

CNK & Associates LLP

Quarterly Insights, July 2020

GST- Judicial Decisions

In Brief

*Commissioning /
Installation services
are independent of
supply of goods.*

*Sale of Land with
primary amenities is
taxable under GST*

San Engineering & Locomotive Company Ltd., In re [2020] 116 taxmann.com 442 (AAR – Karnataka)

(In favor of Applicant)

Relevant Facts

The applicant was engaged in the business of manufacturing power packs and supplying installation and commissioning service. However, installation and commissioning invoice would be raised only after obtaining confirmation from the customer that the installation and commissioning had been completed and a Completion Certificate to that effect had been issued.

The applicant sought advance ruling on the following:

Whether the supply of power packs, freight and insurance service and commissioning/installation services had to be treated as "Composite Supply" or freight and insurance service and commissioning/ installation would be treated independent of supply of power packs given that installation and commissioning takes place after 4-5 months of supply of power packs.

Held

The supply of power packs and the freight and insurance charges would form part of the value of supply of power packs. The supply of commissioning/installation services supplied by the applicant were independent services supplied by the applicant and were independent of the supply of power packs.

CNK comments:

A very logical ruling wherein the concepts of Composite Supply and Independent supply are clearly distinguished.

Shree Dipesh Anilkumar Naik, In re [2020] 117 taxmann.com 450 (AAR - Gujarat)

(In favor of Revenue)

Relevant Facts

The applicant was in the business of developing vacant land as per the plan approved by the Plan Passing Authority (i.e. Jilla Panchayat). As per the said plan, the seller was mandatorily required to develop the primary amenities like sewerage and drainage line, electricity line, water line, land levelling for road, pipe line facilities for drinking water, street lights, telephone line etc. The plots of land would be sold to buyers without any construction on the same. It was

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Aggregate turnover includes exempt and taxable turnover irrespective whether the applicant is engaged in the furtherance of business

noted, that the seller charged on super built-up basis and not on actual measure of plot. This indicated the seller was charging for the land and common amenities.

The applicant sought advance ruling on the following:
Whether GST was applicable on the above-mentioned supply?

Held

Schedule III entry 5 of the Central Goods and Service Tax Act, 2017 (the Act) excludes sale of land from the definition of supply only if the activity is exclusively dealing with transfer of title or transfer of ownership of land, which is immovable property on earth. The above case was a supply of service as per clause 5(b) of Schedule II of the Act and hence, applicable to GST.

CNK Comments:

This ruling is in line with the Supreme Court decision in the case of M/s Narne Construction P Ltd. reported at 2013 (29) STR 3 (SC) in the pre-GST era.

Shree Sawai Manoharlal Rathi, In re [2020] 117 taxmann.com 497 (AAR – Gujarat)

(In favor of Revenue)

Relevant Facts

The applicant was an individual not engaged in any business. His receipts were in the form of rental income and interest from bank savings, PPF, personal loans, advances and deposits.

The applicant sought advance ruling on the following:
Whether interest received in form of PPF, interest received on personal loans and advances and interest received on savings bank account would be considered for the purpose of calculating the threshold limit of INR 20 lakhs for registration under GST Law even though he was not a money lender and the above income was not in furtherance of business?

Held

The Authority referred to the definition of Supply u/s 7 of the Act and concluded in the affirmative since Aggregate Turnover includes exempt turnover (interest-related) and taxable turnover (rental income).

CNK Comments:

Advance Ruling is only applicable to the applicant and has only persuasive value for others. The moot question is whether exempt income which does not

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GST returns for period July – September 2017 were allowed to be rectified due to GSTR - 2 and GSTR-3 being non-operationalized by GSTIN.

arise in the course of business can really be considered for calculating aggregate turnover for the purpose of GST registration.

Bharti Airtel Limited [2020] 116 taxmann.com 416 (High Court-Delhi)

(In favor of Petitioner)

Relevant Facts

The petitioner was engaged in the business of providing telecommunication services in India and held 50 registrations within India. The Petitioner re-molded its GST system from a centralized registration (under the erstwhile service tax regime) to multiple registrations under GST including technical changes within its accounting system to enable filing of GSTR 1, 2 and 3. Since the Government could not operationalize Forms GSTR 2 and 3, a summary scheme of filing GSTR 3B was introduced. The grievance of the Petitioner pertains to the rectification of Form GSTR- 3B for the period from July to September, 2017 which was caused due to the non-operationalization of GSTR 2 and GSTR 3.

Petitioner's grievance was that there was no rationale for not allowing rectification in the month for which the statutory return had been filed. This was also totally contrary to the statutory scheme of the Act - which provided that the data filled by a registered person would be validated in that month itself, and thereafter any unmatched details would be rectified in the month in which it was noticed. Accordingly, Petitioner impugned Rule 61 (5) of the CGST Rules, 2017, Form GSTR-3B and Circular No. 26/26/2017-GST dated 29/12/2017 as *ultra vires* the provisions of CGST Act to the extent, they did not provide for the modification of the information to be filled in the return of the tax period to which such information relates. The aforesaid provisions were also impugned on the ground that they were arbitrary, in violation of Articles 14, 19(1)(g), 265 and 300A of the Constitution of India.

Held

The High Court allowed the present petition by reading down Circular No. 26/26/2017 and permitted the Petitioner to rectify Form GSTR-3B for the period to which the error related, i.e. the relevant period from July, 2017 to September, 2017. It also directed the Respondents that on filing of the rectified Form GSTR3B, they shall, within a period of 2 weeks, verify the claim made therein and give effect to the same once verified.

CNK comments:

Much awaited ruling, particularly in view of the fact that, rectification of

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No recovery of tax can be made without adjudication proceedings u/s 73 or 74 of the Act.

returns has been the bone of contention right from the inception of GST. However, challenge remains how one can rectify the returns as of now when the portal does not allow you to rectify the original return.

Mahadeo Construction Co. [2020] 116 taxmann.com 262 (High Court Jharkhand)

(In favor of Petitioner)

Relevant Facts

The petitioner was a partnership firm registered under the Act. In its case, the GSTN Portal reflected 31.3.2019 as the due date for filing of GSTR 3B Return for the month of February and March, 2018 and hence filed its returns before 31.3.2019. The petitioner was served with a letter dated 8.3.2019 issued by Superintendent of Goods and Services Tax and Central Excise directing the petitioner to make payment of interest on the ground of delay in filing of GSTR-3B Return for the months of February and March, 2018. Additionally, the respondent-Authorities exercised powers u/s 79 of the Act by initiating garnishee proceedings for recovery of aforesaid amount of interest by issuing notice to the petitioner's banker without adjudication proceedings u/s 73 or 74 of the Act.

The present writ petition was limited to the actions of the respondent in initiating recovery proceedings before the "tax is payable". It was contended that the recovery proceedings u/s 79 cannot be initiated without initiation and completion of the adjudication proceedings u/s 73 and 74 of the CGST Act.

Held

The HC held that Section 79 of the Act empowers the authorities to initiate garnishee proceedings for recovery of tax where "any amount payable by a person to the Government under any of the provisions of the Act and Rules made thereunder is not paid". It held that, though the liability of interest was automatic, the same was required to be adjudicated in the event a petitioner disputes the computation or very levability of interest, by initiation of adjudication proceedings under Section 73 or 74 of the Act. Till such adjudication was completed by the Proper Officer, the amount of interest cannot be termed as an amount "payable" under the Act or the Rules. Thus, without initiation or any adjudication proceedings, no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount.

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