

# CNK & Associates LLP

## Quarterly Insights, January 2019 GST - Judicial Decisions

### IN BRIEF

The petitioner paid the tax and penalty under the 'SGST' head instead of the 'IGST'. The goods were detained by the authorities. Aggrieved, the petitioner has filed a writ petition.

The court ruled that respondent will release the goods forthwith along with the vehicle and, then, ensure that the tax and penalty already stood remitted under the 'SGST' is transferred to the head 'IGST'.

### ISSUE 1

#### *Title & Citation*

**Saji S. vs. Commissioner, State GST Department [2018] 99 taxmann.com 218 (Kerala High Court)**

#### *Relevant facts:*

The petitioner, a registered dealer, purchased certain goods from Chennai but being delivered to Kerala. When the goods were in transit, the Assistant State Tax Officer (ASTO) detained the goods. The consignor paid the tax and penalty but the remittance was made under the head 'SGST' instead of 'IGST'. The authorities refused to release the goods. Aggrieved, the petitioner filed a writ petition.

#### *Issues involved:*

Whether GST paid under wrong head by mistake can be adjusted with another?

### *Judgment*

Hon'ble Kerala High Court held that officials should allow petitioner's request and get the amount transferred from 'SGST' to 'IGST'. Revenue contended that adjustment would take some time but Hon'ble Court held that petitioner cannot suffer on that count and hence the respondent was to release the goods along with the vehicle and, then, ensure that the tax and penalty already stood remitted under the 'SGST' is transferred to the head 'IGST'.

## IN BRIEF

The petitioner was one of the 13 co-owners (equal share) of a jointly owned immovable property. They had rented these properties to different parties and the total rent from all these properties exceeded Rs.20 lakhs in a FY but the individual share was not exceeding the above threshold limit. They filed an application to AAR whether:

- ♦ Small business exemption is available to all owners separately in case of jointly owned property? – Yes, exemption is available.
- ♦ Engaging a co-owner to collect and distribute rent among all the owners will have any implication on above exemption for individual co-owners? – No implication

## ISSUE 2

### Title & Citation

**Elambrancheri Khaldoon, In re**  
[2018] 98 taxmann.com 159 (AAR - KERALA)

### Relevant facts

The petitioner is one of the co-owners of a jointly owned immovable property. There were 13 co-owners holding equal share in 86.78 Cents of land and building. They have rented out these properties to different parties. Total rent from all the properties exceeds Rs. 20 lakh in a financial year (FY). But individual share is not exceeding the said threshold. Now, the owners are planning to engage one of the co-owners to collect rent and distribute among them for the purpose of administrative convenience through execution of a power of attorney.

### Issues involved

- ♦ Whether small business exemption under Section 22 of the GST Act is available to all owners separately in case of jointly owned property?
- ♦ Engaging a co-owner to collect and distribute rent among all the owners for administrative convenience will have any implication on above exemption for individual co-owners?

### Judgment:

- ♦ The co-ownership of the property is for financial, administrative and family reasons. By mere joining of hands of 2 or more persons, a different and distinct legal entity or legal personality does not come into existence, unless there is an intention to do so. The same is also the settled position under Income Tax and Service Tax Acts. The rent is collected from all the parties together and divided equally and transferred to the bank account of each co-owner. Only, if the individual receipt of a co-owner from all his business, including 'renting of immovable property', exceeds Rs.20 Lakhs in a FY, the respective person has liability to register under GST Act.
- ♦ Engaging a co-owner to collect and distribute rent among all the owners for administrative convenience has no implication on the business exemption under Section 22 for individual co-owners.

## ISSUE 3

### IN BRIEF:

The applicant has a manufacturing set up at various places in Odisha. It runs townships, hospitals, guest houses and horticulture. GST is charged on the services from these centers. They filed an application to AAR whether:

ITC is available for expenses incurred in the maintenance of such townships, hospitals, guest houses and horticulture – Yes.

### Title & Citation

**National Aluminum Company Ltd, In re [2018] 98 taxmann.com 245 (AAR - ODISHA)**

### Relevant facts:

The applicant is a Government of India (GoI) enterprise and engaged in manufacture of calcined alumina at Damanjodi in Odisha. The produced alumina is transported to aluminum smelter at Angul (Odisha) for production of aluminum cold rolled sheets and coils.

As part of its business, it is having townships at Damanjodi, Angul and residential colony at Bhubaneswar. It runs and maintains townships, hospitals, guest houses and horticulture for its employees, guests, tourists. The suppliers of such services are charging GST in their invoices. The applicant is receiving various services of repair and maintenance which are received as part of its business operations. Supplies availed by the applicant as per the list are classified as follows:

- Support Services
- Waste collection and Sanitation services
- Sweeping and snow removal services
- Security Services/Guard Services
- Services involving repair, alterations, additions, replacements and renovation
- Painting Services
- Human health services including Homeopathy, Unani, Ayurveda, Naturopathy and Acupuncture Contract
- Maintenance and repair services of machinery and equipment

### Issues involved:

Whether the supplier can claim ITC of input services for maintenance of township, guest house, hospital horticulture in its ordinary course of business?

### Judgement:

Above services are varied in nature and intended for partly business use (to the extent intended for the plant, plant area or plant building) and partly non-business use (to the extent intended for use outside the applicant area). Such cases proportionate Input Tax Credit (ITC) to the extent relatable to the plant is available. Accordingly, keeping in mind the current provisions of the GST Act and Rules, ITC used for the purpose of business would be allowed.

**In Brief:**

The respondent increased its base price in response to the change in GST rate. The GST rate was reduced from 18% with full ITC to 5% without ITC. This led to the increase of cost price of the respondent and hence corresponding increase in selling price.

- ♦ Whether allegation of passing rate reduction was established against respondent? -No
- ♦ Whether anti-profiteering was triggered? - No

## ISSUE 4

### Title & Citation

**National Anti-profiteering Authority Jiryusha N. Bhattacharya vs. NP Foods (Franchise Subway India) [2018] 97 Taxmann.com 633 (NAA)**

### *Relevant facts:*

The respondent runs the franchise of Subway India and increased its base prices in correspondence to a GST rate reduction.

An application dated 1<sup>st</sup> January 2018 was filed by the applicant before the Standing Committee alleging that the respondent has not passed on the benefit of reduction in the rate of GST in restaurant service, when he had purchased “6 Hara Bhara Kabab Sub” for Rs.145 instead of Rs.130 when the GST was reduced from 18% to 5%.

The respondent in response stated that the GoI had disallowed ITC on the purchase of material used in the restaurant service with effect from 15<sup>th</sup> November 2017 and, hence, he had increased the base price of his products after the change in the GST rate from 18% with ITC to 5% without ITC.

### *Issues involved:*

- ♦ Whether respondent had increased base price of his products to make good loss which had occurred due to denial of ITC post GST rate reduction, allegation of not passing on benefit of rate reduction was not established against respondent?
- ♦ Whether thus, there was no profiteering in supply and respondent had not contravened provisions of Section 171?

### *Judgment:*

- ♦ It is apparent from the facts of the case that the respondent had increased the base price of his products to make good the loss which had occurred due to denial of ITC post GST rate reduction. It is further revealed that the respondent had increased the average base price by 12.14% to neutralize the denial of ITC of 11.80% and such increase is to commensurate with the increase in the cost of the product on account of denial of ITC. Therefore, the allegation of not passing on the benefit of rate reduction is not established against the respondent
- ♦ As far as the issue of profiteering made on the supply of the products is concerned, the same cannot be termed as profiteering in terms of Section 171 as there was no rate reduction as the same had occurred with effect from 15<sup>th</sup> November 2017 only. Based on the above facts, it is clear that the respondent has not contravened the provisions of Section 171 and, hence, there is no merit in the application filed by the Applicant and the same is accordingly dismissed

**IN BRIEF:**

The applicant sought an advance ruling to determine whether GST was applicable on upfront amount payable in respect of services by way of granting of long term lease

It was held that as per Sl. No. 41 of Notification number 12/2017- Central Tax (Rate) dated 28<sup>th</sup> June 2017 such services are exempted if the conditions mentioned in the notification are fulfilled.

**ISSUE 5**

**Title & Citation**

**Yamuna Expressway Industrial Development Authority [2018] 98 taxmann.com 391 (AAR- Uttar Pradesh)**

***Relevant facts:***

The applicant sought advance ruling in regard to the following question: whether GST is applicable on upfront amount (called as premium/salami) payable in respect of services by way of granting of long-term lease of the thirty years or more for plots catering to public healthcare such as hospital, nursing home, diagnostic centers, etc.

***Issues involved:***

Whether GST is applicable on upfront amount paid for services of long-term lease of plots?

***Judgment:***

Reference was made to serial No. 41 of the Notification No. 12/2017-Central Tax (Rate), wherein it is stated that upfront amount called as premium/ salami would be exempted if it is in respect of service:

- ♦ by way of granting of long-term lease of 30 years, or more of industrial plots or plots for development of infrastructure for financial business;
- ♦ provided by the State Government Industrial Development Corporations or Undertakings or by any other entity;
- ♦ having 50% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.

Since in the given case all the above conditions were satisfied it was held that GST will not be payable on such upfront payment in the form of salami/premium.

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