

CNK & Associates LLP

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GST- Judicial Decisions

In Brief

Transportation of goods from non-taxable territory to taxable territory is 'import of service' liable to GST

GST applicable on reimbursement of office expenses, salaries, etc., done by the foreign company to an Indian entity

Indian Potash Ltd., In re [2019] 112 taxmann.com 25 (AAR-Andhra Pradesh)

(In favour of Revenue)

Relevant Facts

The applicant is engaged in import-handling, promotion & marketing of fertilizers in India. They have sought advance ruling to determine whether the transportation of goods from non-taxable territory to taxable territory is to be treated as 'import of service' and whether it is liable to pay GST?

Held

The Authority observed that as per the provisions of Integrated GST Act 2017, services imported into the territory of India shall be treated as Inter-State Supplies and the same shall qualify as 'import of service'. Further, services supplied by person located in non-taxable territory by way of transportation of goods by vessel from a place outside India up to the India port is taxable under reverse charge and importer is liable to pay GST on ocean freight.

Maansmarine Cargo International LLP, In re [2019] 109 taxmann.com 372 (AAR-Maharashtra)

(In favour of Revenue)

Relevant Facts

The applicant is engaged in management consultancy services to ship owners, logistics services through water, etc. It was going to enter into an outsourcing agreement for which they will provide backend services in respect of foreign business carried out by MSS Marine Ltd. in Hong Kong. For performing such services, the applicant will be reimbursed on actual basis salaries paid to its employees, office rent and other office expenses. It has sought an advance ruling to determine whether GST will be applicable on such reimbursements or not?

Held

The Authority observed that the applicant is arranging or facilitating the business of its foreign client by liaising with their customers. Hence, supply is not undertaken by the applicant on its own account, therefore they are an intermediary and not pure agent. Place of supply in this case is the location of the supplier of services, i.e., the applicant who is located in the taxable territory and will be liable to discharge GST. The reimbursements received

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In Brief

Marketing & Pre-Sales Technical support services by Indian Subsidiary to foreign parent are 'intermediary services'

ITC availed on input services (remaining unutilized) would not be refunded on account of inverted duty structure. There is nothing in Rule 89, as amended that overrides Section 54 and they have to be read together harmoniously while granting refunds. Advance Ruling on formula involved in calculation of refund does not fall within purview of Section 97.

by the applicant relate to establishment costs incurred for running its office in India. The same is being recovered in addition to management fees from its clients and the same is considered as additional consideration for supply.

As per the valuation rules, value of supply include all costs, including the employee cost provided by one distinct entity to the other. Hence, the Authority held that GST will be applicable expenses reimbursed by the foreign company to the applicant.

ANSYS Software (P.) Ltd., In re [2019] 110 taxmann.com 186 (AAR-Karnataka)

(In favour of Revenue)

Relevant Facts

The applicant is wholly owned Indian subsidiary of the foreign parent Company, M/S ANSYS Inc., US engaged in distribution of Ansys Software in India. The applicant has filed an application for advance ruling to determine whether the marketing and pre-sales technical support services provided by it will be classified as 'intermediary services' under GST.

Held

The Authority observed that marketing and pre-sale technical support services includes selecting customers, analyzing their requirements, showcasing the product, convincing its features are as per their requirements, finalizing the product, etc. The applicant is performing all the required pre-sale co-ordination work so that the parent company can make the supply of the relevant software. This amounts to facilitation of supply of goods/services or both by the applicant on behalf of the parent and not undertaking supply on its own, and hence would be considered as an 'intermediary' under GST.

Daewoo-TPL JV, In re [2019] 75 GST 833/107 taxmann.com 351 (AAR-Maharashtra)

(In favour of Revenue)

Relevant Facts

The applicant was formed with sole objective to bid and secure contract for design, engineering and construction of Long Bridge – MRHL Project. The project entailed procurement of various inputs, input services and capital goods which attracted GST at varied rates, depending on the nature of such procurement. Since Input Tax Credit (ITC) paid on inputs and input

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GST not applicable on reimbursement of expenses incurred by employees on behalf of Company

services were higher than output supply, the transaction was covered under inverted duty structure. The Government in order to avoid cascading effect allows relief in the form of refund of unutilized ITC.

Held

Notification No.21/2018 & 26/2018- Central Tax prescribes formula under Rule 89(5) for net ITC which only considers ITC on inputs for computing amount of eligible refund. Thus ITC on input services is not available as refund under the said rules. There is nothing contained in Rule 89 as amended by Notification No. 21/2018 & 26/2018 that overrides Section 54 as they have to be read together harmoniously while granting refunds. Also as per Section 97, read with Section 95 of the CGST Act/MGST Act, 2017, method of calculation of refund is not covered therein and therefore no Advance Ruling has been given for the same.

Alcon Consulting Engineers (India) (P.) Ltd., In re [2019] 110 taxmann.com 357 (AAR-Karnataka)

(In favour of Assessee)

Relevant Facts

The applicant is providing consultancy services for construction projects. While providing such services some of the expenses are incurred by their employees on behalf of the applicant. It has sought an advance ruling to determine whether the expenses incurred by staff on behalf of applicant and then reimbursed periodically are liable to GST?

Held

The authority observed that services by an employee to the employer in the course of or in relation to his employment shall be treated neither as supply of goods nor as supply of services as per the provisions of GST Act. The amount paid by employee to the supplier of service is a 'consideration' as if it is paid by the applicant itself for services received by it. This amount reimbursed by the applicant to the employee later on would not amount to consideration for the supplies received by it because the service of employee to its employer in the course of employment is not a supply; hence it was held that it was not liable to GST.

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In Brief

Value of optical parts such as frames, sun glasses etc. by optical parts trader to branches outside State shall be open market value and if goods are further supplied by branches, option of 90% of price charged for supply of goods by branch to its customers is also available

Where applicant branch office is engaged in business of providing medium-sized heavy-duty cranes on rental/lease/hire basis to its clients which are supplied to it by its Head Office (HO), applicant having paid net consideration to HO, after deducting upkeepment charges is not eligible for full ITC but only to extent specified in restrictions as per second proviso to Section 16(2) of CGST Act

Specsmakers Opticians (P.) Ltd., In re [2019] 76 GST 211/108 taxmann.com 80 (AAR- Tamil Nadu)

(In favour of Assessee)

Relevant Facts

The applicant is engaged in trading of spectacle frames, lens, sunglasses and accessories which are produced locally or imported. The goods are transferred as such to branches situated in other States for further selling to their customers. The applicant has sought advance ruling to determine the value to be adopted in respect of transfer to branches outside the state.

Held

The value in respect of supply of such goods, by the applicant to distinct persons being branches outside the state of Tamil Nadu shall be the open market value of such supplies that is available as per Rule 28(a). Where the said goods are intended for further supply as such by the recipient, the applicant has the option to adopt an amount equivalent to 90% of the price charged for supply of goods of like kind and quality by the recipient to his customer not being a related person.

Sanghvi Movers Ltd., In re [2019] 76 GST 162/108 taxmann.com 70 (AAR-Tamil Nadu)

(In favour of Revenue)

Relevant Facts

The applicant is a branch office of SML, Maharashtra, engaged in business of providing medium-sized heavy duty cranes on rental/lease/hire basis to clients without transferring right to use cranes. Applicant and SML are distinct entities and have obtained GST registrations separately. Applicant has entered into a Memorandum of Understanding (MoU) with SML for supply of crane and trailer to its depot at Chennai, which in turn sub-hires to ultimate customer. Applicant is not paying full consideration of transaction to SML but same is being netted off against receivable by applicant for upkeepment charges that SML has to pay to applicant as per MoU. Whether the recipient office of SML (SML Tamil Nadu) would be eligible to avail full ITC?

Held

Since the applicant is not paying full amount to its supplier SML and payments are netted off against receivables, applicant is not eligible for full ITC on supplies received from SML but only to extent specified in restrictions as per second proviso to Section 16(2) of CGST Act and Rule 37 of CGST Rules.

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