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TAX JURISPRUDENCE

CASE LAW ALERT – JULY 2022
VOL- 2

EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER INDIRECT TAXES

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

Case & Citation	Issue Involved	Decision
Indirect Tax		
Kothari Sugars and Chemicals Limited [2022-TIOL-81-AAR-GST]	Whether recovery of nominal amount from employees for making payment to vendor providing food in canteen as mandated in Factories Act, 1948 would attract tax under GST?	Supply of food by applicant to their employees is 'supply of service' as per Schedule II of CGST Act, 2017, as the same is not part of employment contract and amount collected by applicant is a 'consideration' on which GST is liable to be paid.
Healersark Resources Private Limited [2022-TIOL-25-AAAR-GST]	Whether services of boarding, lodging facilities and other services provided by appellant to its client with regards to residential vocational programs conducted by client is treated as a composite supply or a mixed supply? Whether the same is eligible for exemption vide exemption Notification No. 12/2017-CT (R)?	The supply of service is a composite supply with 'Provision of Accommodation – SAC 9963' as principal supply and is eligible for exemption as per Sl. No. 14 of Notification no. 12/2017 - CT(R).

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

INDIRECT TAX

Case 1 – M/s Kothari Sugars And Chemicals Limited [2022-TIOL-81-AAR-GST]

Facts in brief & Issue Involved

- ♦ Applicant is engaged in manufacture of sugar, molasses, denatured ethyl alcohol, and ethyl alcohol.
- ♦ Applicant has two manufacturing units located at Kattur and Sathamangalam, wherein 300 workers have been employed. Canteen facility is mandatorily to be provided as per Factories Act, 1948.
- ♦ Concessional rate is recovered from employee for supply of food in canteen and balance cost incurred is borne by applicant.
- ♦ Applicant sought advance ruling on whether recovery of nominal amount from employees would attract tax under GST?

Contentions of the Applicant

- ♦ Applicant stated that activity of provision of canteen facility is only on account of obligation bestowed on them by Government and same cannot be termed as business as defined u/s 2(17) of CGST Act, 2017.
- ♦ Amount received from employees is merely in nature of recovery and does not amount to consideration as defined u/s 2(31) of CGST Act, 2017. They do not retain any profit margin in this activity of collecting nominal amount from employees.
- ♦ Applicant placed reliance in **Press Release issued dated 10.07.2017** wherein CBIC has clarified that supplies by employer to employee in terms of contractual agreement of employment is not subject to GST.

- ◆ Provision of canteen facility is part of employment contract, same shall be covered under Entry 1 of Schedule III to CGST Act, 2017 and thereby ousted from scope of supply as defined u/s 7(1) of CGST Act, 2017.

Observations & Decision of Advance Ruling Authority

- ◆ Entry 1 of Schedule III states that only services by an employee to employer in course of or in relation to his employment are neither a supply of goods nor a supply of service. But in this case, supplies are provided by employer to employees for a consideration, though nominal.
- ◆ Further, Press Release makes it clear that any benefit provided to employees as part of employment contract would not be subjected to tax under GST. But in this case, the canteen facility is provided by applicant is in accordance with the mandate under Factories Act, 1948.
- ◆ Therefore, the contention that activity of supply of food for a nominal charge by them is neither a supply of goods nor a supply of service is not legally tenable.
- ◆ Applicant has established canteen in their premises and collecting nominal rate as fixed by Managing Committee is an activity in furtherance of their business i.e. outward supply as defined u/s 2(83) of CGST Act, 2017.
- ◆ The contention that applicant only collects employee cost and pay to third party vendor and such employee cost is only a recovery is not acceptable. Recovery of cost from salary as deferred payment do not alter fact of service provided.
- ◆ The supply of food by applicant to their employees is composite supply of food i.e. 'supply of service' as specified under Clause 6 of Schedule II to CGST Act, 2017 and amount collected by applicant is 'consideration' on which GST is liable to be paid.

NASA Comments

- ◆ Department has issued Circular No. 172/04/2022-GST dated 6th July 2022 wherein it is clarified that perquisites provided by employer to its employees in terms of

contractual agreement would be covered under Schedule III. Hence such perquisites would be treated as neither a supply of goods nor a supply of service. This circular is a clarificatory in nature and hence a view can be taken that it applies to past period also.

- ♦ Even after this clarification department may take the position that canteen facility is not provided as perquisite pursuant to employment contract. A view can be taken that once canteen facility is mandated under statute, it is binding on employer to provide such facility and it is a perquisite in the hands of employee.
- ♦ As ruling of AAR does not have binding precedence, one has to take a considered call for taking position on issue of recovery made from employees in respect of canteen facility.

Case 2 – Healersark Resources Private Limited [2022-TIOL-25-AAAR-GST]

Facts in brief & Issue Involved

- ♦ Appellant is engaged in the business of hospitality providing boarding, lodging facilities and other services to M/s. Apollo Med Skills Limited (AMSL) for the candidates enrolling in the vocational programs organised by AMSL.
- ♦ AMSL has established training centres across the country for providing up-skilling courses for doctors, nursing professionals and skilling courses for paramedical and hospital support staff as a part of its project implementation under Deen Dayal Upadhyay Grameen Kaushalya Yojana (DDU-GKY) and other programs under various schemes. As these are residential courses, AMSL has engaged the appellant to provide boarding, lodging facilities and other services in line with the SOP given by the Government of India.
- ♦ Appellant had sought an advance ruling in respect of following questions:
 - What is the applicable GST SAC code and the GST rate for the supplies made by them to M/s. AMSL?

- Is it a composite supply or a mixed supply?
- Whether the service is exempted vide Notification No. 12/2017- CT (Rate) dated 28th June 2017?
- ◆ The SGST member of Original Authority has ruled that the appellant is not providing accommodation and other services to ASML but is only supporting ASML in its implementation of project under DDU-GKY. Hence, the services rendered is only a business support service falling under SAC 998599: Other Support Services taxable @ 18%.
- ◆ However, the Central member of Original Authority ruled in contradiction that the classification opined by the SGST member under SAC 998599: Other Support Services is a residual entry that needs to be adopted only in cases where the supply cannot be suitably classified under relevant categories, which is not evident in the present case. The service provided by the appellant is a composite supply of hospitality services in which accommodation, lodging, food, and other amenities are naturally bundled and supplied in conjunction with each other. The provision of accommodation being the principal supply is covered under SAC 9963 and the per day equivalent tariff being less than INR 1,000 makes it eligible for exemption under Sl. No. 14 of Notification no. 12/2017 -CT(Rate) dt. 28th June 2017.
- ◆ Due to conflicting views, the issue has been placed before the Appellate Authority as per the provisions under Section 98(5) of the Act.

Observations & Decision of Appellate Advance Ruling Authority


- ◆ Appellant has entered into a Service Provider Agreement with ASML wherein they have agreed to provide the boarding, lodging facilities and such other services for residential vocational programs conducted by AMSL in Healthcare sector.
- ◆ Appellant is providing such hospitality services to AMSL on a Principal-to-Principal basis and the Appellant may also enter into similar contracts with other parties. It is evident from the agreement between the appellant and ASML that the supply is

made by them in the capacity of an independent contractor' and not as that of an agent, hence it is not a business service of intermediaries.


- ♦ The state member of AAR has failed to specify as to how the supply shall be classifiable under the SAC 998599 but has straight-away ruled it to be a business support service. If this opinion is to be agreed upon, then every such individual activity of a supply may take the shade of extending support service to the main business and the individual nature of supply by such independent persons would be lost.
- ♦ Appellant has entered into lease agreements with third party service providers, one out of which is an agreement with AMET University, as per which the applicant has entered into the contract for lease of the property owned by AMET for the purpose of running hostels and providing accommodation for the candidates, and/or general office purposes. Thus, it is clear that the applicant enters into agreement with third parties, in their own capacity, to enable themselves to provide the 'Hospitality service', which establishes that the activities of the applicant are independent in nature.
- ♦ Appellant provides a bouquet of hospitality services together and in conjunction with each other thereby being naturally bundled composite supply of services with provision of accommodation being the principal service.
- ♦ Lastly, the said composite supply provided by the appellant is used by the candidates for residential/lodging purposes and the per day equivalent consideration for a unit of accommodation provided in Chennai region is INR 300 and for regions out of Chennai, the same is INR 250 which are below INR 1000 stipulated for per day. Hence, the said service is eligible for exemption under Sl. No. 14 of Notification no. 12/2017 - CT(Rate) dt. 28th June 2017.

NASA Comments

- ♦ This is a well-reasoned and a favourable ruling passed by AAAR treating the bouquet of services as one composite supply having accommodation service as principal supply.

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- ♦ The exemption of INR 1,000 per unit is withdrawn by recent Notification No. 03/2022 – Central Tax (Rate) dated 13th July 2022 and consequently the short-term accommodation services will be taxed at 12% with effect from 18th July 2022 even if value of consideration is INR 1,000.
 - ♦ Ruling by AAAR is binding only on appellant 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.



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