

Tax INFORM

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DIRECT TAX



A. Recent Case Laws

I. Domestic Tax Rulings

Middleby Celfrost Innovations Pvt. Ltd (ITA Nos. 953 to 955/Bang/2019) / [TS-1177-ITAT-2021(Bang)]

Tribunal disallows depreciation on enhanced goodwill resulting from revaluation of assets pursuant to slump sale

Facts: In the instant case, during the AY 2014-15, the assessee had acquired the assets and liabilities of a refrigeration business of Celfrost Innovations Private Limited ('Seller'), as a going concern, on slump sale basis, through a business transfer agreement, dated 15 October 2013. Thereafter, the assessee obtained a valuation report ('PPA report') from an independent valuer, for the allocation of purchase price towards various assets. As per the PPA report, all the assets were recorded at fair value and an allocation was also made towards brand value. Further, the resultant excess purchase consideration was recognised as goodwill.

At the year end, the assessee carried out certain adjustments (reduction) to the values of sundry debtors and inventory taken from the seller and the amount of goodwill was increased to that extent.

During the assessment proceedings, the AO accepted the difference between the purchase consideration and net value of assets as goodwill and allowed the depreciation on the same under section 32 of the Act. However, the AO rejected the depreciation on enhanced goodwill to the extent it had arisen on account of downward adjustments to sundry debtors and inventory.

Issue before the Bangalore Tribunal: Whether The primary issue which arose before the Tribunal was whether the assessee would be eligible to claim depreciation on the enhanced goodwill resulting from revaluation of sundry debtors and inventory pursuant to slump sale.

Tribunal's Ruling: The In view of the decision of the Hon'ble Supreme Court in the case of Smiffs Securities, the Tribunal held that the assessee could claim, as goodwill, only the difference between the consideration paid at the time of slump sale and the net value of the assets that the assessee acquired by virtue of slump sale. The assessee cannot vary the quantum of goodwill based on the exercise carried out subsequent to slump sale by passing entries in the books of accounts, even though there may be valid reason for doing so.

It further held that where the quantum of consideration attributable to various assets (sundry debtors and inventory) is sought to be varied, the claim can be only by way of either write off as bad debts under section 36(1)(vii) of the Act or diminution in the value of inventory.

In light of the above, the Hon'ble Tribunal rejected the assessee's contention and disallowed the claim of depreciation on enhanced goodwill to the extent it related to the adjustment to sundry debtors and inventory.

However, the Tribunal has, relying on the decision of T.Veerabhadra Rao , also held that the items of sundry debtors and inventory are part of the business that was acquired by way of slump sale and therefore will retain the same character as they had with the vendor. Thus, the assessee would be entitled to claim the deduction of same as bad debts / fall in value of inventory, subject to satisfaction of prescribed conditions laid down under the Act. Accordingly, the matter was remanded back to AO for verification of facts and allowance of the deduction in accordance with the law.

[M/s Chadha Power \(ITA No. 3055/Del/2018\) / \[TS-1158-ITAT-2021\(DEL\)\]](#)

Tribunal allows payment of business development expenditure to overseas entity on account of business / commercial expediency.

Facts: During the year under consideration, the assessee had claimed expenses on account of reimbursement towards business development expenses which were paid to Chadha Projects JLT, Dubai.

During the assessment proceedings, the AO disallowed the reimbursement of expenses as the same was not backed by commercial expediency. Without prejudice, the AO further disallowed the said expenditure under section 40(a)(i) of the Act, as the amount was paid to a non-resident without deducting of tax at source.

The learned CIT(A) referred to the principles laid down by Hon'ble Supreme Court in the case of SA Builders Ltd. on the aspect of commercial expediency. Further, with respect to applicability of the provisions of section 40(a)(i) of the Act, the CIT(A) observed that the India-UAE DTAA does not have any mention regarding fees for technical services and therefore Article 22 for 'Other income' would be applicable. It was therefore held that there would be no requirement to deduct tax at source as the income is taxable only in the resident state (i.e. UAE).

Aggrieved against the order of CIT(A), the Revenue preferred an appeal before the Tribunal.

Issues before the Delhi Tribunal: The primary issue which arose before the Tribunal was whether the assessee was eligible to claim the deduction of business development expenses paid to Chadha Projects JLT, Dubai.

Tribunal's Ruling: At the outset, the Tribunal observed that Chadha Projects JLT, Dubai had actually secured various work orders, which clearly shows that it had assisted the assessee in the business development as well as procurement of huge business orders, which was in line with the assessee's business.

Further, the Tribunal remarked that without any adverse material, the AO cannot question the wisdom and business expediency. Accordingly, the Tribunal held that there are no reasons to uphold the addition on the ground that there are no commercial activities.

Further, with respect to disallowance under section 40(a)(i) of the Act, the Tribunal confirmed the order of the CIT(A) and held that there is no obligation to deduct tax at source on such payment.

Considering the above, the issues were held in the favour of the assessee.

Procter & Gamble Health Limited [I.T.A. No.1637/Mum/2020] / [TS-1161-ITAT-2021(Mum)]

Tribunal allows deduction for distribution of free samples to medical practitioners.

Facts: In the instant case, the assessee was a resident company engaged in the business of manufacturing, trading and marketing of basic vitamins, drugs, laboratory and fine chemicals, reagents, pharmaceutical specialties, diagnostics & pigments.

During the assessment proceedings, the AO disallowed 50% of the deduction claimed towards free samples provided to doctors / medical practitioners / others. Thereafter, the learned CIT(A), relying on decision of the DRP in assessee's own case, restricted the disallowance to 20% of the total cost of free samples.

The primary contention of assessee was that it is a regular business practice of all drug manufacturers to provide free samples to doctors / medical practitioners / others to promote their business activity. It was further contended that the cost incurred by the assessee towards free samples works out to a negligible percentage of the total turnover and is not more than similar expenditure incurred in previous and subsequent assessment years. Further, the assessee placed reliance on the ruling of Hon'ble Mumbai Tribunal in the case of Johnsons & Johnsons, wherein the Tribunal had restricted the disallowance to 2% of the claim of the assessee.

Issue before the Mumbai Tribunal: The issue before the Tribunal was whether the assessee is eligible to claim the deduction towards distribution of free samples to doctors / medical practitioners.

Tribunal's Ruling: At the outset, the Tribunal observed that the disallowance in the present case was made purely on estimate basis. Further, the AO had disallowed 50% out of the

expenditure as, in some instances, the names and address of the relevant parties were incomplete.

However, on perusal of documents, the Tribunal observed that the assessee had furnished the details of free samples along with their quantity and cost. Further, the assessee has also furnished the details of chemists' shop along with the list of doctors / medical practitioners with their qualifications, the field of practice, detailed address with PIN code etc..

The Tribunal held that non availability of complete address of medical practitioners in few instances cannot be a reason to make the disallowance when the Revenue authorities have accepted that distribution of free samples is a regular business practice and have not raised any doubt regarding the genuineness of the expenditure.

Lastly, the Tribunal observed that the cost incurred by the assessee towards distribution of free samples in these assessment years is much lesser than similar expenditure incurred in the earlier and subsequent assessment years.

Considering the above, the Tribunal deleted the disallowance towards distribution of free samples to medical practitioners.

II. Personal Tax Rulings

[Naveen Pratap Tyagi \[TS-1170-ITAT-2021 \(DEL\)\]](#)

Issues not covered under limited scrutiny not subjected to revisionary power of Commissioner

Facts: The assessee was an Individual whose case was selected for limited scrutiny for verification of large cash deposit in saving bank accounts. In this regard it was noted that the assessee is an agriculturist and has submitted the details of cash deposits along with its documentary evidence. Accordingly, the assessee's returned income was accepted.

On perusal of the said order, PCIT found that the assessment was completed without carrying out necessary and proper enquiry and thus issued a notice for revisionary order u/s. 263 on the following grounds:

- Capital gains was disclosed in the revised return and not in the original return and was offered to tax in F.Y. 2012-13, which was not verified by the AO
- The reason for selection of limited scrutiny was large cash deposited on a particular date against which the assessee had given only partial explanation and also the source with respect to opening cash balance remained unexplained

- Capital gains working with respect to valuation of land and indexation needed to be verified
- Deduction u/s. 54B had been erroneously claimed
- Mismatch in reporting interest income
- Capital gains pertain to A.Y. 2012-13 which was reported in A.Y. 2013-14

In this regard, the assessee submitted reply to each issue raised by the PCIT and also stated that the similar explanation was already submitted during the assessment before the AO and accordingly there was no error in the order.

However, the PCIT was of the view that the order passed was erroneous and prejudicial to the interest of the Revenue to the extent of above pointed issues and accordingly passed an order u/s. 263 directing to make a fresh assessment.

In this regard, assessee submitted that the scrutiny of the case was picked up for the limited scrutiny for verification of large cash deposit. Therefore, power u/s. 263 was assumed to authorise enquiry on that limited issue and PCIT was not entitled to expand the scope of enquiry beyond the limitation of AO and supported various judicial precedents on the matter.

Issue before the Tribunal: Whether the PCIT was justified in passing the revisionary order u/s. 263 and whether the PCIT had assumed power and expanded the scope beyond the limitation of AO.



- In the present case, the case of the assessee was selected for scrutiny on a limited scrutiny basis to verify large cash deposit, wherein on the said issue of cash deposit no addition was made. The assessment order clearly shows that there was no discrepancy in the cash deposited by the assessee in his savings bank account. Thus, it shows that the original order did not have any infirmity or error to the extent of cash deposited. Also, in the set aside proceedings no addition was made in this respect.
- With respect to addition of the other issues, ITAT relied on the office memorandum [F. No. 279/MISC/52/2014-(ITJ)] dated 07/11.2014, which clearly provided that “ordinarily in scrutiny cases selected on the basis of AIR/CIB/26AS information, the scrutiny shall be limited to that information. Wider scrutiny would be possible only with the sanction of Principal Commissioner of Income tax /Commissioner of Income tax in specified cases and under the monitoring of the range head”
- ITAT observed that the case of the assessee was not covered into complete scrutiny and therefore AO was not duty bound to look into other aspects of the revisionary issues raised by the PCIT. Further, ITAT also relied on the CBDT instruction numbers 7/2014, dated 26/9/2014 and Circular number 225/26/2006-ITA-II(p), dated 08/09/2010.

As such, relying on the above office memorandum and CBDT Circular, the ITAT noted that the PCIT was not justified in making revisionary order on issues not covered under limited scrutiny.

III. International Tax Rulings

Bekaert Industries Private Limited [TS-1135-ITAT-2021 (PUN)]

Engineering Analysis decision not applicable on Payment of IT support services to Associated Enterprise (AE); payment taxable as royalty

Facts: The assessee was an Indian company engaged in the business of manufacturing and dealing in Steel Tyre Cord and Hose Reinforcement Wire. One of the international transactions declared by the assessee was payment towards its share of allocable IT Support services. The assessee had availed IT Support services from its AE, N.V. Bekaert SA, which included integrated SAP system, its platform, V-server and its connectivity.

During the course of the assessment proceeding, it was observed that assessee had not deducted tax on the said payments to its AE. Accordingly, AO treated the said payment as both Royalty and Fees for Technical Service (FTS) and disallowed expenditure u/s. 40(a)(ia) of the

Income tax Act. The DRP after allowing partial relief, upheld the action of the AO and confirmed the addition.

Aggrieved by the order of DRP, assessee preferred an appeal before the Tribunal in connection with non-deduction of TDS on allocable IT Support Services expenses paid to AE.

Issue before ITAT: Whether DRP was justified in confirming the action of AO considering the said payment as Royalty and FTS and consequently disallowing the same u/s. 40(a)(ia) for non-deduction of tax.

Tribunal's Observations: ITAT made the following observations, to answer the question as to whether any withholding tax was required to be done on payment made to N.V. Bekaert SA.

- With respect to the first contention of the assessee that the said expenditure was a reimbursement, the ITAT observed that the Transfer pricing study report categorically states that the IT support services had been allocated between the group companies based on the usage / benefit to the beneficiary group and that certain IT services are charged to group entities at cost plus 5% markup basis. Further, the assessee did not bring any evidence on record to substantiate the argument that the AE did not recover any mark up from assessee.
- Further the Tribunal observed that N.V. Bekaert was not essentially providing any IT services, but instead was charging for the use of full-fledged IT infrastructure developed by the AE on the basis of extent of user and accordingly, the ITAT concluded that the payment would fall under royalty for use or right to use industrial, commercial or scientific equipment. Hence, the same would be taxable as royalty both under the Income tax Act as well as under the DTAA between India and France and not as 'fees for technical services'.
- Assessee's argument was that the Tribunal was not empowered to change the complexion of the case from that made by the AO and both AO and the DRP had considered IT Support Service as royalty, by relying on the case of Samsung, which is now overruled by the SC decision in the case of Excellence Engineering. In this regard, ITAT stated that "no fetters can be imposed on the power of the Tribunal to examine the subject matter in appeal from another point of view, which was not applied by AO". Further, the ITAT also made reference to exception clause contained in Rule 11 of Income tax Appellate Tribunal Rules, 1963.
- The Tribunal finally concluded that it is not deciding the issue of royalty from a different standpoint on any non-existing legal or factual position, but was taking cognizance of the correct legal position and the material already available on record from the orders of the authorities related to the transaction under consideration. It was only that the subject matter in appeal had been approached from a different perspective and decided on a legally tenable angle.
- Based on the above arguments, ITAT confirmed the addition.

IV. Foreign Court Rulings

Ovvio Italia Spa [TS-1118-FC-2021 (ITL)]:

Payment of Tax residency certificate ("TRC") not conclusive evidence for determining beneficial ownership

Facts: Ovvio Italia Spa (taxpayer), resident of Italy, made payment towards use of "Intellectual Property" to Ovvio Holding BV, a Dutch resident company. On the said payment, taxpayer, by relying on the TRC issued by Netherland tax authorities, deducted 5% withholding tax, as per article 12(2) of the Italy – Netherlands tax treaty. On this, the Italian tax authorities opined that the beneficial ownership test was not met, by merely relying on the TRC and accordingly applied a higher withholding rate of 30% as per domestic law, as against 5% provided in the treaty.



Issue before the Court: Whether beneficial ownership can be assumed based on TRC and consequently withholding tax as per DTAA would be applicable.

Observation of the Court: In this regard, the Supreme court of Italy made the following observations:

- Person having real, legal and economic control over the income is said to be the beneficial owner, even if the income is received through interposed entity;

- The presence of beneficial ownership condition in the tax treaty is to prevent treaty shopping or treaty abuse;
- The onus to prove the beneficial ownership is on the taxpayer if the withholding is done based on the rate provided in the tax treaty;
- The Court also held that the TRC is not conclusive or decisive proof to determine the beneficial ownership.

In this backdrop, the Supreme Court of Italy held that the burden of determining beneficial ownership is not fulfilled and hence the taxpayer cannot avail the beneficial rate benefit provided as per DTAA. Accordingly, the decision was decided in favour of the Italian tax authorities.



B. Notifications/Circulars

Circular No. 1 / 2022 dated 11th January 2022

Central Board of Direct Taxes (CBDT) extends timelines for filing of income-tax returns and various audit reports

In view of the difficulties reported by the taxpayers and other stakeholders due to COVID and in e-filing of various reports of audit, the CBDT, vide above mentioned Circular, has extended the time limits for undertaking various compliances under the Act.

The same has been summarized below:

Sr. No	Compliance (AY 2021-22)	Original Due Date	Existing Due Date	Extended Due Date
1	Furnishing of various audit reports	30 September 2021	15 January 2022	15 February 2022
2	Furnishing of various audit reports	31 October 2021	31 January 2022	15 February 2022
3	Transfer Pricing Audit Report u/s 92E of the Act	31 October 2021	31 January 2022	15 February 2022
4	ROI due date for taxpayers who are required to get their accounts audited under the Act or any other law for the time being in force (excluding taxpayers covered under Sr. No. 5 below)	31 October 2021	15 February 2022	15 March 2022
5	ROI due date for taxpayers who are required to furnish transfer pricing report under section 92E of the Act	30 November 2021	28 February 2022	15 March 2022

It is pertinent to note that, although, the due dates for furnishing the ROI have been extended, the extended due date shall not be applicable for the purpose of computing interest under section 234A of the Act, in a scenario where the payment of self-assessment tax exceeds Rs 1,00,000.

It is further clarified that, in case of a resident senior citizen not having any income chargeable to tax under the head business or profession, the tax paid till the original due date of filing of ROI, shall be treated as an advance tax and accordingly no interest shall be chargeable on such amount.

Circular No. 02/2022 dated 19 January 2022

CBDT has issued guidelines regarding how to claim exemption under Section 10 (10D) by way of examples of different situations. The Finance Act, 2021 had amended clause (10D) of section 10 of the Act by inserting fourth to seventh provisos. Clause (10D) of section 10 of the Act provides for income-tax exemption on the sum received under a life insurance policy.

Notification No. 08/2022 dated 18 January 2022

New Rule, Rule 8AD has been inserted for computing capital gains on the receipt of amount under a specified unit linked insurance policy, including the amount allocated by way of bonus on such policy.

Notification No. 07/2022 dated 18 January 2022

The Central Government has taken one more step towards digitization of tax administration by announcing “e-advance rulings Scheme, 2022”, thereby making Advance Rulings also digital.

Notification No. 139/2021 dated 28 December 2021

With an objective of bringing in transparency in the appeal proceedings, CBDT had introduced the “Faceless Appeal Scheme 2020” (“Old Scheme”) on September 25, 2020. However, there were some post implementation hiccups experienced and accordingly taxpayers requested certain modifications in the Old Scheme.

In order to fix the hiccups and incorporate the changes requested by taxpayers, the CBDT, in suppression of the Old Scheme, has introduced a new appeal scheme called as “Faceless Appeal Scheme 2021.”

INDIRECT TAX



Goods & Services Tax

A. Recent Case Laws:

[Radhemani and Sons vs Addln. Commissioner \(Appeals\) & Ors. \[TS-694-HC\(CHAT\)-2021-GST\]](#)

Assessee is eligible for a refund regardless of whether the error is discovered by the taxpayer or the tax officer.

The Assessee's refund application was rejected by the Deputy Commissioner in this case, and Assessee filed an appeal with the Additional Commissioner (Appeals) who took a view that Assessee was eligible for a refund of tax erroneously paid by misclassifying interstate supplies as intrastate supplies or vice versa, only if the error is acknowledged by the authority and not on a suo-moto application of the Assessee. The High Court relied on Circular No. 162/18/2021-GST dated September 25th, 2021 and clarified that an Assessee is eligible for a refund regardless of whether the error is discovered by the taxpayer or the tax officer.

[Prime Alloys vs. The State Tax Officer & Ors. \[TS-722-HC\(MAD\)-2021-GST\]](#)

High Court disposes writ petition and remands case as an opportunity for being heard was not provided.

In this case, an order was passed by the Tax Officer against the Appellant without an opportunity of being heard. Aggrieved with the said order, the Appellant filed writ petitions before the Madras HC for non-provision of an opportunity of being heard. The Madras HC held that the provisions of Section 75(4) of the Tamil Nadu Goods and Services Tax Act, 2017 were applicable in this regard. The said section stated that an opportunity of being heard shall be provided where a request is made in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. The Court further stated that as an adverse order was intended to be passed, it was essential to issue a notice of personal hearing to the Appellant. Therefore, the Madras HC quashed the orders passed and the case was remanded to provide an opportunity of hearing to the appellant.

Saiher Supply Chain Consulting Pvt. Ltd. vs. UOI & Anr. [TS-04-HC(BOM)-2022-GST]

Applications falling within 15/03/2020 to 02/10/2021 are eligible for extension due to the Covid-19 second wave.

In this case, the Petitioner's refund application filed on 30th September 2020 was rejected by the Assistant Commissioner on 26th November 2020 on the ground that it was time barred. The Petitioner filed a writ petition before the Bombay High Court and stated that the Assistant Commissioner had failed in considering the SC's Order in Misc. Application No. 665 of 2021 in *Suo Motu Writ Petition (Civil) No. 3 of 2020* stating that the period of limitation falling between "15th March 2020 to 2nd October 2021" stands excluded due to the Covid-19 second wave. Since the period of limitation for the refund application fell on 30th September 2020 i.e between 15th March 2020 to 2nd October 2021, the period is to be excluded as per the order passed by the Supreme Court. Therefore, the order passed by Assistant Commissioner was quashed and set aside. The refund application was restored for fresh consideration.

Nodal Officer, Jt. Commissioner, IT Grievance, GST Bhawan vs. Das Auto Centre [TS-746-HC(CAL)-2021-GST]

High Court allows Assesseees to claim unutilized credit lying in TRAN-1 through GSTR-3B

In this case, the Assessee's were unable to file their TRAN-1 forms due to technical glitches, connectivity issues, assessee's not being aware of the new GSTN system etc., on the GST Portal. Multiple writ petitions were filed before the Calcutta HC as the Assessee's were unable to utilize the credit available to them. The HC observed that in the case of *Bharat Electronic Ltd [Madras HC]*, an identical issue was considered by the Court and it directed the revenue to provide an option to file revised Form TRAN-1 by opening the portal. The High Court further observed that various tax authorities were directed by the courts to open the portal for the Assessee to file or revise their TRAN-1 Forms. Upon considering various decisions passed, the Calcutta High Court stated that Assessee cannot be put to prejudice on account of technicalities and the reopening of portal for each Assessee is a difficult exercise and was required to be done at a higher level. Therefore, the Calcutta High Court ruled that the Assessee would be eligible to make use of the unutilized credit through their GSTR 3B and the Tax Officer would be entitled to verify the legality and genuineness of the claim.

Chheda Electricals and Electronics Pvt Ltd vs State of U.P. and 2 Others [TS-734-HC(ALL)-2021-GST]

High Court ruled that due to absence of TDF-1 Form during transit without allegation of tax evasion is not a ground for levy of penalty

In this case, the petitioner was a company engaged in the manufacturing of electrical goods and had factories in Satara, Maharashtra and Roorkee, Uttarakhand. The petitioner had imported goods from Malaysia and the goods were consigned to its factory in Roorkee. The consignment vehicle contained enameled copper wires and electrical goods along with the tax invoices and goods receipt for the said goods. The consignment vehicle was intercepted and seized along with the goods on 10/01/2018 and an order was passed by the Tax Officer imposing a penalty. An appeal was preferred before the Additional Commissioner (Appeals) and the appeal was partly allowed by reducing the amount of tax and penalty. The petitioner filed a writ petition before the Allahabad High Court on the grounds that the invoices reflect the IGST had been paid and duly declared in the respective GSTR 1. However, the conveyance was seized on the ground that a TDF-1 (transit declaration form) was not available with the driver and hence, conveyance was seized and penalty proceedings were initiated. The High Court in its order stated that the Additional Commissioner (Appeals) in his order had not recorded any discrepancy in the details furnished by the petitioner and had also not recorded that any evasion of tax had taken place. Therefore, the High Court quashes the order for seizure of goods and states that the goods and conveyance shall be duly released.



Uttar Pradesh Avas Evam Vikas Parishad [TS-1254-AAAR(UP)-2020-GST]

Advance for undertaking 'Deposit Work' not deposit; taxable at the time of receipt.

In this case, the Appellant received funds for the execution of project work under the category of "Deposit Work". The Appellant was of a view that such funds can neither be considered as "Advances" nor as "Loans" but to be classified as "Deposits". Accordingly, the Appellant filed an application before the Uttar Pradesh Authority to obtain an advance ruling on the time of supply of the said supply of "Deposit Works". The AAR held that the "Time of Supply" in case of "deposit works" would be the time of receipt of funds from the Government and the value of supply would be the amount received from the Government. Aggrieved with the ruling passed by the AAR, the Appellant preferred an appeal with the AAAR stating that the amount received from the Government is attached with certain restrictions and the appellant is never in control with the funds, hence, the same has to be classified as "Deposits" and not as "Advance Payments". The AAAR ruled that the receipt of funds is to be construed as "Advance Payment" and not as "Deposit" as the funds are given for smooth functioning and timely completion of the project. The AAAR further stated that any conditions/ restrictions attached with the funds do not alter its character and it remains as advance which later gets adjusted in payment as and when bills/invoices are issued. The AAAR on considering the provisions of Section 13(2) of the CGST Act, 2017 regarding the time of supply has stated the time of supply will be the time of receipt of advance towards provision of any service and hence, the time of supply in this case will be the date of receipt of advance from the Government. Further, the value of supply will be the amount of advance received by the applicant towards that particular work/supply.

Premier Sales Promotion Pvt. Ltd. [TS-714-AAAR(KAR)-2021-GST]

Trading in vouchers is taxable as supply of goods

In this case, the Appellant traded in vouchers by purchasing vouchers from RBI and in turn supplying it to its customers, who give it to their employees as gratification. The Appellant filed an application before the Karnataka AAR to obtain a ruling on whether the supply of vouchers was taxable and if the said supply was taxable then at what rate the same should be taxed. The AAR ruled that the supply of vouchers was a taxable supply as per the provisions of Section 12(5) of the Central Goods and Services Tax Act, 2017[CGST Act, 2017] and the rate of tax applicable on the supply of vouchers was 18%. Aggrieved with the order passed by the AAR, the Appellant preferred an appeal with the AAAR on the grounds that the said vouchers are instruments of payment and hence, to be treated as "money" or "Consideration" as per the RBI Master Directions, Guidelines, FAQs and the Payment and Settlement Systems Act, 2007. Accordingly, they are not classifiable as good or services subject to tax under the GST law. The AAAR held that the said voucher cannot be termed as "money" as it can be considered as money only when it is used to settle an obligation and the settlement of obligation occurs at the time when ultimate beneficiary uses the voucher to purchase goods and/or services. The AAAR ruled that the vouchers do not settle an obligation but in fact create an obligation. The AAAR further ruled that, it is not an "actionable claim" as an actionable claim means either claim to an unsecured debt or beneficial interest in certain movable property. The voucher does

not give rise to any unsecured debt nor does it give rise to any beneficial interest in the movable property. Hence, voucher can neither be termed as “money” nor as “actionable claims” and were to be treated as “goods” as per the CGST Act, 2017. Accordingly, the provisions of Section 12(5) of the CGST Act, 2017 w.r.t Time of Supply were applicable in this regard. Further, as per the rates prescribed the rate of tax for such supply was 18%. The AAAR upheld the order passed by the AAR and dismissed the appeal filed by the applicant.

[Adithya Automotive Applications Pvt Ltd. \[TS-725-AAAR\(UP\)-2021-GST\]](#)

AAAR reversed the ruling passed by AAR stating that body-building on chassis supplied by Tata Motors is taxable at 18% as it is job-work

In this case, the Appellant was a company engaged in body building & mounting of body on the chassis of different models of Tippers, Tankers, Trucks and Trailers. The Appellant received the chassis from Tata Motors and undertook the body building as per the contract. The Appellant had sought an advance ruling before the Uttar Pradesh AAR on whether the body building activity on the chassis would be construed as manufacturing services and attract 18% GST. Further, it had also sought a ruling on whether the Circular No.52/26/2018 – GST in respect of building of body of buses attracting a rate of 18% would be applicable in this regard. The AAR held that the ownership of chassis was transferred to the Appellant and was to be taxed at the rate of 28%. Hence, the AAR held that the body building activity of the Appellant would not tantamount to manufacturing attracting 18% of GST and accordingly, the aforesaid circular would also not apply in this case. Aggrieved with the said order, the Appellant preferred an appeal before the AAAR and stated that, the ownership was not transferred but remained in temporary possession only for a certain time to carry out the job work process. The AAAR after considering the submissions of the Appellant ruled that the job worker can use certain inputs required for fabrication work but such activity will not amount to manufacture. The AAAR further held that goods are in temporary possession only to carry out the process of job-work as per the principal’s direction and the ownership of the chassis always remains with the principal and hence, the Appellant is considered a job-worker. Further, the AAAR after considering the Notification No.11/2017- Central Tax which had clarified that the rate of tax for service by way of job work for bus body building was 18%, ruled that the said notification was applicable in this regard and the rate of 18% would be applicable for the services provided by the Appellant.

[Vardhman Infotech \[TS-705-AAR\(UP\)-2021-GST\]](#)

OMR/Answer Sheets supply printed with logo of educational taxable at 18%

In this case, the applicant filed an application before the Uttar Pradesh Authority for Advance Ruling to obtain a ruling on whether a supply of OMR Sheets, Answer Sheets printed with logo and name of educational institution/ University is to be construed as a supply of goods or service and at what rate should be taxed. Relying on Circular No.11/11/2017 dated October

20th, 2017, which provides that in the case of printing of books, pamphlets, brochures, envelopes, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing is the principal supply. Accordingly, the Uttar Pradesh AAR clarified that a supply of OMR Sheets, Answer Sheets / Examination Copies printed with logo and name of educational institution / University qualifies as a supply of service and accordingly taxable @ 18%.

[Divyajivan Healthcare LLP \[TS-740-AAR\(GUJ\)-2021-GST\]](#)

Services for members by a multi-specialty hospital is exempt from GST

In this case, the Applicant proposed to setup a multi-specialty hospital and provide health care services to the members and their family upon receipt of a lumpsum consideration. The Applicant submitted an application before the Gujarat AAR to obtain an advance ruling on whether the lumpsum consideration received was exempt from GST. The Applicant submitted in its application that it intends to provide Annual Preventive Health Checkup services, Dental treatment, skin care treatment, home care services, tele-medical guidance etc., The said services intended to be provided by the applicant are exempted from GST vide Sr. No 74 of Notification No.12/2017 – Central Tax. The AAR upon considering the facts of the case and the said Notification held that the services are exempt from GST and provided a ruling in favor of the applicant.

[Maa Laxmi Enterprise \[TS-745-AAR\(WB\)-2021-GST\]](#)

Crushing and packaging of whole wheat atta a 'composite supply' eligible for conditional exemption

In this case, the applicant was in the business of selling flour(atta) and providing service of job work in the nature of crushing food grains supplied and owned by Food & Supplies Department, Government of West Bengal. The applicant crushes the atta and returns the flour to the Government department, who further distribute it via the Public Distribution System (PDS). The applicant had submitted an application before the West Bengal AAR to obtain an advance ruling on whether the supply of milling food grains into flour and supply to the Government for distribution was eligible for exemption under Sr. No 3A of Notification 12/2017-Central Tax dated 28.06.2017 and if the same was not exempt, the rate of tax on such supply. The AAR held that processing of crushing food grains into atta and packing the same constituted a composite supply with supply of atta being considered as the principal supply. The AAR further held that value of supply for supply of flour shall include both consideration in money and non-cash consideration. The applicant receives certain amounts for fortification and packing charges for crushing of food grains which is considered as supply of goods. This supply of

atta was eligible for exemption under Sr.No 3A of Notification 12/2017 only if the value of goods involved in such composite supply did not exceed 25% of the total value of supply. If the value of goods exceeded 25% of the total value, then the same was chargeable to tax at the rate of 5%. Due to the absence of documents to ascertain whether the value of supply of goods in the composite supply exceeded 25% of the value or not, the AAR was unable to provide a ruling in this regard.

[Sikka Ports & Terminals Ltd. \[TS-743-AAR\(GUJ\)-2021-GST\]](#)

Port and terminal handling facility provider was eligible to claim ITC w.r.t cost of operation & maintenance of the support vessels.

In this case, the applicant was running and operating a port and terminal handling facility at Sikka Port, Gujarat for receipt of crude oil & other feedstock and evacuation of various finished products of the crude oil refinery. The applicant submitted an application to the Gujarat AAR to obtain a ruling on the eligibility of Input Tax Credit (ITC) on operation and maintenance of its vessels. The applicant stated in its application that it enters into contract for hiring of certain vessels for operating and maintaining its vessel which are underwater. As these are essential for providing output services of supplying port & terminal handling facilities and also not specifically blocked u/s 17(5) of the Central Goods and Services Tax Act, 2017, ITC is to be made available on the hiring of vessels to the applicant. The applicant further states that ITC is blocked only in respect of vessels such as yachts, boats etc., which are used for personal purposes. After due consideration of various contracts entered into by the applicant with its contracts for O&M of the vessels and examination of the provisions of Section 17(5), the AAR ruled that the provisions of Section 17(5) pertains to blocked credit for vessels which are treated as “goods” but in this case the ruling sought by the applicant is pertaining to credit admissibility of Services of hiring vessels for O&M of its vessels. Hence, the dis-allowability of credit u/s 17(5) does not arise in this case. The applicant was eligible to claim ITC w.r.t cost of operation & maintenance of the support vessels.

[Kayal Infra \[TS-742-AAR\(WB\)-2021-GST\]](#)

Ongoing “Residential Real Estate Project” is taxable at 1.5%

In this case, the applicant was involved in construction of property used for residential purposes. The applicant submitted an application before the West Bengal AAR to obtain a ruling on whether the property currently under construction can be treated as a “Residential Real Estate Project” as per Notification No.11/2017 – Central Tax dated 28/06/2017 amended vide Notification No.03/2019 – Central Tax dated 29/03/2019. The applicant had also sought a ruling on whether the same can be treated as an affordable residential apartment as per the aforesaid notification and whether the GST charged from customers for sale of flat should be at a concessional rate of 1.5%, subject to conditions or at a rate of 7.5%. The aforesaid

notification stated that an affordable residential apartment under GST is a residential apartment in a project which commences on or after 01/04/2019 or an ongoing project where promoter has opted for new rate of 1.5%, as reduced by 1/3rd to factor in the value of land, and the gross amount charged is not more than Rs. 45lakhs. Further, a Residential Project is a project is which not more than 15% of the total carpet area is for commercial space. As the project satisfied all the aforesaid conditions mentioned in the notification, the applicant contends that the rate of tax applicable was 1.5%. The AAR after considering the submissions of the applicant and the conditions mentioned in the notification for the project to be classified as “Residential Real Estate Project”, ruled that the said project satisfied all the conditions mentioned in the notification and qualified as an Affordable residential apartment. The AAR further ruled that the GST rate to be charged from customers, in cases before receipt of completion certificate, shall be at 1.5%, as reduced by 1/3rd to factor in the value of land.



B. Notification/ Circulars

Central Tax Notification No. 38/2021 dated 21.12.2021

The Central Tax notified 1st January 2022 as the date when the provisions of Section 108 – Powers of Revisional Authority, 109 – Constitution of Appellate Tribunal and Benches and the provisions of Chapter XVIII relating to Appeals and Revisions ranging from Section 113 to 122 came into force.

Central Tax Notification No.40/2021 dated 29.12.2021

The Central Board of Indirect Taxes and Customs vide Notification No.40/2021 – Central Tax hereby amended the following rules under the Central Goods and Service Tax Rules, 2017:

- Rule 36(4) stated that the registered person is eligible to avail Input Tax Credit of not more than 105 percent of the existing eligible credit against the suppliers' invoices or debit notes. The said rule has been amended to provide that the registered person is eligible to avail credit only to the extent of the credit available against his name by way of GSTR 1 or GSTR 2B.
- Sub-rule (1A) inserted to Rule 80 to provide that annual return and the self-certified reconciliation statement for the Financial Year 2020-21 shall be furnished on or before the 28th February 2022.
- Rule 142 provided a time period of 14 days from date of detention or seizure of the goods and conveyance to make payment and intimate the officer of the payment. The said time period is reduced from 14 days to 7 days.



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