

# CNK & Associates LLP

Quarterly Insights, April 2021

GST- Judicial Decisions

## In Brief

*Chargeability of GST and Admissibility of ITC in case of three different activities, running a sweet parlour, Restaurant service and providing catering service to an educational institution*

**Manoj Mittal: In re [2021] 126 taxmann.com 48 (AAR – West Bengal)**

(In favor of Applicant)

### **Relevant Facts**

The applicant had a place of business with two sections out of which one section was a sweet parlour wherein the applicant claimed to be engaged in selling sweetmeats, namkeens and bakery items off the counter in the form of takeaways from the said sweet parlour. In other section of the premises, the applicant claimed to be engaged in preparing and serving fast food snacks and beverage items which could either be consumed at the premises or were allowed as takeaways. In addition to this, the applicant was also engaged in providing catering services to an educational institution which provided education services up to secondary school.

The applicant sought advance ruling on the following:

- 1) Whether sale from the portion of the sweetmeats and bakery shop should be categorized as supply of goods and eligible for input tax credit (ITC)?
- 2) Can the supply of fast-food snacks and beverages from the portion of the shop which offers the opportunity of eating at the same premises be classified as restaurant services attracting a rate of GST of 5% and ineligible for ITC?
- 3) In case of receipt of common ITC in the form of inputs, input services and capital goods, will reversal of ITC be required in terms of Rule 42 and 43 of the CGST Rules 2017?
- 4) Will the catering services provided to the educational institution qualify as exempt supply based on the agreement?

### **Held**

- 1) Yes. Sale from the portion of the sweetmeats and bakery shop should be categorized as supply of goods and eligible for ITC since it involves only supply of goods with no element of service and separate books of accounts are maintained.
- 2) Supply of food and beverages, which offers the facility of eating in the same premises along with takeaway of the same would be classified as restaurant service attracting a rate of GST of 5% if credit of input tax charged on goods and services used in supplying the service has not been taken.
- 3) The applicant shall have to follow the principle of apportionment of credit as laid down in sub-section (1) and (2) of section 17 of the GST Act read with rule 42 and 43 of the CGST/WBGST Rules, 2017 in respect of common ITC in the form of inputs, input services and capital goods.
- 4) The catering services provided to the educational institution will qualify as exempt supply based on the agreement. However catering service to auditors and parents of the students of the educational institution will be liable to 5% GST without ITC.

### **CNK comments:**

*A very practical ruling, in line with GST Law.*

# CNK & Associates LLP

## In Brief

*GST applicability on Capital Subsidy*

*ITC admissibility on CSR Activities*

***Surya Roshni LED Lighting Projects Ltd., In re [2021] 124 taxmann.com 58 (AAR – Odisha)***

(In favor of Revenue)

### ***Relevant Facts***

The applicant entered into an agreement for design, supply, installation, operation, maintenance and transfer of energy efficient Greenfield Public Street Lighting System and Centralized Control & Monitoring System with Government of Odisha. Applicant received Capital Subsidy of 90% of total capital expenditure incurred for supplying, installing and commissioning of equipment from the State of Odisha.

The applicant sought advance ruling on the following:

- 1) Whether Capital Subsidy received by the applicant for the Greenfield Public Street Lighting System project in the State of Odisha is liable to GST or not? and if liable what is the rate of GST?
- 2) What shall be the time for raising GST Invoices for Capital Subsidy and Annuity Fee (consisting of 10% of Project Capital Expenditure and O&M Fee) payable in 7 years?

### ***Held***

- 1) Capital Subsidy received/receivable by applicant in this case being actual cost incurred by applicant in project, it is not a subsidy which generally means grant/grant-in-aid, or a benefit given to an individual, business or institution, usually by Government. This 'capital subsidy' cannot be 'subsidy' by any stretch of imagination. Rather the same is a consideration as defined in section 2(31) of CGST Act in relation to supply of goods and therefore, said 'capital subsidy' shall certainly be liable to be included in Transaction Value for purpose of calculation of GST - Applicant is thus liable to pay GST on 'Capital Subsidy'.
- 2) Further, in the subject case since there is a Composite supply, where the predominant supply is 'Supply of Goods', invoice should be raised as per the provision of Section 31 of the CGST Act, 2017.

### ***CNK comments:***

*Meaning of Subsidy varies from case to case. It is necessary to understand the fact of the case before coming to conclusion as regards the taxability in case of 'Subsidy'.*

***Dwarikesh Sugar Industries Ltd., In re [2021] 125 taxmann.com 329 (AAR – Uttar Pradesh)***

(In favor of Applicant)

### ***Relevant Facts***

The applicant was engaged in the business of manufacture and sale of sugar and allied products. In order to comply with the Corporate Social Responsibility (CSR) in terms of section 135 of the Companies Act, the applicant undertook the activities

# CNK & Associates LLP

## In Brief

of: - 1) Construction of School building, additional rooms, laboratories etc. 2) Free supply of furniture / fittings to be used in the school 3) Free supply of electrical goods used in the school 4) Other expenses such as provision of goods/services to registered charitable trusts/NGOs. In order to undertake the above, the applicant procured various goods and services on which GST was charged by the supplier.

The applicant sought advance ruling on the following:

- 1) Whether expenses incurred by the company in order to comply the requirement of CSR under The Companies Act, 2013 qualify as being incurred in the course of business and eligible for ITC in terms of Section 16 of CGST Act, 2017 ?
- 2) Whether free supply of goods as a part of CSR activities is restricted under Section 17(5)(h) of CGST Act, 2017?
- 3) Whether goods and services used for construction of school building which is not capitalized in the books of accounts is restricted under Section 17(5)(c) / 17(5)(d) of CGST Act, 2017?

### **Held**

- 1) Yes. Expense incurred to comply with the requirement of CSR qualifies as being incurred in the course of business and is eligible for ITC.
- 2) No. Free supply of goods as part of CSR activities is not restricted under Section 17(5)(h) of CGST Act, 2017.
- 3) ITC is restricted only to the extent of capitalization in books of accounts and as such goods and services used for construction of school building which are not capitalized in the books of the Company, ITC can be availed on the same and not restricted under Section 17(5)(c ) and Section 17(5)(d) of CGST Act, 2017.

### **CNK comments:**

*Kerala AAR in case of Polycab Wires Limited in an earlier ruling disallowed ITC on CSR activities. However, this is a welcome ruling and very good interpretation of law. Relief to the Companies, which have to incur mandatory expenses for CSR activities.*

### **Kalyan Jewellers India Ltd., (AAAR – Tamil Nadu)**

(In favor of Applicant)

### **Relevant Facts**

The applicant was engaged in the business of manufacturing and trading of jewellery products. As a part of sales promotion, the applicant issued different types of Pre-Paid Instruments (PPI's) viz., Closed System PPIs, Semi-closed System PPIs, Open System PPIs through its retail outlets, third party PPI issuers and online portals to its Customers and these are generally called "Gift Vouchers/Gift Cards" in trade parlance.

The applicant approached the Appellate Authority for Advance Ruling (AAAR) against the ruling given by the Tamil Nadu State Authority for Advance Ruling (AAR), which ruled that GST at 12 per cent or 18 per cent would be levied on such

*GST applicability on  
Gift Vouchers*

# CNK & Associates LLP

## In Brief

*Order for ending the extension of limitation period*

issue of PPI's (gift vouchers or gift cards) depending on whether on such pre-paid instruments were paper based or magnetic strip based.

### *Held*

Modifying the AAR verdict, the AAAR has clarified that GST will be levied not on the supply of vouchers but on the underlying supply of goods/ services at the time of redemption and the time for payment of GST will be dependent on the provisions detailed in the GST Law.

In its order, the AAAR said that vouchers are neither goods nor services and the GST law recognizes it as an instrument of consideration (non-monetary form) for future supply.

### *CNK comments:*

*This AAAR ruling provides considerable clarity on the taxability of vouchers, which otherwise is a very grey area. However, the AAAR while giving its ruling has not felt the need to determine whether vouchers are actionable claims or not and this is specifically stated in the order.*

### *Suo Moto Writ (Civil) No. 3 of 2020 Cognizance for Extension of Limitation (Supreme Court of India)*

The Supreme Court of India had passed an Order in *Suo Moto Writ* Petition titled as "Cognizance for Extension of Limitation" on 27<sup>th</sup> March 2020, pertaining to certain time periods prescribed under different statutes. The reason for passing such order was that the litigants should not face problems in filing their petitions/applications/suits/appeals/all other proceedings. This effect of this order had been extended time to time.

Now, because lockdown has been lifted and country is returning to normalcy, the Hon'ble Supreme Court has issued the direction that its earlier order passed on 27<sup>th</sup> March 2020 effective from 15<sup>th</sup> March 2020 had fulfilled its purpose and the extension of limitation period should come to an end.

Hence, Supreme Court has disposed of *Suo Moto Writ (Civil) No. 3 of 2020* vide its order dated 8<sup>th</sup> March 2021 and ordered that the period from 15<sup>th</sup> March 2020 to 14<sup>th</sup> March 2021 shall be excluded from computing the limitation period.

***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.