

# CNK & Associates LLP

Quarterly Insights, October 2019  
GST- Judicial Decisions

## In Brief

*Incidental services offered in conference are 'composite supplies' taxed at 18% under SAC 998596*

*Supply of pump sets with installation, electrification & energization is a 'composite supply' & not a 'works contract'*

### **All Rajasthan Corrugated Board & Box Manufacturers Association, In re [2019] 107 taxmann.com 264 (AAR- Rajasthan)**

(In favour of assessee)

#### **Relevant Facts**

The applicant is conducting a conference and exhibition for upliftment of corrugation industry. Facilities such as technical seminars, hotel room accommodation, cultural programs, airport pickup and drop, etc., will be offered to the delegates which will be inclusive of registration fees. It has sought an advance ruling to determine the classification and taxability of services offered in the exhibition.

The AAR, Rajasthan observed that under GST, 'composite supply' means two or more taxable supplies of goods or services or both which are naturally bundled and supplied in conjunction with each other. In this case, the basic intension of the delegates is to attend conference and all other facilities are made available to them for overall good experience of the conference.

#### **Held**

The AAR, Rajasthan held that facilities offered in a conference are incidental services which are 'composite supplies' during the organization of the conference. Those services or facilities are classified under SAC 998596- 'Events, exhibitions, conventions and trade show or organizations and assistance services' taxable at 18% GST.

### **United Engineering Works, In re [2019] 108 taxmann.com 104 (AAR – Karnataka)**

(In favour of assessee)

#### **Relevant Facts**

The applicant is engaged in the manufacture and supply of goods namely, pump sets and supply of services in the nature installation, electrification & energization to government entities.

It sought an advance ruling to determine the classification of such supply whether it would be covered under the purview of works contract or composite supply.

# CNK & Associates LLP

## In Brief

*ITC of GST paid on materials used for repair & maintenance of building not available to the extent being capitalized*

### Held

The AAR observed that-

‘Composite supply’ under GST means two or more taxable supplies of goods or services or both which are naturally bundled and supplied in conjunction with each other where one of the taxable supply is a principal supply. The applicant is engaged in two taxable supplies, firstly of goods and secondly of installation service. Installation service is possible only when the pump sets are supplied and hence, the principal supply is of pump sets.

As per the agreement entered into by the applicant with the government entities, it is not involved in drilling bore wells. The obligation of the applicant is to ensure effective installation and functioning of pump-sets supplied by it and does not relate to building, construction, etc., of any immovable property as defined under ‘works contract’.

Hence, it was held that supply of pump sets along with installation, electrification & energization is a ‘composite supply’ would not qualify as ‘works contract’.

### Rambagh Palace Hotels (P.) Ltd., *In re* [2019] 106 taxmann.com 172 (AAR – Rajasthan)

(In favour of Revenue)

### Relevant Facts

The applicant is a hotelier engaged in the business of rendering accommodation, mandap keeping, restaurant, spa services and providing other club facilities including the renting of space or lawn, etc. In order to maintain the said property, the hotel needs to undertake routine repairs and maintenance activities.

The applicant has sought advance ruling to determine whether GST paid on building materials such as cement, concrete, bricks or marble, paint, polish and any other building materials meant for repair of building shall be available for input tax credit (ITC)?

### Held

The AAR, Rajasthan observed that-

- 1) The repair and maintenance activities undertaken in respect of hotel i.e., immovable property involves transfer of goods like cement, tiles etc.

# CNK & Associates LLP

## In Brief

*Accumulated ITC lying unutilised in respect of notified goods, on account of inverted duty structure, shall not lapse*

- 2) Section. 17(5) of the CGST Act, 2017 clarifies that ITC is not available for constructions, reconstruction, renovation, addition, alteration or repair of an immovable property even when such goods or services or both are used in course or furtherance of business. However, such limitation is restricted to the capitalization of such costs to the said immovable property. In this case, repair and maintenance of building encompasses supply of goods for construction purposes.

Hence, it was held that ITC of GST paid on materials used for repair & maintenance of the hotel building shall not be available to the extent being capitalized.

### **Shabnam Petrofils (P.) Ltd. vs. Union of India [2019] 108 taxmann.com 15 (Gujarat.)**

(In favour of assessee)

#### **Relevant Facts**

The writ applicant was a manufacturer and seller of textile goods. It filed Special Civil Application before High Court of Gujarat challenging the provisions of the CGST Act, 2017, notification and circular issued by which the refund of accumulated ITC in respect of inverted duty structure was not granted.

#### **Held**

The Honourable Court observed that-

- 1) As per the provisions of refund under the CGST Act, 2017, refund of the unutilized ITC is granted on account of inverted duty structure where tax rate on inputs is higher than the tax rate on output supplies. However, certain goods or services are notified on which refund of accumulated ITC on account of inverted duty structure shall not be available. The notification issued under GST notifying such goods which was amended later on provided that accumulated ITC lying unutilised on the inward supplies received up to 31.07.2018, would lapse.
- 2) The court further observed that where the legislature wanted the ITC to lapse, it had been expressly provided for under the provisions of ITC of the CGST Act itself. However, no inherent power could be inferred from the provision of refund under the CGST Act, 2017 empowering the Central Government to provide for

# CNK & Associates LLP

## In Brief

*Penalty recovered by finance company due to delay in payment of EMI by borrowers is taxable under GST*

the lapsing of the unutilised ITC accumulated on account of inverted rate structure.

- 3) The writ applicant had a vested right to unutilized ITC accumulated on account of inverted rate structure. Therefore, the Honourable Court held that accumulated ITC lying unutilised in respect of notified goods, on account of inverted duty structure, would not lapse.

**Bajaj Finance Ltd. In re [2019] 108 taxmann.com 1 (AAAR Maharashtra)**  
(In favour of Revenue)

### Relevant Facts

The applicant is a non-banking financial company and is providing various types of loans to customers. The loan agreements provide for payment of EMI at a specified date. In case of delay in repayment of EMI, or in case the cheque has dishonoured / bounced, a penalty in the form of penal interest is collected from the customers.

The applicant has sought an advance ruling to determine whether such penal interest collected from customers is a taxable supply under GST?

### Held

The AAR observed that-

- 1) Interest received on loans is exempt from GST.
- 2) As per exemption notification under GST, interest means interest payable in any manner for money borrowed but does not include other changes in respect of money borrowed.
- 3) The penalty/penal charges recovered by the applicant from the borrowers are covered under 'other charges' and not under 'interest'.
- 4) As per CGST Act, 2017 'tolerating an act or a situation' is a supply of service. Therefore, tolerating delay in payment of EMI would fall within the ambit of supply.

The AAAR, Maharashtra upheld the order of AAAR that penalty/penal charges recovered by the applicant due to delay in payment of EMI, dishonouring of cheque by the borrowers are supplies liable to GST.

# CNK & Associates LLP

## In Brief

*Goods and Services provided in connection with the supply/ installation/ erection and assembly of complete air conditioning plant is a composite supply, the principle supply being the supply of goods.*

**Nikhil Comforts, In re [2019] 75 GST 305/107 taxmann.com 233 (AAR – Maharashtra)**

(In favour of Revenue)

### Relevant Facts

Applicant firm entered into an agreement with GSIDC, a wholly owned Government Company in Goa, for the supply of air-conditioning goods and services. The scope of such services included supply, installation, testing, commissioning of VRF Indoor and Outdoor units, stands, cables, etc.

Applicant sought an advance ruling on whether:

- 1) The transaction would be classifiable under works contract or a composite supply;
- 2) If the same is a composite supply, whether the principle supply would be the supply of air-conditioners.

### Held

Schedule II of the CGST Act, 2017 defines works contract as a service. Section 2(119) of the CGST Act, 2017 further leads to the works contract being performed on any immovable property.

As per the contract submitted by applicant, it can be concluded that major part of contract is supply of goods like outdoor units, cables, cassette units, wall units, refrigerant pipes, drain pumps, indoor and outdoor stands etc.

These goods would be fixed /attached to earth or to something which is further fixed /attached to the earth. Hence, it cannot be construed to be an immovable property. Hence, it is not construed to be a works contract but would be categorised as a composite supply. Since the principle supply is that of goods and providing installation and testing services are naturally bundled, the rate of goods would prevail.

Thus, it was held that such transaction is a composite supply liable to tax @ 28 % applicable to Air Conditioners.

# CNK & Associates LLP

## In Brief

*The 'permanent members of a Life Club' and 'the Club' are not distinct persons and hence any supply of food and refreshments cannot be termed as a 'sale'*

**State of West Bengal & Others. vs. Calcutta Club Limited, Civil Appeal No-4184 of 2009. Supreme Court.**

(In favour of assessee)

### Relevant Facts

- 1) The Calcutta Club was a Life membership club providing club facilities to its permanent members. On provision of food and beverages, the Club charged its Life members certain consideration for which sales tax was sought by the revenue. A notice was issued to the Club on non-payment of Sales tax on such food and beverages during the quarter ending 30.06.2002. The respondent Club submitted before the Tribunal, that it is not a dealer within the meaning of the Act as there is no sale of any goods in the form of food, refreshments, drinks, etc. by the Club to its permanent members and hence, it is not liable to pay sales tax under the Act.
- 2) The respondent further argued and contended on the grounds of doctrine of mutuality i.e. a person cannot make a profit from himself. The respondent Club treated itself as agent of the permanent members in entirety and advanced a stand that no consideration passed for supplies of food, drinks or beverages, etc. and there was only reimbursement of the amount by the members and therefore, no sales tax could be levied.

### Held

The Honourable Supreme Court held that supplies of food, drinks and refreshments by the petitioner clubs to their permanent members cannot be treated as 'deemed sales' within the meaning of Section 2(30) of the Finance Act, 1994. It also held that the payments made by the permanent members are not considerations and in the case of Members' club the suppliers and the recipients (Permanent Members) are the same persons and therefore, there is no exchange of consideration.

## ***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

## ***Disclaimer and Statutory Notice***

This e-publication is published by C N K & Associates, LLP Chartered Accountants, India, solely for the purposes of providing necessary information to employees, clients and other business associates. This publication summarizes the important statutory and regulatory developments. Whilst every care has been taken in the preparation of this publication, it may contain inadvertent errors for which we shall not be held responsible. The information given in this publication provides a bird's eye view on the recent important select developments and should not be relied solely for the purpose of economic or financial decision. Each such decision would call for specific reference of the relevant statutes and consultation of an expert. This document is a proprietary material created and compiled by C N K & Associates LLP. All rights reserved. This newsletter or any portion thereof may not be reproduced or sold in any manner whatsoever without the consent of the publisher.

This publication is not intended for advertisement and/or for solicitation of work.