

Separate GST Registration is not required for execution of work contract at project site in different states

GEW (India) (P.) Ltd., In re [2021] 132 taxmann.com 139 (AAR - KARNATAKA) – In favour of Assessee – November 8, 2021

Relevant Facts

The Applicant was a company registered under GST at Uttar Pradesh, got a sub-contract work from M/s. L&T, claimed to be a works contract, for erecting steel structure casted and bolted on ground in the civil foundation, at the site at Karwar, Karnataka. Applicant stated that books of account will not be maintained in Karnataka and invoices will not be prepared from Karnataka - It also stated that engineers connected with project will only be located in Karnataka and applicant was not having fixed establishment in Karnataka.

The applicant sought an advance ruling in respect of the following

- Whether applicant was required to be registered in the State of Karnataka for executing the works contract ?

- Whether applicant had to obtain input service distributors (ISD) registration to avail input tax credit (ITC) of tax paid on services procured from suppliers in Karnataka at project site and distribute the same to their place of registration at Noida, UP?

Held

Hon'ble Karnataka Advance Ruling Authority referred section 22 to 24 of CGST Act and observed the following

- The applicant need not obtain separate registration in Karnataka, for supply of works contract services and can raise the invoice by charging IGST from their registered office at Noida, UP, with place of supply as Karnataka.
- Since the applicant are neither having nor intending to have any establishment at the site at Karnataka, they cannot obtain ISD registration for the site at which they are delivering service.

CNK Comments

A very practical ruling in line with CGST Act, which clarifies the position on GST registration at various sites in respect of work contract transactions.

Registration of purchasing dealer cannot be cancelled for fraud committed by selling dealer; cancellation of registration is not sustainable when department has failed to prove that ITC was availed with full knowledge of seller being non-existent.

Bright Star Plastic Industries Vs. Additional Commissioner of GST [2021] 132 taxmann.com 146 (Orissa)- Hight Court of Orissa – In favour of Assessee – October 4, 2021

Relevant Facts

The Petitioner was carrying on the business of manufacturing and trading of Poly Vinyl Chloride (PVC) pipes, high-density polyethylene and low-density polyethylene pipes, scrap iron angles, iron scraps, etc. The CT & GST Officer, Bhubaneswar issued a show-cause notice (SCN) in Form GST REG-17 under Rule 22(1) of the OGST Rules, 2017 for cancellation of Petitioner's registration on the ground that registration has been obtained by means of fraud, willful misstatement, or suppression of facts. After the Petitioner filed a reply, the CT & GST Officer, Bhubaneswar dropped the proceedings for cancellation of the registration. However, on the same day, they issued another SCN for cancellation of registration, on the ground that, Petitioner had claimed ITC against fake invoices issued by the non-existent supplier. A detailed reply was sent by the Petitioner to the aforesaid SCN with the details of the bill numbers, the dates, the value of the goods and the CGST & SGST amounts paid. It was further pointed out that the Petitioner had reflected the purchases so made in the return GSTR-3B for the relevant months as well.

Ruling

It was ascertained that the purchases had been made from a dealer, who was registered with the Department, and ITC was being claimed on the basis of the tax invoices that fulfilled the requirement of law. Reliance was placed on a decision of the Delhi High Court in *On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi (2017)*, wherein it was observed that the buyer cannot be put in jeopardy when he has done all that the law requires him to do and further that the purchasing dealer has no means to ascertain and secure compliance of the selling dealer. The fraud committed by the selling dealer, which resulted in the cancellation of a selling dealer's registration, cannot lead to automatic cancellation of the registration of the purchasing dealer. The decision of the Gujarat High Court dated December 10, 2020, in Special Leave Application No.15508 of 2020 *Vimal Yashwantgiri Goswami v. the State of Gujarat* was referred which supported the case of the Petitioner. Hight Court directed the Department to restore the Petitioner's registration forthwith by issuing appropriate orders/directions and the Petitioner was correspondingly now permitted to file all the returns which it could not file on account of the cancellation of the registration.

CNK Comments

Welcome judgment by High Court in favor of the Petitioner.

GST on Activities of Charitable Trust

Jayshankar Gramin Va Adivasi Vikas Sanstha, In re [2021] 132 taxmann.com 164 (AAR - Maharashtra) – In favour of Revenue – November 10, 2021

Relevant Facts

Applicant was a Charitable Trust registered under Maharashtra Charitable Trust Act, 1950. They were also registered under the Society Act and Income-tax Act, 1961 as a charitable trust.

The trust undertook supply of services to 50 orphans and homeless children by way of shelter, education, guidance, clothing, food and health for the Women and Child welfare. The Govt. of Maharashtra Women and Child Welfare Department paid a sum of Rs. 2,000 per month per child to the trust. Other expenses for children were made from donations. The trust also rendered services to destitute women who were litigating divorce or homeless or the victim of domestic violence. Major source of income of the trust was from Government of Maharashtra's Woman and Child Welfare Ministry and also the Central Government and other donations from public. The applicant was claiming exemption under Sr. No. 1 of Notification No. 12/2017 dated June 28, 2017, which provided exemption from tax to Services supplied by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.

The applicant sought an advance ruling in respect of the following :-

- Whether applicant was required to obtain registration under the GST Act ?
- Whether applicant was liable to pay GST on Donations/Grants received from various entities including Central and State Government and if yes, what is the rate of tax?

Held

Hon'ble Maharashtra AAR referred notification no. 12/2017 dated June 28, 2017, and observed the following-

- The applicant was not performing 'charitable activities, as defined under the above said notification. Hence, the said activities are taxable and liable to obtain registration under GST.
- The applicant was liable to pay GST on Grants received from various entities including Government, but GST will not be payable on donations if they are philanthropic and not an advertisement. Rate will be 18%.

CNK Comments

Charitable activities specified in the notification are no doubt exempt from GST. However, certain grants and donations may still be exempt in the absence of essence of supply.

Electronic Credit Ledger can be utilized only for the purpose mentioned in the GST Law.

Jyoti Construction Vs. Deputy Commissioner of CT & IGST, [2021] 131 taxmann.com 104 (Orissa) – High court of Orissa – In favour of Revenue – October 7, 2021

Relevant Facts

The Petitioner had filed an appeal against assessment order, before the Appellate Authority and made payment of the pre deposit being 10% of the disputed amount of tax by debiting its electronic credit ledger (ECRL) . The Appellate Authority rejected the appeal of the petitioner holding that appeal filed was defective, since petitioner made payment of pre deposit being 10% of the disputed amount of tax by debiting its ECRL and did not pay it from the electronic cash ledger (ECL). He rejected the contention of the petitioner that the ECRL could be debited for the purposes of making the payment of pre-deposit. Petitioner contended that section 107(6) of the Act is merely a machinery provision, and it must be interpreted accordingly to serve the purpose of collecting the pre deposit amount which could be done even by debiting the ECRL

Held

Orissa High Court analysed section 49(3) read with rule 85(4) and 107(6) and was of the opinion that the assessee was required to make payment equivalent to 10% of the disputed amount of tax arising from the order against which the appeal is filed. This payment was required to be made by the petitioner by debiting its ECL only as provided under relevant sections of GST Act.

January 2022

They have also pointed out that usage of ECRL would be restricted to the extent provided under section 41(2) and petitioner could not utilize the same for making payment of pre-deposit appeal.

CNK Comments

A very debatable ruling. It is required to be deliberated as to whether output tax mentioned in section 49 includes disputed tax or not. In the Pre-GST era payment of pre-deposit through credit has been allowed in many rulings.

Applicability of GST on amount recovered towards Top-up and parental insurance premium from the employees

TATA Power Company Limited *In re* [2021] (AAR- MAHARASHTA) – In favour of Assessee – November 10, 2021

Relevant Facts

The applicants was engaged in power generation, transmission and distribution of electricity to its customers and as a part of its employee policies, it provided certain facilities to its employees such as insurance, transport, etc. The applicant had an arrangement with insurance company for providing insurance cover for its employees, in pursuance of which, the insurance company issued a master insurance policy to the applicant for providing group insurance to the applicant's employees. Further, the applicant had formulated a 'Health & Wellness Policy' for the welfare of its employees under which, its employees could opt for an additional insurance (hereinafter referred to as "Top-up Insurance") apart from the insurance cover provided under the group insurance. Therefore, the applicant had taken a 'Top-up policy' from the insurance company. To avail the aforesaid additional insurance cover by way of Top-up insurance and Parental Insurance, employees were required to contribute an additional amount as premium

which was recovered by the applicant from the employees' salary. The applicant had not availed ITC of GST charged by the insurance Company.

The applicant sought an advance ruling in respect of the following

Whether the recovery of an amount towards Top-up and parental insurance premium from the employees, amounts to a supply of any service?

Held

Hon'ble Maharashtra AAR referred to section 7 along with other relevant sections and observed that the applicant is not engaged in providing insurance service. The service of insurance is actually provided by the insurance company for which the insurance company is charging GST. The Applicant is just paying the insurance premium amount to the insurance company and recovering the premium amount from its employees. The applicant has not taken ITC of the GST paid to the insurance company. Non-providing of Top Up Insurance/Parental Insurance coverage will not affect applicant's business by any way. Therefore, activity of recovery of the cost of insurance premium cannot be treated as an activity done in the course of business or for the furtherance of business and hence, not liable to GST.

CNK Comments

Another welcome judgment from the authority, which clarifies one more doubt of GST applicability on the transactions relating to employees. Similar ruling has been given earlier in the case of Posco India Pune Processing Centre Pvt Limited (2019 25 AAR GST) and Jotun India Pvt Ltd (2019 312 AAR GST).

KEY TAKE AWAY

- No separate GST registration required for execution of work contracts in different states.
- Registration of purchasing dealer can not be cancelled for fraud committed by selling dealer.
- It is very critical to substantiate, how activities can qualify as 'Charitable Activities' as defined in GST Law.
- Electric Credit Ledger can be utilized strictly for the purpose, as mentioned in GST Law.
- GST is not applicable on amount recovered towards top up and parental insurance premium paid from employees.



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