GST]	Can refund of GST which had been wrongly paid in excess be disallowed when the taxpayer has suo-moto paid the correct tax before filing of refund application?	High Court set aside the appellate order disallowing refund claim on the basis that petitioner had already paid IGST as demanded by revenue and thus, respondent's liability to refund wrongly paid CGST & SGST cannot be disputed.
GEW (India) (P.) LTD [TS(DB)-GST-AAR(TN)-2021-659]	Whether applicant has to take registration in state where works contract is executed if the receipt of PO, raising of invoice and GST registration is in another state? Whether ISD registration be taken for site where services need to be delivered when there is no establishment/office nor any intention to have office in that state?	Applicant need not obtain separate registration in Karnataka and can raise invoice by charging IGST from their registered office at Noida, with Place of Supply as Karnataka. As applicant is not intending to have any office/establishment in that state, ISD registration cannot be obtained for the site at which they are delivering service

The brief analysis of above referred decisions and rulings are given below.

Case 1 – SBI Cards and Payment Services Ltd vs. Union of India [2021-TIOL-2141-HC-P&H-GST]

<p>Facts in brief & Issue Involved</p>	<ul style="list-style-type: none"> • Petitioner company is engaged in the business of issuing credit cards to its customers (cardholder). • In absence of complete break up of individual transactions available during initial stages of GST, petitioner wrongly paid CGST & SGST of about INR 108 crores considering the transactions to be intra-state supplies. • It later transpired that these transactions were actually inter-state supplies. Hence the petitioner, as required by the respondent, deposited additional amount of INR 108 cores as IGST on the inter-state transactions and then applied for refund of amount wrongly paid on the basis that the transactions were intra-state transactions. • The petitioner's plea for refund was rejected on the grounds that phrase 'subsequently held' in Section 77 of the CGST Act could only apply in a case where an adjudicating authority had actually held whether a transaction was inter-state or intrastate. • Petitioner filed writ petition to challenge the order whereby petitioner's prayer for refund of CGST & SGST wrongly paid was rejected.
<p>Contentions of Petitioner</p>	<ul style="list-style-type: none"> • Section 77 of CGST Act, 2017 reads as under: <i>(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is <u>subsequently held</u> to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.</i> • CBIC circular (bearing F. No. CBIC-20001/8/2021-GST dated 25.09.2021) clarified that the term 'subsequently held' also covers situation where inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State or inter- State respectively. • Petitioner, thus, argued that in view of this clarification there can be no dispute that at least one amount of INR 108 crores approximately has to be refunded to the petitioner.

Observations & Decision of HC	<ul style="list-style-type: none"> • It was on the requirement of the respondents that the petitioner paid an additional amount of GST of INR 108 crores. • Once the petitioner paid that extra amount as per the respondents requirement under IGST head, the liability of the Revenue to refund an amount of INR 108 crores wrongly deposited under CGST & SGST cannot be disputed. • The petition was allowed and respondents were directed to refund which was deposited earlier by the petitioner towards CGST and SGST along with applicable interest.
NASA Comments	<ul style="list-style-type: none"> • Above judgement would be beneficial for quite a few taxpayers who seek refund of tax paid under wrong head (especially during initial stages of GST) after suo-moto depositing tax under the correct head. • A string of judgement based on recent circulars clearly indicate that Government is taking keen interest to resolve the issues faced by the taxpayers and circulars are issued to clarify the stance of the government on various interpretational issues. • The circulars are binding in nature and hence should help taxpayers to get their issues resolved smoothly.

Case 2 – M/s GEW India Private Limited [2021-TIOL-267-AAR-GST]

Facts in brief & Issue Involved	<ul style="list-style-type: none"> • Applicant has received a works order from M/s. L&T to execute a works contract involving supply, erection and installation of steel after fabrication at site located in Karwar, Karnataka. • Applicant does not have any GST registration in Karnataka. • Applicant is required to procure goods which are to be fabricated at the applicant's factory premises in Noida as per the drawings in work order, and needs to be transported to erection site at Karnataka for execution of works contract. • As per the work order, applicant has to raise an invoice on Karnataka registration of M/s L&T from applicant's Noida registration. • Applicant will avail the services of registered dealers in Karnataka for completing the works contract at any stage of work as and when required and dealers in Karnataka shall levy CGST and KGST in relation to work carried for immovable property as per section 12(3) of IGST Act, 2017.
--	--

	<ul style="list-style-type: none"> Applicant has sought advance ruling on following questions: <ol style="list-style-type: none"> Whether applicant is required to take registration in Karnataka or it can raise invoice from Noida registration and charge IGST? Whether applicant can take registration as a regular dealer or as an ISD to distribute ITC relating to services or goods procured locally in Karnataka?
Contentions of Applicant	<ul style="list-style-type: none"> In terms of Section 7(3) of the IGST Act read with Section 12(3) of the IGST Act, the works contracts services will be billed from a state different from the state where actual work is performed and the transaction will amount to inter-state supply attracting IGST. The applicant, alternatively, quoted the provisions of Section 22 (1) of the CGST Act 2017, with regard to registration and stressed upon the phrase "from where he makes a taxable supply of goods or services or both". Section 22 of the CGST Act read with KGST Act demands registration, in relation to immovable property services, to be obtained from where person is executing and delivering rather than the place where he is registered in some other state or UT. Further, various local contractors and sub-contractors may raise bills on Noida office by treating their supplies to be intra state supply and levy CGST & KGST. In such a situation the GST component becomes cost to the applicant. Thus, applicant was of the view that they have to obtain ISD registration in Karnataka, for receiving the services on behalf of their Noida registration and transfer or distribute the credit in terms of Section 20(3)(c) of the CGST Act or else obtain regular registration u/s 25 of the CGST Act.
Observations & Decision of AAR	<ul style="list-style-type: none"> Applicant is registered in state of Uttar Pradesh from where he is providing taxable supply and has the principal place of business. Further, applicant has stated that they will not be having any office in Karnataka and instead will be just having a guest house for stay purpose for their resident engineer or any other person. Applicant is not required to take a separate registration in Karnataka for execution of the works contract. Applicant can supply the impugned services from Noida, UP and raise invoice from the said place by charging IGST.

	<ul style="list-style-type: none"> • Section 2(61) of CGST Act, 2017 defines Input Service Distributor to mean an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit..... • Thus, to distribute the ITC, the supplier should obtain ISD registration for the premises from where they intend to distribute the credit. • Since the applicant neither has nor intends to have any establishment in Karnataka, it cannot obtain ISD registration in Karnataka.
NASA Comments	<ul style="list-style-type: none"> • This ruling allows a work contractor to supply services in other state from its registered place of business. It would reduce compliance burden on works contractor with regards to obtaining registration in different states, filing returns, etc. • However, not obtaining registration in state of execution may lead to loss of input tax credit on goods or services procured by it locally. One may need to structure a transaction accordingly so as to minimize the loss on procurements made in the state of execution. • Ruling by AAR is binding only on applicant and its jurisdictional officer. It does not have general binding precedence value.

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

From:

N. A. Shah Associates LLP
Chartered Accountants

Address: B 21-25 / 41-45, Paragon Centre,
Pandurang Budhkar Marg, Mumbai – 400013.

Tel: 91-022-4073 3000, Fax: 91-022-4073 3090

E-mail Id: info@nashah.com

This alert is prepared for educational purpose and general guidance of the clients. N.A. Shah Associates LLP is not responsible for any action taken by anyone on the basis of this alert. Views / Comments expressed herein should not be treated as professional advice or legal opinion in the matter. It is advisable to seek professional advice in the matter before acting on the basis of this alert.