CNK & Associates LLP

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GST- Judicial Decisions

In Brief

ITC admissibility for providing transportation facility to employees and GST applicability on recovery from employee of the same

Tata Motors Ltd., In re [2020] 119 taxmann.com 106 (AAR – Maharashtra)

(In favor of Applicant)

Relevant Facts

The applicant had engaged some service providers to provide transportation facility to its employees to and from the workplace, in non-air-conditioned buses having seating capacity of more than 13 person. Applicant charged nominal amount from its employees on monthly basis for this transportation facility.

The applicant sought advance ruling on the following:

1) Whether Input Tax Credit (ITC) was available to applicant on GST charged by service provider on hiring of buses having capacity for more than 13 persons?
2) Whether GST was applicable on nominal amount recovered by Applicants from employees for usage of bus transportation facility?
3) If ITC was available in question no. (1) above, whether it will be restricted to the extent of CGST borne by the Applicant (Employer)?

Held

1) Section 17(5)(a) of the CGST Act as amended w.e.f. 1-2-2019 allows ITC on Motor vehicle for transportation of person having approved seating capacity of more than 13 persons. Hence, ITC would be allowed after 1-2-2019.
2) Since the applicant was not supplying any services to its employees, in view of Schedule III of CGST Act, 2017, GST was not applicable on the nominal amounts recovered by Applicants from their employees in the subject case as such recovery is made in the course of employment.
3) ITC was not admissible to Applicant on part of CGST which was borne by employee and thus ITC would be restricted to the extent of CGST borne by the Applicant.

CNK comments:

A very practical ruling, which removes the doubt on transactions involving employees. It is also advisable to include the nominal amount charged to the employee as part of the cost to company (CTC) and payment so made will be in course of employment which would be neither supply of goods nor supply of service.

In Brief

Consideration of Notional Interest on high security deposit amount for arriving at threshold limit for GST.

Midcon Polymers Pvt. Ltd. In re [2020] 120 taxmann.com 24 (AAR – Karnataka)

(In favor of Applicant)

Relevant Facts

The applicant was intending to enter in to a contractual agreement of renting of commercial immovable property with monthly rent of Rs. 1.5 lakhs or annual rent of Rs. 18 lakhs and also refundable caution deposit of Rs. 500 lakhs, which was to be returned without interest on the termination of tenancy. The applicant was also going to discharge property tax levied by the Local Authority/Municipal Corporation.

The applicant sought advance ruling on the following:

1) For the purpose of arriving at the value of rental income, whether the applicant can seek deduction of property tax.
2) For the purpose of arriving total income from rental, whether notional interest for the security deposit should be taken into consideration.
3) Whether the applicant is entitled for exemption of tax under the general exemption of Rs. 20 lakhs.

Held

1) As per Section 15(1) of the CGST Act, 2017, where the supplier (applicant) and the recipient are not related, price is the sole consideration for the supply and monthly rent is the price payable. Thus, the monthly rent would be the transaction value and the same would be the value of supply of the impugned service. Section 15(1) of the CGST Act does not provide for deduction of property tax hence, property tax cannot be deducted from the value of taxable supply i.e. renting of immovable property.
2) The security deposit collected in such cases is normally equivalent to 6 months or 12 months' rent. Also it is a known fact that the higher the security deposit lower the monthly rent amount. The notional interest has to be considered as part of value of supply of service, if and only if the said notional interest influences the value of supply i.e. monthly rent and in such a case GST is chargeable on the notional interest at the rate applicable to monthly rent.
3) The applicant is entitled for exemption of tax under the general exemption of ₹ 20 lakhs, subject to the condition that their annual turnover, which includes monthly rent and notional interest, if it influences the value of supply, does not exceed the threshold limit.

In Brief

In the case of builder, the deduction for value of land to determine taxable value is the deemed value on the basis of notification as per the GST act and not the actual value.

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Karma Buildcon In re [2020] 119 taxmann.com 299(AAR – Gujarat)
(In favor of Revenue)

Relevant Facts

The applicant was engaged in the business of construction. For the purpose of the business they bought land and developed residential/ commercial property on that land. They entered into the agreement with prospective buyers for such residential /commercial property. The agreements were inclusive of land or undivided share of land cost. The applicant constructed residential / commercial property on the land by engaging labour and machinery and transferred such property to the buyers. Further, in applicant's case the cost of land was distinctly determinable and was more than one third (33.33%) of the consideration value of sale of property.

The applicant sought advance ruling on the following:

1) What would be the value of supply for the transaction of sale of residential/ commercial property with undivided rights of land?
2) In the case of construction of residential/commercial complex, the builder charged an amount which is inclusive of land or undivided share of land. As per Notification No. 11/2017-CT (Rate) and 08/2017-I.T (Rate) both dated 28.06.2017 the land value is deemed to be one third (33.33%) of the total amount (i.e. value including land value) and GST is payable on balance amount. But in applicant's case the value of Land is clearly ascertainable. In that case whether actual cost of Land can be deducted for the for the purpose of arriving at the taxable value of supply?

Held

1) The value was to be arrived in terms of deeming provision of Para 2 of Notification no. 11/2017-CT (Rate) dated 28.06.2017, as amended by Notification. No. 1/2018-C.T. (Rate), dated 25-1-2018.
2) Authority found that applicant's grounds of contention to allow the deduction of actual value of land from the transaction value instead of deduction, as defined in the Notification No. 11/2017-CT (Rate) dated 28.06.2017, was not tenable and beyond the purview of legality.

CNK comments:

Authority has denied deduction for the actual cost of land for the reason that it was not tenable and beyond the purview of legality. A very genuine argument put forth by applicant, was dismissed by the authority without giving any cogent reason.

In Brief

Concept of 'Pure Agent' analysed in detail and benefit of pure agent concept denied in the absence of documentary evidence.

Global Vectra Helicorp Ltd. In re [2020] 119 taxmann.com 268 (AAR – Gujarat)

(In favor of Revenue)

Relevant Facts

The applicant held a Non-scheduled Operators Permit (NSOP) (No.8/1998) issued by the Directorate General of Civil Aviation (hereinafter referred to as the 'DGCA'). It employed a fleet of around 30 helicopters (aircrafts) for providing rental services of aircraft including passenger aircrafts, freight aircrafts, and the like with or without operator. In respect of the ATF (Aviation Turbine Fuel), it was agreed that for the purpose of flying of the aircrafts supply of ATF would be the responsibility of the customers. However, at locations where the customer was unable to provide the fuel, in order to ensure continuity of flying, the contract required applicant to procure the fuel on behalf of the customer and subsequently the cost of the fuel was reimbursed by customer at actual (without charging any mark-up). Applicant thus in his opinion, undertook the activity of procurement of fuel as a 'pure agent'.

The applicant sought advance ruling on the following:
Whether in terms of the valuation provisions under GST legislation, amount recovered as reimbursement (at actual) by the applicant from the customer, for the fuel procured on behalf of the customer is required to be included in the value of services provided by the applicant?

Held

To act as 'Pure Agent' certain conditions as prescribed as per Rule 33 of the CGST Rules, 2017 need to be satisfied. Applicant failed to produce documentary evidence in support of his claim of pure-agent and was not able to satisfy the conditions prescribed in Rule 33. Hence, amount recovered as reimbursement by the applicant would be included in the value of service provided.

CNK comments:

Authority has interpreted the law in a very restrictive manner. Going by this ruling in practical situations, one needs to be very careful when making the claim for non-levy of GST on account of pure-agent concept and in most of the cases it may not be possible to make such a claim unless all conditions of Rule 33 are strictly followed.

In Brief

The ruling determines the concept of composite and principal supply and holds that exemption applicable to health care services provided by clinical establishments will not apply to wellness centre since the principal supply is of providing accommodation service.

Oswal Industries Ltd. In re [2020] 119 taxmann.com 269 (AAR – Gujarat)

(In favor of Revenue)

Relevant Facts

Nimba Nature Cure Village is a unit of M/s. Oswal Industries Ltd. Nimba Nature Cure Village is one of the largest Naturopathy Centers in India and offers physical, psychological and spiritual health overhaul with the help of power of nature. They provide different types of wellness facilities at Nimba such as Naturopathy, Ayurveda, Yoga and Meditation, Physiotherapy and Special therapy. Such wellness facilities were provided with the help of highly qualified professionals' doctors in the field of naturopathy, researchers, and support staff.

The applicant sought advance ruling on the following:

Whether the applicant was eligible to get the benefit of entry No.74 of exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 i.e services by way of health care services by a clinical establishment, an authorized medical practitioner or para-medics ?"

Held

Authority found that, these wellness and therapy services are not possible to be given without accommodation. Wellness packages depended upon the type of room chosen by the customer. Hence, this was composite supply of accommodation and therapy services. Since, there was no option available for the customer to avail wellness package without opting for accommodation, room accommodation was held to be principal supply and fell under tariff entry 996311. Applicant thus, was not eligible get the benefit of exemption Notification No.12/2017.

CNK comments:

In this ruling the Authority has ignored the essential part of the supply which was therapy and not the accommodation. The principal supply should have been determined on the basis of essential part of supply. Customer came to the wellness center to be cured from the diseases they had and not for enjoyment by staying in an accommodation.

In Brief

Restriction on refund of ITC on Input services in case of Inverted Structure refund was challenged. However the Court held that Section 54(3) and Rule 89(5) which imposes the restriction were valid.

TVL Transtonnelstroy Afcons Joint Ventures and Others, In re [2020] 119 taxmann.com 324 (High Court – Madras)

(In favor of Revenue)

Relevant Facts

The petitioners were engaged in different businesses wherein the rate of tax on input goods and/or input services exceeded the rate of tax on output supplies and were eligible for GST refund under inverted duty structure. Section 54(3) provides for refund of any unutilized ITC and the said section itself specifies that the quantum of refund includes credit availed on input services apart from inputs. Rule 89(5) of the Central GST Rules, 2017 is enacted to provide formula for determining the refund on account of inverted duty structure and it states that the petitioner was entitled to refund of the unutilized ITC availed during the relevant period proportionate to the turnover of inverted rated supply of goods vis-à-vis total turnover of the petitioner for that period. The revised formula *inter alia* excluded input services from the scope of 'net ITC' for computation of the refund amount under the Rule. Thus, the substituted Rule 89(5) denied refund on the ITC availed on input services and allowed relief of refund of ITC availed on inputs alone.

The petitioners, prayed that the amended Rule 89 was *ultra vires* Section 54(5) in as much as Section 54(3) provides for refund of any unutilized ITC accumulated on account of inverted duty structure thereby covering credit of both 'inputs' and 'input services'. Even the constitutionality of the provision was challenged.

Held

The High Court dismissed the writ petition and was of the view that Section 54(3)(ii) does not infringe Article 14. Section 54(3)(ii) only restricts a refund claim to the unutilised credit that accumulates only on account of the rate of tax on input goods being higher than the rate of tax on output supplies. In other words, it qualifies and curtails not only the class of registered persons who are entitled to refund but also imposes a source-based restriction on refund entitlement and, consequently, the quantum thereof.

CNK comments:

This is another very controversial judgment, which has deviated from recent judgment pronounced by Gujarat High Court in favour of petitioner in case of VKC Footsteps India (P) Ltd [2020] 118 Taxmann.com 81 wherein the Court read down the provisions of Section 54(3) and Rule 89(5).

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