

# CNK & Associates LLP

Quarterly Insights, April 2019

**GST- Judicial Decisions**

## In Brief

*The High Court held that the supply made to the international airports were within the taxable territory of India and hence taxable under GST*

**Vasu Clothing (P.) Ltd. v. Union of India [2018] 100 taxmann.com 451 (M.P)**

(In favor of Revenue)

### **Relevant Facts**

The assessee specialized in manufacturing superior quality garments for children. It also exported into the Middle East, South Africa and USA. It further intended to supply such garments to Duty Free Shops (DFSs) located in the duty-free areas at international airports.

The assessee filed a writ petition against being aggrieved by the fact that the benefit of removing goods from his factory to DFS located in the international airports without payment of duty as was available under the erstwhile central excise regime was not available under the GST regime.

The petitioner's contention is that Section 2(5) of the IGST Act, 2017 (export of goods) and Section 2(23) read with Section 15(1) of the IGST Act, 2017 (zero rated supply) should be applicable for the above mentioned transaction on the contention, that the duty free shops at international airports in India are located beyond the customs frontier of India. Therefore, any transaction with a duty free shop was considered as taking place outside India and hence GST was not payable. Based on this contention, the assessee filed a writ petition before the High Court of Madhya Pradesh.

### **Held**

The Honorable High Court observed that a Duty-Free Shop situated at the airport could not be treated as Territory out of India as defined under GST Act. The assessee was not exporting the goods out of India. It was selling to a supplier who was within India and the point of sale was also within India i.e. at Indore. Therefore, the assessee was required to pay GST.

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## In Brief

*The AAR held the business of running canteens is taxable at 5% without ITC. It further held that the transport services were composite in nature to the principal supply of outdoor catering and hence would be charged at 18% (cost of food + transport) with ITC.*

**Prism Hospitality Services (P.) Ltd. In re [2018] 100 taxmann.com 401 AAR-Telangana**

### **Relevant Facts**

The applicant was engaged in diversified services which included:

1. Maintenance of canteens in Industries, Educational establishments;
2. Providing food to student mess, training institutes ;
3. Transport services to a training institute for catering food from one building to another. It charged separate transport charges.

It filed an application for Advance Ruling for applicability of GST on these activities.

### **Held**

The Authority for Advance Ruling (AAR) held the following:

1. Supply of food: The activity of supply of food on contractual basis excepting that supply is not event based or on specific occasions, constitute supply of service in terms of amended Notification No.13/2018-Central Tax (Rate), date July 26, 2018 and is taxable at the rate of 5% and the supplier is not eligible for the input tax credit as per the condition stipulated therein.
2. Transport services: The principal supply being supply of food i.e. outdoor catering service and transportation is ancillary would be characterized as composite supply chargeable to GST @ 18% on gross amount (cost of food + cost of transportation).

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## In Brief

*The AAR held that:*

- a. *The place of supply of services as an agent is in India and hence cannot be categorized as an 'export'.*
- b. *The services by the assessee would be treated as 'inter-state supply.'*

**Mrs. Vishakhar Prashant Bhawe, In re [2019] 101 taxmann.com 150 AAR- Maharashtra**  
(In favor of Revenue)

### **Relevant Facts**

The applicant is engaged in trading of Laboratory Instruments/Equipments and also provides ancillary services in the nature of servicing, repairs and maintenance of Laboratory Equipments/Instruments.

The applicant acts as an agent of various German principals wherein he procures purchase orders from Indian Clients against commission in convertible foreign exchange.

It sought advance ruling in respect of the following:

- a. Whether 'commission' received as an intermediary between the German principals and Indian Clients would be termed as 'export of service'?
- b. If not, whether the impugned supply of service forming an integral part of cross-border sale /purchase of goods would be treated as an intra-state supply?

### **Held**

The AAR held the following:

- i) The assessee is acting as a broker to facilitate the sale between the foreign principals and Indian parties and hence would be covered by the definition of 'intermediary'. Since the supplier of services is located in India and the supplier of goods is located outside India, the place of supply of intermediary services shall be the location of the supplier of services. i.e., India. Since, the place of supply of services is in taxable territory, the same cannot be treated as export of services.
- ii) The supply of services by the applicant would be treated as an 'Inter-state' supply.

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## In Brief

*The AAR held that the sale of trademark constitutes sale of goods and hence taxable under GST.*

*Non-compete fee was not taxable since there was no supply (the goods have already been sold).*

### **Lal Products v. Intelligence Officer [2019] 101 taxmann.com 229 (Ker)**

(In favor of assessee)

#### **Relevant Facts**

The taxpayer, namely, 'L' having its registered office in Kerala had sold its trademark to 'W' having registered office in Bangalore (Karnataka). The agreement was executed in Ahmedabad (Gujarat). The Assessee received the following from W:

- a. Non-competition fee; and
- b. Sale proceeds of trademark

The Kerala Tax Department assessed the matter and treated the non-competition fee received by it from 'W' as local sale. The department further treated the sale of trademark as inter-state sale under section 3 of the Central Tax Act 1956 and levied the tax accordingly.

The assessee argued on levy of tax on such transaction and filed writ petition before HC.

#### **Held**

The High court held that transferring its rights obtained under a statute, from one State to another, postulated a movement of the intangible, corporeal goods and, hence, would be an inter-State sale assessable to tax under the Central Sales Tax Act.

For non-compete fee, it was further held that there was no sale of goods in the said transaction as right had already been transferred. Hence, the non-competition fee received by the assessee 'L' from purchaser of trademark was not assessable to tax.

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## In Brief

*The AAR held the packaging service in addition to the manufacturing service is a composite supply, the principle supply being the manufacture of tea bags and classified under SAC 9988 taxable at 5% GST.*

### **Vedika Exports Tea (P.) Ltd. In re [2019] 101 taxmann.com 478 AAR- Maharashtra**

(In favor of Revenue)

#### **Relevant Facts**

The applicant is contract manufacturer and packer of tea bags for its clients. It sought a ruling on the classification of the services provided by way of packing of tea bags and the rate of GST thereon in a specific case of HUL.

As per the applicant's agreement with HUL, it shall manufacture and / or process and pack tea bags of Taj Mahal, Lipton and Brook Bond Brands at his plants. In terms of the agreement, HUL shall procure, transport and deliver to the applicant's manufacturing units all the raw material, packaging materials and other materials required for such activities. The applicant sought the HSN code and rate applicable in such a case.

#### **Held**

The AAR observed the detailed process which included:

- a. Manufacturing (receipt of blended tea from HUL; quality control procedures applied; tea is passed through hoppers, Magnetic grill and mesh, filling of tea leaves into the tea bag pouches and stitching those tea bags subjected to quality control)
- b. Packaging (packed in cartons, wrapped and put into boxes, stored delivered to HUL after sample testing.)

The above mentioned services of Manufacturing and Packaging are supplied in terms of a Single contract and at single price.

It is held that the applicant makes a composite supply to HUL, where in the service of manufacturing tea bags from the physical inputs owned by HUL is the principle supply. It is classifiable under Heading No. 9988 and taxable at 5% rate under serial No. 26I(f) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, as amended from time to time.

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## In Brief

*The AAR held that the applicant is not liable to register under GST for supplying goods from overseas location and storing the same at FTWZ to be cleared by DTA customers on payment of relevant duties.*

*The AAR held that the residential accommodation provided to key management personnel in a hotel would not be construed as in furtherance of business as the same services would have been provided from any residential accommodation. Hence, ITC on hotel is not eligible.*

### **Sadesa Commercial Offshore De macau Ltd., In re [2019] 102 taxmann.com 42 (AAR-Tamil Nadu)**

(In favor of Applicant)

#### **Relevant Facts**

The applicant manufactures leather with offices worldwide in addition to commercial alliances in 18 countries across five continents. The applicant was supplying leather to several Indian Shoe manufacturers from several countries including Thailand and Argentina. These imported goods are first stored in the third party FTWZ unit before supply to DTA customers. The advance ruling was sought on: “whether it is required to take GST registration”?

#### **Held**

It was observed that applicant is exclusively conducting the activity of exporting goods to FTWZ. These goods are then sold to the Indian customers. The Indian customers clear the same on payment of appropriate custom duties and IGST. Therefore, the AAR held that the applicant is not liable to GST Registration.

### **Posco India Pune processing Center (P.) Ltd., In re [2019] 102 taxmann.com 21 (AAR- Maharashtra)**

(In favor of Revenue)

#### **Relevant Facts**

The applicant is engaged in distribution of steel coils. It is a company based in South Korea and has a place of business in Pune. The POSCO overseas entity had deputed two employees to the Indian entity viz., Managing Director (MD) and General Manager of POSCO. They are provided with rent-free hotel accommodation and the cost of the same is borne by the applicant. An advance ruling was sought on the question as to whether Input tax credit is admissible in respect of GST paid on hotel stay, provided to GM AND MD

#### **Held**

It was observed that, the service provided by the hotel were for the personal residential purpose of these key personnel. The same duties could have been performed staying in any other

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## In Brief

### *The AAR held that:*

- *Promotion and marketing services are intermediary services*
- *After sales support cannot be qualified under composite supply.*

residential accommodation and hence cannot be concluded to be in furtherance of business. Further, GST is exempt on residential accommodation. Based on the above, the Authority of Advance Ruling held that the applicant is not eligible to claim the ITC for the same.

### **Toshniwal Brothers (SR) (P.)LTD., In re [2019] 102 taxmann.com 37 (AAAR-Kar.)**

(In favor of Revenue)

#### **Relevant Facts**

The applicant is engaged in providing marketing, sales promotion and post- sales support services to its overseas clients in Karnataka. The applicant accepts orders for the goods of the overseas customers in India. These orders are typically placed directly by the client on the overseas entity.

The applicant relied on the case of Go Daddy India P. Ltd wherein it was held that marketing, branding on P2P basis without securing customers is not an intermediary service. It sought an advance ruling on the following:

- Whether promotion and marketing services will be intermediary services?
- Whether after sales support services fall under composite supply?
- Whether after sale support services fall under composite supply?
- Whether above would contract qualify as an export of services?

#### **Held**

The AAR held that the ruling given in the case of Go Daddy India Pvt. Ltd. shall not apply in this case as the services provided by Go Daddy India Pvt. Ltd. were on a P2P basis. Further, it was held that:

- Promotion and marketing services is an 'intermediary services'
- After sales support services would not qualify as composite supply as they are independent of the services of promotion and marketing.

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*The AAR held that the supplier and consumption of service is outside the state of Rajasthan hence input tax credit of Central tax paid in Haryana is not an eligible ITC against the outward liability in Rajasthan.*

- Third question remained unanswered as it was on determination of the place of Supply which is outside the jurisdiction of AAR.

The appellant filed an appeal, where Appellate AAR has upheld the order of AAR.

### **IMF Cognitive Technology (P.) Ltd. In re [2019] 102 taxmann.com 211 (AAR-Raj.)**

(In favor of Revenue)

#### ***Relevant Facts***

The applicant company deals in computer software. Its activities include development, designing and trading in all types of computer software and is also engaged in exports of software. The applicant stated that in case of procurement of inward supplies from other states, at times, the supplier charges CGST & SGST of the State of supplier.

It sought an advance ruling: ‘whether the ITC of central tax paid in one state (say Haryana) would be available to set off against the central tax in another state (say Rajasthan)?’

#### ***Held***

The AAR held observed that the local SGST and CGST charged for the services provided and availed in a State would be eligible for ITC within that particular State only, where such services were provided and consumed.

Therefore, since the services were availed from a supplier outside Rajasthan and the place of supply also being outside Rajasthan, ITC of central tax paid in Haryana is not available to the applicant to set off against liability in Rajasthan



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*The AAR held that the rent-a-cab services provided by an employer to its employees in furtherance of business would be covered under S. 17(5) of the CGST Act and hence no ITC is available on the same.*

**YKK India's (P.) Ltd. In re [2019] 102 taxmann.com 277 (AAR- Har.)**

(In favor of Revenue)

### **Relevant Facts**

The applicant has a manufacturing unit in a rural area of Rewari District, Haryana. The location has very minimal access to transportation which hinders its employees to reach the factories. With a view to engage in efficient practices, it has hired buses as well as cars to ensure that the employees are able to reach the factory in time.

The applicant has sought advance ruling on: 'whether the applicant is eligible to take ITC on GST charged by the contractor for hiring of buses / cars'?

### **Held**

The authority of advance ruling referred to section 17(5) of the CGST act, 2017 wherein ITC is not available on GST paid for rent-a-cab services which include any commercial vehicle which is hired for transportation of passengers.

Therefore, no ITC is admissible on such services availed by the applicant.

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