CNK & Associates LLP

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GST- Judicial Decisions

In Brief

Admissibility of ITC on various transactions relating to Health Care Services.

Ambara, In re [2020] 120 taxmann.com 369 (AAR – Karnataka)

(In favor of Applicant)

Relevant Facts

The applicant was running a hospital providing health care services to both in-patients as well as out-patients. In addition to health care services, they also provided food and beverages and medicines to the in-patients. It had been marking item wise billing to the in-patients and the out-patients.

The applicant sought advance ruling on the following:

1) Whether Input Tax Credit **(ITC)** is required to be restricted on medicines supplied to patients admitted in hospital.
2) Whether ITC is required to be restricted on medicines supplied to patients treated as out-patients.
3) Whether ITC is required to be restricted on medicines supplied to other than in-patients and out-patients.
4) Whether ITC is required to be restricted on supply of food and beverages to the patients admitted in hospital.

Held

1) The ITC is required to be restricted on medicines used in the supply of health care services provided to in-patients and out- patients. Further in case medicines are supplied independent of health care services, then the applicant is eligible to claim ITC subject to payment of taxes on such independent supply of medicines.
2) The ITC is not required to be restricted on medicines supplied to others, i.e., customers, who are neither in-patients nor out-patients, as there is no health care service provided and the applicant is liable to pay tax on such outward supply of medicines.
3) The ITC is to be restricted on supply of food and beverages supplied to in-patients being part of the health care services.

CNK comments:

A very practical ruling, which removes the doubt on admissibility of ITC in various transactions related to health care sector.

In Brief

Refund of IGST paid on Export of goods not applicable to holder of Advance Authorization license w.e.f. 23rd October 2017

Cosmo Films Limited, In re [2020] 120 taxmann.com 417(High Court - Gujarat)

(In favor of Revenue)

Relevant Facts

The petitioner was a public limited company engaged in the business of manufacturing and sale of flexible packaging films. The petitioner was entitled to import raw materials without payment of IGST under Advance Authorization (AA) Licenses and pay IGST on exports and claim Refund (Rebate) of the IGST so paid on exports. Thereafter, sub-rule (10) of rule 96 of the CGST Rules was amended by Notification dated 4th September 2018 with retrospective effect from 23rd October 2017 providing that rebate on exports could not be availed by the petitioner, if the inputs procured by the petitioner had enjoyed AA benefits or Deemed Export Benefits under the said notification. Therefore, the petitioner was unable to utilize the benefit of duty-free imports under AA Licenses and take the benefit of rebate on exports, because of the amendments made in rule 96(10) of CGST Rules.

The petitioner preferred instant petition challenging the notifications and amendments made in sub-rule (10) of rule 96 of the CGST Rules, by Notification No. 54/2018 denying the option to claim rebate to the petitioner for importing goods under AA Licenses being ultra vires the provisions of the CGST Act and the CGST Rules made thereunder and Article 14 of the Constitution of India.

Held

On conjoint reading of the provision of section 16 of the IGST Act, section 54 of CGST Act and Rule-96 (10) of CGST Rules, which is substituted by Notification No. 54/2018 dated 9th October 2018, it is apparent that the person who has availed the benefits of Notification No. 48/2017 dated 18th October 2017 and other Notifications as stated in sub-rule 10 shall not have the benefit of claiming refund of integrated tax paid on exports of goods or services. The petitioner has availed benefits under Advance Authorization License scheme as per the Notification No. 18/2015 which was amended by Notification No. 79/2017 dated 13th October 2017 and paid integrated tax on the goods procured by the petitioners for the export purpose.

By virtue of the Notification No. 16/2020 Central Tax (Rate) dated 23rd March 2020, the option of claiming refund under option as per clause (b) is now restricted to the exporters who only avail Basic Custom Duty **(BCD)** exemption and pay IGST on the raw materials thereby exporters who want

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to claim refund under second option can switch over now. The amendment is made retrospectively thereby avoiding the anomaly during the intervention period and exporters who already claimed refund under second option need to payback IGST along with interest and avail ITC.

In view of above amendment, the grievance of the petitioner raised in instant petition is therefore taken care of. However, it is also made clear that Notification No. 54/2018 is required to be made applicable with effect from 23rd October 2017 and not prior thereto from the inception of the rule 96(10). Therefore, in effect Notification No. 39/2018 dated 4th September 2018 shall remain in force as amended by the Notification No. 54/2018 by substituting sub-rule (10) of rule 96 of CGST Rules, in consonance with sub-section (3) of section 54 of the CGST Act and section 16 of the IGST Act. The Notification No. 54/2018 is, therefore, held to be effective with effect from 23rd October 2017. Rule is made absolute to the aforesaid extent.

CNK comments:

Gujarat High court has rightly interpreted the Rule 96(10) by stating that one cannot avail the benefit of both i.e., IGST exemption at the time of Importing goods and refund of IGST at the time of Exporting the Goods. Notification No. 16/2020 has also put all the doubts to rest by allowing BCD exemption benefit.

Availment of ITC on Promotional and marketing materials

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M/s. Page Industries Limited, In re [2021] 123 taxmann.com 31 (AAR – Karnataka)

(In favor of Revenue)

Relevant Facts

The applicants were engaged in manufacture, distribution and marketing of knitted and woven garments under the brand name of 'Jockey', Swim-wears and swimming equipment under the brand name of 'Speedo'. The applicant also got the said garments manufactured from their job workers. To promote their brands and to market their products, applicant availed the services of advertisement agencies such as print media, electronic media, outdoor advertising etc. The applicants were also procuring promotional products and marketing materials for use in displaying their products at their showrooms and showrooms of distributors/dealers.

The applicants sought advance ruling on the following:

Whether under the facts and circumstances of the case, the promotional products / materials and marketing items used by the applicants in promoting their brand and marketing their products can be considered as 'Inputs' as

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Applicability of Reverse charge mechanism in case of import of services

defined under section 2(59) of the CGST Act, 2017 and GST paid on the same can be availed as ITC in term of section 16 of the CGST Act, 2017?

Held

The GST paid on procurement of the 'distributable' products, which are distributed to the distributors, franchisee is allowed, as the said distribution amount to supply to the related parties which is liable to GST being covered by Schedule 1 of the CGST Act. However, the said distribution to the retailers for their use are not to related parties and would not be liable to tax and thus be claimed as gift given free of cost and hence, ITC is not allowed. Further, GST paid on procurement of 'non distributable' products qualify as capital goods and not as 'Input' and the applicants can avail the ITC if and only if the ITC is not barred under section 17(5) of CGST Act, 2017.

CNK comments:

In this Ruling the Authority has ignored the important aspect of 'In the course of furtherance of business' as mentioned in definition of 'Input' under Section 2(59). Instead, they have come up with the concept of 'distributable' and 'non distributable' products. It seems that the controversy related to availability of ITC on promotional goods and materials is not going to settle down soon.

IZ Kartex, In re [2020] 121 taxmann.com 313 (AAAR – West Bengal)

(Ruling of AAR overturned by AAAR in favor of Applicant)

Relevant Facts

The appellant IZ-KARTEX Russia based foreign entity entered into a Maintenance and Repair Contract (MARC) with Bharat Coking Coal Ltd. **(BCCL)** on 15th October 2015 for maintenance of 4 nos. of Electric Rope Shovel, supplied by the appellant. As per the agreement, foreign applicant was to be entirely responsible for all taxes, duties, license fees and such other levies imposed outside and inside BCCL's country legally applicable during execution of the contract. The appellant raised invoices against BCCL inclusive of tax. Payment was not made till 2018 owing to problem in the payment channel which necessitated the appellant to open a branch in India in 2018 and they got GST registration on 25th October 2018. The payment against invoices raised by them towards BCCL were received in the bank account of the branch, opened in India, after reducing tax element paid by BCCL under reverse charge mechanism. According to the appellant, as per Notification No. 10/2017-Integrated Tax (Rate) dated 28th June 2017, the recipient of service, i.e., BCCL was liable to pay the IGST on the services imported by them from the appellant under reverse charge mechanism.

In Brief

Whether financial assistance received from holding company located outside India to its subsidiary in India for training activity conducted in India is covered as 'consideration for supply' and the activity is covered under the meaning of supply of services in terms of Section 7 of the CGST/ MGST Act, 2017.

The applicant sought advance ruling on the following:
To specify the person who was liable to pay tax in the aforesaid circumstances and whether it was legally justified by BCCL to deduct GST from payments made to the foreign company.

Held

From the fact of the case, it is amply clear that the service is being provided by the appellant's foreign entity, as all the conditions of import are satisfied in the present case. Hence, BCCL qualifies as importer of services and need to pay GST under Reverse charge mechanism, without deducting any taxes from the applicant.

CNK comments:

Favourable judgment from the appellant point of view, in line with GST provisions. Also, the concept of Fixed Establishment has been explained in the detail in its order by AAAR.

M/s. Prettl Automotive India Private Limited (AAR – Maharashtra)

(In favor of Revenue)

Relevant Facts

Applicant was engaged in supply of electric transformers, static converters, electric wires/ cables for transmission of electricity, equipment for spark ignition, installation and commissioning services. Prettl Kabelkonfektion GmbH, **(Prettl GmbH)**, Germany, Applicant's holding company, desired to join the 'develoPPP.de programme' (said program) run by the German Federal Ministry for Economic Cooperation and Development. Under the said program, German Government had entered into development partnerships with the private sector, to promote services provided by the private sector towards economic, social and ecological sustainable development. Pretti GmbH desired to provide financial assistance of 540.000 Euro to the Applicant under the said program for which the Applicant shall construct a 400 sqm training centre and conduct various training activities including teaching content at four educational institutes. Further, Prettl Gmbh intended to build up a workbench in India, to produce their products and benefit from lower value-add costs, since the automotive business and cable business are extremely competitive. Hence the activity undertaken by the applicant in India, under a contract with Prettl GMBH was towards such buildup of workbench to produce their products, if required

Held

As per the agreement, applicant had agreed to do some acts and as per clause 5 of Schedule II of the CGST Act, 'an agreement to do an act' will be considered as supply of service for which it had received consideration in the form of 'financial assistance'. Therefore, the said services shall be classified under the SAC Heading 999792 which pertains to "Agreeing to do an Act".

Further, the entire gamut of supply as per the agreement between the applicant and Prettl GMBH, would be performed in India and therefore the place of supply, being event based in the subject case would be in India and the said transaction did not satisfy the condition mentioned in clause (iii) of Section 2(6) of the IGST Act, 2017. Hence, the said transaction was not considered as Export of Services under the GST Laws.

CNK comments:

It is a radical judgement where financial assistance is considered as consideration for service based on the agreement. Further, ruling was also given in respect of exports which was earlier not given by the AAR in almost all cases.

Contact Us

Mumbai
Mistry Bhavan, 3rd Floor,
Dinshaw Vachha Road, Churchgate
Mumbai 400 020
Tel No. +91 22 6623 0600

Mumbai (Suburban Office)
501/502, Narain Chambers,
M.G. Road, Vile Parle (East)
Mumbai 400 057
Tel No +91 22 6250 7600

Ahmedabad
Tel. No. +91 79 2630 6530

Bengaluru
Tel. No.+91 80 2535 1353

Chennai
Tel No. +91 44 4384 9695

New Delhi
Tel No.+91 11 2735 7350

Vadodara
Tel. No. +91 265 234 3483

Dubai
Tel. No. +971 04 355 9533

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