

CNK & Associates LLP

Quarterly Insights, July 2019

GST- Judicial Decisions

In Brief

GST is not applicable on interest free security deposits received by lessor from the lessee

Input Tax Credit can be claimed only to extent of invoice value raised by suppliers less discounts i.e. discounted price paid by him to suppliers

E-Square Leisure (P.) Ltd., In re_ 104 taxmann.com 258 (AAR – Maharashtra)

(In favour of assessee)

Relevant Facts

The applicant is a lessor and is engaged in renting of immovable property to business entities for commercial purposes. It has taken interest free security deposit from the lessee which is returnable to the lessee on the completion of the tenure of the lease.

The applicant sought advance ruling on the following questions:

- 1) Whether GST would be applicable on interest free security deposit and notional interest, if any.
- 2) In case GST is applicable, what would be value of notional interest for levy of GST

Held

The Authority of Advance ruling observed that:

The security deposit taken by the applicant is to secure or to act as a guarantee as per the terms of agreement against damages, if any, caused to the furniture, equipments, fittings supplied along with the premises or any damage constitutes consideration to the properties. Thus, the deposit received by the applicant cannot be treated as consideration for the supply made by it and hence not liable to GST.

However, at the time of completion of the lease tenure, if the entire deposit or a part of it is withheld due to any damages, then such amount so deducted shall be liable to GST as per the present GST laws.

MRF Ltd., In re _ [2019] 103 taxmann.com 278 (AAR-Tamil Nadu)

(In favour of Revenue)

Relevant Facts

The applicant intends to enter into an agreement with C2FO for setting up an interactive automated data exchange relating to sale and purchase of goods and services between them and their suppliers

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In Brief

The applicant is offering several individual services to the recipients. There is also a consolidated charge for a combination of all services.

These services are categorized as mixed supplies and taxed at the highest applicable rate.

The said exchange having open invoice and supplier data, offers discounting by supplier and if agreed by supplier, discounted invoices are placed for early payment. Such discount could be on APR (Annual Percentage Rate) or flat discount prefixed. The applicant pays the supplier based on discounted invoice. The supplier raises invoice on the undiscounted price and pays applicable GST.

The Applicant on receipt of goods/services and invoice avails tax paid as credit. Thereafter, when such invoice is staged for discount against early payment in C2FO platform and price is discounted, only discounted amount is paid by applicant to his suppliers and not amount indicated in invoice.

The applicant has sought Advance Ruling to clarify whether the company can avail the ITC of the full GST charged on the supply of invoice or a proportionate reversal of the same is required in case of post-purchase discount.

Held

As per proviso to section 16, the recipient is entitled to avail the credit of input tax on the payment made by him alone and if any amount is not paid as per the value of supply and the recipient has availed full input tax credit, the same would be added to his output tax liability.

Sarj Educational Centre., In re_ [2019] 102 taxmann.com 448 (AAR – West Bengal)

(In favor of Revenue)

Relevant Facts

The applicant is engaged in providing boarding facility to the school students. The boarding facility includes lodging, housekeeping, laundry, medical assistance and food.

It sought advance ruling on the following questions:

- 1) Whether service to the students for lodging along with food is a composite supply?
- 2) Whether supply of such service is eligible for exemption under Sl. No. 14 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017?
- 3) What should be the rate of tax for the combination of services it provides, if it is not considered a composite supply?

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Held

The applicant's lodging facilities were used by both - day boarders and boarders. Numerical analysis revealed that the consideration charged was not a cost allocation for lodging and food only. A flat amount was charged for maintenance, electricity and laundry instead of reimbursement of the actual cost. The consideration was, therefore, a consolidated charge for a combination of all these services.

- 1) Lodging facility: Numerical analysis disclosed the 'per day' tariff to be less than Rs.1000 per day per unit and hence the Standalone lodging facility offered is, therefore exempt.
- 2) Supply of Food: This is taxable at the rate of 5%
- 3) House Keeping Services: These are taxable under Heading No. 9987 and taxable at rate of 18%
- 4) Laundry Services: Laundry service is classifiable under Heading No. 9997 and taxable at rate of 18%
- 5) Composite or Mixed Supply: Several individual services are offered by the applicant. Individuals select the packages depending on their respective need. Hence, the same cannot be categorized as composite supply. The combination of services is, therefore, offered as a mixed supply within the meaning of section 2(74).

Hence, each of the combinations includes services taxable at the rate of 18%, which is the highest rate applicable to the services being offered. Being mixed supply, value of the entire combination of services offered is taxable at 18%

Students' Welfare Association., In re_ [2019] 103 taxmann.com 449 (AAR - Maharashtra)

(In favor of Revenue)

Relevant Facts

The applicant is a registered charitable trust offering education related activities to students. The services offered include lodging and boarding facilities, compulsory personality development training, computer awareness activities, and communication skills in various languages. Apart from donations, the applicant charges a nominal fee from the students for the above services.

The applicant sought an advance ruling in respect of:

- 1) Whether hostel accommodation is covered within the definition of Charitable Activities and thus, exempt under SI. No. 1 of Notification No.12/2017-CT (Rate)?

Hostel accommodation provided by Trusts to students is not covered within the definition of charitable activities and thus, taxable.

Donations received by trust without any instruction would be exempt.

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In Brief

Services of an international Line Producer of feature films would be categorized as Import of Services.

- 2) Whether different treatment would be required for use of hostel rooms given by us for residential purposes but ultimately been used by the hirer for commercial use?
- 3) Whether the donations received are chargeable to GST?

Held

- 1) It was found that hostel accommodation to students was the primary activity of the Trust. Such students were found to be coming for education from Pune. Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of Notification No. 12/2017-CT (Rate) and hence taxable.
- 2) The description of service is use based i.e., if the accommodation is used for residential or lodging purpose then it is immaterial who the user is.
- 3) Donations received without any instruction would be exempt. However, where the donor is clearly receiving identifiable benefits in return either in terms of advertising or publicity, the said donation amount received is to be treated as a consideration for supply of goods or services or both and liable to GST. In instant case, applicant has not submitted in detail the terms of the donations and hence this authority is unable to answer this question

Udayan Cinema (P.) Ltd, In re_ [2019] 103 taxmann.com 219 (AAR – West Bengal)

(In favor of Revenue)

Relevant Facts

The applicant is engaged in producing feature films. Producing Films requires shooting at locations across the globe. The Company is in the process of appointing CDI Virtual Films Inc. (CDIVF) as a Line Producer for its upcoming project in Brazil.

It sought advance ruling on the following questions:

- 1) Whether IGST on the reverse charge is applicable on the payments to be made to CDIVF and, if so, what is the applicable rate and classification for such services?
- 2) Whether the reimbursements made are subject to IGST?

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In Brief

The supply in question is a supply of goods made available to the supplier of services for services to be performed on such goods for a recipient who is not in India.

Since both – the ‘place of supply’ and the ‘service provider’ are in the same state, it is an intra-state supply liable for CGST + SGST

Held

The Line Producer's services would be categorized as import of services and therefore liable to GST under the reverse charge route. Such taxable services are to be identified as motion picture production service classifiable under Heading No. 999612 and taxable at rate of 18 %.

Value of Supply would not allow deductions on account of reimbursements.

Bilcare Ltd., In re 2019 106 taxmann.com 408 (AAR – Maharashtra)

(In favor of Applicant)

Relevant Facts

The applicant is engaged in providing packaging solutions to pharmaceutical industries. These solutions aim to enhance the speed and quality of drug discovery. Its offering includes wide range of specialty polymer films and aluminum foils mainly used for packaging solid dosage pharmaceutical products. It also provides global clinical material supplies for new drug discovery projects along with solutions for product & people ID authentication and security.

Its clientele includes foreign clients.

It sought advance ruling on:

- 1) Determining the place of supply for various services provided to foreign clients to determine the applicability of IGST or CGST + SGST
- 2) If IGST is payable, the portal does not allow payment of IGST if the same state is selected under Place of Supply.

Held

1) Though the location of the recipient of services is outside India, the services supplied are in respect of goods which are made physically available by the recipient of services to the supplier of services for the services to be performed. As per S. 13(3)(a) of the IGST Act, 2017, the place of supply falls in the taxable territory and hence, IGST is not applicable. Since the ‘place of supply’ and the ‘service provider’ are in the same state, it is an intra-state transaction where CGST + SGST are applicable.

2) Not answerable since IGST is not payable.

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