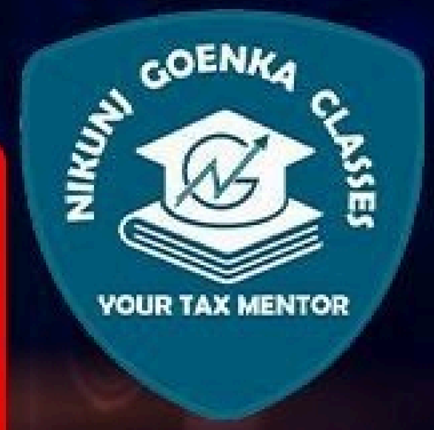

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ANALYSIS OF KEY ADVANCE RULINGS

M/s Columbia Asia Hospitals Pvt. Ltd. (AAR No.-KAR ADRG 15/2018)

Question: Whether the services provided by the employee of corporate office to the other units of the company is taxable plus charging consideration against allocation of common expenditure of units would tantamount to levy GST or not.?

Answer: The Karnataka AAR held the ruling in **favour of revenue**, briefing the findings in relation with the Entry 2 of Schedule I of CGST Act, 2017.

The person delivering the service are employed by the corporate office & not by the other units of the applicant. Hence there is an employer-employee relationship with corporate office only and no relationship exists with the employees of the corporate office & other units of the applicant. Therefore, the Entry no. 1 of schedule III of CGST Act, 2017 would not be applicable

Though the corporate office & its units are the distinct person u/s 25 of CGST Act, 2017, the transaction would be covered under the Entry no. 2 of Schedule I of CGST Act, 2017 i.e. "Supply of goods or services or both between related persons or between distinct persons, when made in the course or furtherance of business" & therefore **becomes taxable.**

Additionally, corporate office raises an invoice for the allocation of the expenses such as rent, travel expense, consultancy, etc. incurred on behalf of other units. Such reimbursement from the other units would be covered under the term 'TRANSFER' u/s 7(1)(a) of CGST Act, 2017. Furthermore, the transaction between the distinct person without consideration is covered under the definition of the SUPPLY under Entry No. 2 of Schedule I of CSGT Act, 2017. **Hence the reimbursement of the expenditure would be attracting the tax liability.**

Bai Mumbai Trust v Suchitra (Bombay High Court)

Whether GST is applicable on services or assistance rendered by the Court receiver appointed by the Court?

Court observed that schedule III provides that services provided by any court or tribunal established under any law is neither a supply of goods nor supply of services.

Switching Avo Electro Power Ltd. (2018) 96 taxmann.com 106 (AAAR-West Bengal)

When the storage battery or electric accumulator is supplied separately with the static converter (UPS), it would be considered as a mixed supply or not naturally bundled supply?

When a **UPS is supplied with built-in batteries** in a manner that the supply of the battery is inseparable from the supply of the UPS, and the two items are 'naturally bundled' then it should be treated as a composite supply under Section 2(30) of the CGST Act.

When the **storage batteries having multiple uses is supplied with the static converter i.e. UPS**, it cannot be said that they are naturally bundled even if the same is supplied under a single contract at a combined single

price. **Therefore, the supply of external storage battery supplied with UPS would be considered as a 'mixed supply'.**

Association of Leasing & Financial Service Companies v Union of India 2010 (20) STR 417 (SC):

The Hon'ble Apex court had held that Lessor collecting principal as well as interest from Lessee and accounting the interest part as income by following Accounting Standard 19 and hence interest part is considered as consideration. Therefore, Lessor is liable to pay service tax on the interest part. **Now under GST Law the entire instalments (Principal + Interest) will attract GST.**

Rashtriya Ispat Nigam Ltd. v Dewan Chand Ram Saran 2012 (260) STR 289 (SC):

Point of dispute: Whether the service tax liability created under law can be shifted by a clause entered in the contract?

Decision: Yes. Assessee can contract to shift their liability.

Regarding transferring of service tax liability by way of contract was correct. It means service provider will bear all the taxes, and service receiver can shift the burden of service tax payable by him to service provider by deducting the same from the bills raised by service provider

Delhi Transport Corporation v Commissioner Service Tax 2015 (038) STR 673 (Del)

Facts of the Case: The appellants entered into contracts with seven various agencies for display of advertisements. The terms of the contract clearly stated that it would be the responsibility of the contractors/advertisers to pay directly to the concerned authority the tax/levy imposed by such authority in addition to the license fee.

Department issued show cause notice asking the appellant (service provider) to pay service tax along with interest and penalties on the service of display of advertisements rendered by them.

Appellant's Contentions: The appellant argued that they were under a bona fide belief that the liability to remit service tax stood transferred to the recipient as per the agreements; this caused the failure to file returns and remit service tax. They relied upon Rashtriya Ispat Nigam Limited v Dewan Chand Ram Saran 2012 (26) STR 289 (SC) to urge that having entered into the contracts in the nature mentioned above, it was a legitimate expectation that the service tax liability would be borne by the contractors/advertisers and, thus, there was no justification for the appellant being held in default or burdened with penalties

Decision: The High Court held that undoubtedly, the service tax burden could be transferred by contractual arrangement to the other party. **However, on account of such contractual arrangement, the assessee cannot ask the Revenue to recover the tax dues from a third party (the other party) or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors (the other party).**

Therefore, the appellant was an assessee, and statutorily bound to not only get itself registered but also submit the requisite returns as per the prescription of law and rules framed thereunder.

Tata Consultancy Services v State of AP 2004 (178) ELT 22 (SC):

If software is designed/developed, put in a media and sold, **it could still be treated as sale of goods** by applying the Supreme Court decision in Tata Consultancy Services v State of AP 2004 (178) ELT 22 (SC).

In the said case, it was held that goods may be tangible property or an intangible one. It would become goods provided that attributes thereof having regard to

(a) utility

(b) capable of being bought and sold,

(c) capable of being transmitted,

(d) transferred,

(e) delivered

(f) stored and

(g) possed.

If a software, whether customised or non-customised, satisfies these attributes, the same would be goods.

KEY ANALYSIS OF ADVANCE RULING

SP Singla Constructions Pvt. Ltd. (GST AAR Gujarat - 2022):

Question on which Advance Ruling sought: SP Singla Constructions Pvt. Ltd. desires to obtain Advance Ruling on the question as to what is the time of supply for the purpose of discharge of GST under the CGST Act, 2017 in respect of Mobilization Advance ('said advance') received by it for construction services provided by it? SP Singla Constructions Pvt. Ltd. received advance from its recipient of service for procurement of goods.

Advance Ruling: SP Singla Constructions Pvt. Ltd. does not contest the taxability on said Advance, but is before us for its deferment from date of its receipt to date of issue of invoice. We pass the Ruling based on Section 13(2) CGST Act read with its explanation (i). Time of Supply, on said Advances received by SPSC for Supply of its Service, is the date of receipt of said advance.

Advance is for procurement of Goods. SP Singla Constructions is Service provider, supplying Works Contract Service. We refer to Schedule II (6)(a) CGST Act, wherein works contract shall be treated as supply of service. The Contract submitted before us is also for the same. The Payment terms and conditions are part and parcel of the contract. We find it neither tenable to colour a Service Contract as Goods supply contract nor rational to misrepresent a Service contract as Goods supply contract to hoodwink Section 13(2) CGST Act and defer payment of Tax.

KEY ANALYSIS OF ADVANCE RULING

Maharashtra Authority for Advance Ruling in case of M/s Amogh Ramesh Bhatawadekar (2020):

The applicant, Amogh Bhatavdekar, located in Thane is a proprietor supplying digital goods, in the subject case 'online gaming' and has not obtained GSTIN because he is of the opinion that the services rendered by him is export of e-goods (Digital Goods).

Facts stated by the Applicant:

(a) **Digital goods/e-goods** are not necessarily goods as commonly understood & as defined in the GST Acts but they can at best be called as "services".
(b) They are supply of services done through internet or mails. There is no delivery of e-goods as such.
(c) The said e-goods, are stored on CLOUD which are located outside India, & are purchased from vendors outside India who send it to the CLOUD as identified by the buyer / vendor / the applicant.
(d) The e-goods are not received by the seller in India but are stored on CLOUD hence it cannot be said to be imports in India, hence out of purview of reverse charge mechanism under the IGST Act.
(e) The buyers are usually from abroad, who pay in dollars directly through PAYPAL, therefore it is supply outside India taking it outside purview of IGST levy. It is export of services i.e. it is out and out services not liable to either IGST or CGST & SGST. It is covered by the Circular NO. 78/52/2018 GST New Delhi dated 31/12/2018.

Observation and Order of AAR:

In case where the supplier of such service is located outside India and the recipient is a business entity (registered person) located in India	The reverse charge mechanism would get triggered and the recipient in India who is a registered entity under GST will be liable to pay GST under reverse charge and undertake necessary compliances.
If the supplier is located outside India and the recipient in India is an individual consumer not registered under GST Laws	In such cases also the place of supply would be India and the transaction is amenable to levy of GST. In such case the individual should obtain registration and pay GST under reverse charge.

Questions Answered by the AAR

Whether "e-goods" as commercially known in the market are "goods" as defined in the GST Acts or are they services as per GST Act	E-goods, in this case – 'Online Gaming' will be covered under services under the GST Act
Whether they are exempted from GST	Not exempt
If not exempted what is the rate of GST on supply	18%
In what circumstances IGST under reverse charge will be applicable or whether it is applicable in the situation of procurement from foreign supplier & supply from out of India as discussed above	In the situation of procurement from foreign supplier & supply from out of India the applicant has to discharge IGST liability under reverse charge mechanism.

Universal Services India (P) Ltd., In re 2016 (42) STR 585 (AAR)

Facts of the Case:

WWD – a US based Company is engaged in the business of providing name registration, web hosting, designing and other services to customers across the world. The customers can either directly pay to WWD in US Dollars using an international credit card or in Indian rupees using their Indian credit cards.
Collections would be remitted without any markup to WWD.

In order to enable customers to pay for the services, using Indian credit card in Indian rupees, WWD intends to enter into an agreement with the applicant – an Indian company. The applicant submitted that the payment processing service would be the main service of the applicant where it provides this service on its own account

Point of dispute for which Advance Ruling is sought:
(i) Whether the place of provision of payment processing service proposed to be provided by the applicant, is outside India in terms of Section 13(2) of the IGST Act, 2017?
(ii) Whether services proposed to be provided by applicant would qualify as 'export of service'?

Ruling of Authority for Advance Ruling:
The definition of "intermediary" as per Section 2(13) of the IGST Act, 2017 does not include a person who provides the main service on his own account. In the present case, applicant provides main service, i.e., "business support services" to WWD on his own account. Therefore, applicant is not an "intermediary" and thus, the service provided by it is not intermediary service.

Thus, AAR ruled that the place of provision of payment processing service to be provided by the applicant, is outside India in terms of Section 13(2) of the IGST Act, 2017.

Further, while deciding the questions as to whether services provided by applicant qualify as export of service, AAR observed that all conditions mentioned as per Section 2(6) of the IGST Act, 2017 are satisfied, and hence the said service will qualify as export of taxable service.

KEY ANALYSIS OF ADVANCE RULING

Specsmakers Opticians Private Limited (GST AAAR Tamil Nadu - 2019):

Facts of the case:

Applicant View: The two provisos under Rule 28 of the CGST Rules deal with specific situations. There is no requirement that the provisos should be applied sequentially.

Grounds before AAR:

(i) The first proviso to Rule 28 does not mandate and it is at the option of the supplier, to take the value as 90% of the sale value of goods of like kind and quality;

(ii) The second proviso is an alternative, whereby the invoice value can be taken as Open Market Value;

(iii) The second proviso is not subordinate to the first proviso. It independently deals with a situation where the recipient is eligible for full ITC.

Ruling of the AAR:

Based on the above, when the supply is to the distinct person of the appellant and the recipient is eligible for full Input tax credit, the second proviso provides the value declared in the invoice to be the 'open market value' for such transaction. Also, the second proviso does not restrict its application as in the first proviso, which is to be applied for cases of '**as such supply'** only. Therefore, the appellants may adopt the value for supply to distinct person as provided under Proviso 2 to Rule 28

Lakshmi Tulasi Quality Fuels – 2022 (62) GSTL 71 (App. A.A.R -GST – A.P.)

Facts of the case:

Where residential building consists of several rooms are leased/rented out and lessee has not used it itself as residence but sub-leased for its commercial interest and business for accommodating students and working professionals in bulk numbers for a temporary period of stay.

AAAR held:

The Appellate Authority for Advance Ruling observed that the benefit of exemption is available only where residential dwelling is used as residence. The lessee would be involved in business of sub-leasing of property and had no intention to use property as residence. Moreover, the intention of lessee to take property on lease for commercial and business purposes was evident from lease deed. As a result, lessor is not eligible to exemption and liable to 18% IGST said by AAAR.

Therefore, leasing services involving own or leased non-residential property would be classifiable under SAC 997212 and taxable at 18%

Intas Pharmaceuticals Limited. (GST AAR Gujarat) - 2022 GSTL & Dishman Carbogen Amcis Ltd. (GST AAR Gujarat) – 2022 GSTL

Facts of the case:

Canteen charges – employee portion – Applicant providing canteen facility to its employees at concessional amount – part charges borne by applicant and balance collected from its employees and paid to canteen service provider – no profit margin retained by applicant.

Issues involved:

Whether GST, at the hands of the applicant, is leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant from employees and paid to the Canteen Service Provider?

Ruling:

GST, at the hands of the Intas Pharmaceuticals Limited, **is not leviable on the amount representing the employees portion of canteen charges**, which is collected by Intas Pharmaceuticals Limited and paid to the Canteen service provider

Greenbrilliance Renewable Energy LLP – 2022 (61) GSTL 114 (AAR – GST – Guj.)

Facts of the Case:

The applicant was supplying photovoltaic panels and Solar EPC services and empanelled as channel partner to execute the solar rooftop system in Gujarat under the Surya Gujarat Yojna. As per the scheme, the beneficiaries have to pay channel partner amount after deducting subsidy portion from total system cost and after successful installation of solar system, channel partner has to apply to respective electricity distribution company (DISCOM) of region for subsidy and funds are released by respective DISCOM directly to channel partners. It filed an application for advance ruling to determine whether subsidy should be reduced for arriving at taxable value of solar system in order to collect GST on goods supplied to customer under rooftop solar project.

Subsidy granted by Government does alter taxable nature of supplies to make supply partly exempted and partly taxable; thus section 17(2) of CGST Act, has any implication?

AAR held:

Subsidy provided Government on Solar Rooftop System is not includible in value of supply; however, since said subsidy received by applicant also included GST element, applicant would be liable for paying back to Government.

Subsidy granted by Government does not alter taxable nature of supplies to make supply partly exempted and partly taxable; thus, entire supply being taxable, sub-section (2) of Section 17 of CGST Act, 2017 in respect of input tax credit has no implication.

Fastrack Deal Comm Pvt. Ltd. – 2022 (61) GSTL 125 (AAR – GST – Guj.)

Facts of the case:

When sale of land is not treated as supply as per Schedule III of GST Act, 2017, whether forfeiture of advance pertaining to sale of land will be treated as supply and accordingly attract GST?

AAR Held:

Forfeiture of advance amount in a land transaction by seller for breaching sale condition by buyer is taxable activity of 'refraining or tolerating or doing an act' and taxable accordingly in hand of person forfeiting such amount.

Shanmuga Durai – 2022 (62) GSTL 210 (AAR – GST – T.N)

Facts of the case:

Renting out property by partner free of rent to his partnership firm in which he and his wife are partners and he is managing partner holding 2/3rd shares amounts to supply?

AAR Held:

The AAR ruled that therefore the activity of renting immovable property owned by the Applicant to the partnership firm, in which he was a major shareholding partner, is a taxable supply under CGST Act. Valuation of renting of property free of rent by partner to his firm in which he and his wife partners and he is managing partner holding 2/3rd shares is to be determined by applying Rule 28 of CGST Rules, 2017.

Emerald Court Co-operative Housing Society Ltd. – 2021 (54) GSTL 41 (AAR – GST – Mah.)

AAR Held:

Co-operative Housing Society – Maintenance charges – Activities or transactions, by a person, other than an individual to their members or constituents – In view of insertion of clause (aa) to Section 7(1) of CGST Act, 2017, principle of mutuality between society and its member not applicable – Maintenance charges received by society from its members amounted to consideration received for supply of goods/services as separate entity – GST applicable on maintenance charges (by whatever name called) collected from its members, if monthly subscription or contribution charged from members exceeds ₹ 7,500 per month.

Manyam Venkateswara Rao – 2021 (54) GSTL 318 (AAR – GST – Andhra Pradesh)

Facts of the case:

Mining service – Valuation (GST) – Contribution to National Mineral Exploration Trust (NMET) and District Mineral Foundation (DMF) under Mines and Minerals (Development and Regulation) Act, 1957 (MMDR) read with National Mineral Exploration Trust Rules, 2015 and Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015

AAR Held:

Charges under MMDR Act are levied under law other than GST Act – Hence, payments to DMF and NMET were includible under "value of supply" in addition to royalties paid. They qualify as consideration for grant of mining and leasing rights by State Government, chargeable to GST under RCM in hands of applicant – service recipient

M/s Kasturi and Sons Ltd. (GST AAR Maharashtra - 2022)

Facts of the case:

The Applicant proposes to let out on Leave and License Basis the said premises to M/s. Life Insurance corporation of India for residential purpose of their staff members and the Ruling is sought on the applicability of exemption vide SI. No.12 of the Notification No. 12/2017-CT (Rate) on the said transaction

Contention of the department:

LIC is commercial organisation and hence the staff to whom the flat is let out, can sit late in office and work more. LIC is not natural person and LIC is profit making company. So, in order to increase profit, the facility of accommodation is given to employee, which is a commercial use and not for residential use.

AAR Held:

In its ruling, the AAR held that GST exemption is provided by the nature of the property and its usage and not by the status of the recipient. Only if a residential property was either used or let out for Commercial purposes then it would be classified as a service provided and attract GST whereas, property let out for residential purposes will be exempt from GST ambit, said by the AAR.

The GST applicability is not decided by the nature of the property but by the purpose for which it is used i.e. it is not the nature of the property, but the nature of the end use that will determine whether it is a commercial rent or residential rent.

The AAR held that Kasturi and Sons would be eligible for the exemption from payment of GST on the monthly license fee to be received on the proposed letting out on leave and license basis of their residential building.

M/s Baroda Medicare Private Limited, Sunshine Global Hospital [2022-TIOL-24-AAAR-GST] (GUJARAT AAAR):

Facts of the case:

Whether the supply of Occupational Health Check-up (OHC) service by the hospital i.e. nursing staff, Doctors, Paramedical staff on hospital's payroll, working in different corporate for providing health checkup service, ambulance facility, and allied medical services to their employees and also the camps conducted for health check-up outside the hospitals, to be treated as Health Care service and hence not taxable under CGST / SGST?

AAAR Held:

The AAAR modified an earlier ruling by the Gujarat Authority for Advance Ruling (AAR) that had said 18% GST would be applicable on such health services.

"we modify the ruling … and hold that supply of occupational health check-up services by the hospital, i.e. nursing staff, doctors and paramedical staff on the hospital's payroll working in different corporates for providing health check-up services, ambulance facilities and allied services to their employees and also the camps conducted for health check-up outside the hospitals, to be treated as healthcare services and exempted under GST," the Gujarat AAAR ruled.

Antara Purukul Senior Living Ltd. – 2022 (61) GSTL 177 [AAR – GST – Uttarakhand (UK)]

Facts of the Case:

The applicant has sought advance ruling from AAR Uttarakhand on the following questions:

1) Whether the electricity charges paid to Uttarakhand Power Corporation Limited (UPCL) for the power consumed by residents in their residential apartments and recovered from them on actual cost basis liable to GST?
2) Whether the electricity charges paid to UPCL (Electricity supply authority) for the power consumed towards common area and recovered from residents on actual cost basis are liable to GST?
3) Whether Asset Replacement Deposits collected from residents are liable to GST?

AAR Held:

1) The electricity charges paid to Uttarakhand Power Corporation Limited (UPCL) for the power consumed by residents in their residential apartments and recovered from them on actual cost basis is liable to GST.
2) The electricity charges paid to UPCL (Electricity supply authority) for the power consumed towards common area and recovered from residents on actual cost basis is liable to GST.
3) The amounts collected towards Asset Replacement Deposits, amounts to advancement for future supply of services to residents, are taxable, in terms of Section 15(2)(a) of the CGST Act, 2017.

CCEx. Mumbai v Fiat India Pvt. Ltd. 2012 (283) ELT 161 (SC):

Assessee Claim: Fiat UNO model cars for the past five years consistently selling at below manufacturing cost to non-relative buyers for meeting demand in the market. Therefore, such selling price (i.e. transaction value) itself has sole consideration for the purpose of GST.

Department Contention: The extra commercial consideration was involved in this case an additional consideration should be added to the price for the purpose of duty. Therefore, Best Judgment Assessment has been invoked.

Decision: Full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production. Thus, price could not be considered as the sole consideration for sale. No prudent businessperson would continuously suffer huge loss only to penetrate market. Therefore, Best Judgment Assessment of the department was proper said by the Hon'ble Supreme Court of India in the case of CCEx. Mumbai v Fiat India Pvt. Ltd. 2012 (283) ELT 161 (SC).

The spirit of the above case law is also applicable under GST Law.

KEY ANALYSIS OF ADVANCE RULING

CCEx. v Stelko Strips Ltd. 2010 (255) ELT 397 (P&H)

Decision: The ITC could be taken on the strength of private challans as the same were not found fake and there was proper certification that duty has been paid.

CCus. & CEx. v Sachin Malhotra 2015 (37) STR 684 (Uttarakhand)

Rent-a-cab	Hiring of Cab
Under rent-a-cab scheme, the hirer is endowed with the freedom to take the vehicle wherever he wishes, and he is only obliged to keep the holder of the license informed of his movements from time to time.	When a person chooses to hire a car, which is offered on the strength of a permit issued by the Motor Vehicles Department, then the owner of the vehicle, who may or may not be the driver, will offer his service while retaining the control and possession of the vehicle with him-. The customer is merely enabled to make use of the vehicle by travelling in the vehicle. In the case of a passenger, he is expected to pay the metered charges, which is usually collected on the basis of the number of kms. travelled.

Commr. of C. Ex., & S.T., LTU v Rane TRW Steering Systems Ltd. 2015 (039) STR 13 (Mad)

Facts of the case: Assessee had availed credit of GST paid on housekeeping and gardening services. However, Revenue disallowed the credit and also imposed penalty on the ground that the assessee was not eligible to avail credit of GST on these services.

Decision: The High Court noted that principle laid down in the case of CCE v Millipore India Pvt Ltd. 2012 (26) STR 514 (Kar). In this case, the Karnataka High Court held that landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. The environmental law expects the employer to keep the factory without contravening any of those laws.

That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly manner, certainly, the tax paid on such services would form part of the costs of the final products. Therefore, housekeeping and gardening services would fall within the ambit of input services and the assessee is entitled to claim the benefit of input tax credit on the same

Sri Desikanathar Textiles Pvt. Ltd. vs Union of India 2022 (62) GSTL 449 (Mad.)

Input Tax Credit – Transitional Credit – Mistake while filing of Form GST TRAN-1 – Revision of Form GST TRAN-1 – Provisions of CGST Act, 2017 do not provide for lapsing of credit, which could not be successfully transitioned under new regime while filing form correctly in TRAN-1 – Assessee having indefeasible right to utilize such credit – Several communication indicating that assessee was in continuous touch with Authorities to ensure that transition of credit was successful – Direction given to Authorities to allow input tax credit, after verification by competent officer that such credit could be transitioned but for wrong declaration in Form TRAN-1 – **If credit available to be transitioned, it cannot be denied. Authorities either to allow assessee to file either a revised TRAN-1 or directly make credit entry in assessee's electronic cash register. Rule 117 of CGST Rules, 2017 read with section 140 of the CGST Act, 2017 along with Article 226 of Constitution of India.**

No GST ITC on Input Services Using Products' Promotional Scheme: TN AAAR in case of GRB Dairy Foods (2022)

Facts of the Case: The appellant, M/s GRB Dairy Foods Pvt. Ltd is involved in the business of making and supplying ghee, masalas, instant mixes, and sweets. With the goal of expanding the market share, the appellant has incorporated a sales promotional offer buy and fly, to expand the product sales. According to the scheme the petitioner furnishes the rewards such as Dubai Trip, Gold Voucher, Television, and Air Cooler for those retailers whose target will be achieved.

GRB Dairy Foods submitted that it procured the reward items "in the course of its business" and it has a direct nexus with the business carried on by the company. "Marketing and business expansion is an indispensable activity of every company's operation

Ruling of TN AAR:

The AAR Bench factored in a 2018 ruling given by the Maharashtra Bench in the case of Biostadt India (2019 (22) GST L 551 (AAR – GST)), where ITC was held to be not available on procurement of gold coins offered under a sales promotion scheme to its customers. "**the credit of taxes paid on goods/services for personal consumption is explicitly restricted. The (reward) goods and services are used by the retailers and hence are for personal consumption. Thus, the applicant company is ineligible to take Input Tax Credit on the inward supply of these goods and services,**" held the AAR Bench.

"The appellant submitted that AAR completely ignored the fact that there was a contractual obligation that was based on a scheme that was circulated to the trade-in in advance." After coming to the contractual obligation, the provided promotional materials cannot be treated as a gift. The AAR sees that the promotional materials were said to be the gifts that were provided voluntarily and thus will come beneath eh provisions of section 17(5)(h) and therefore credit has to be restricted.

Ruling of AAAR:

AAAR sees that the petitioner furnished the rewards through the method of goods and indeed foreign tours via furnishing valid air tickets and that is the cause they coined the reward policy as buying and fly. Hence what they furnished in the policy were the goods and services. The provisions of clause (h) said

that the ITC will not be available for the goods lost, stolen, demolished, written off, or disposed of via gift or free samples. Hence this clause is only subjected to goods.

AAAR ruled that under the provision of the CGST act more precisely section 17(5) of the act, the gifts or rewards provided excluding the acknowledgement despite they are provided for the sales promotion do not entitle as inputs for the objectives of Credit, since no GST is furnished upon its disposal. Hence, we mentioned that the ITC on the inputs and the input services engaged in the goods and services used towards the goal of the reward is not available for the petitioner and as per that the ruling provided via the Advance Ruling Authority of Tamil Nadu needs no interruption and the appeal is dismissed.

GST ITC not allowable to BMW on demo car or vehicle: The Haryana Appellate Authority of Advance Ruling (AAAR) (2022)

Facts of the Case: BMW has sought an advance ruling on the issue of whether the unit of BMW is entitled to avail the Input Tax Credit (ITC) of IGST and Compensation Cess paid on receipt of cars (on stock transfer basis) for use in relation to business activities and onwards supply to dealers after use for a limited period of time.

Ruling of the AAR: The Authority of Advance Ruling (AAR) ruled that in the motor vehicle industry, demonstration vehicles are an indispensable tool for the promotion of sales by providing trial runs to customers. These demo cars are used for demonstration purposes for prospective customers, and after a specific period of time, they are sold off for their book value, paying the applicable taxes at that point of time.

Contentions of the AAR: The AAR observed that the specific provisions regarding the admissibility of the input tax credit on motor vehicles for transportation of persons up to a seating capacity of not more than 13 persons are contained in Section 17(5) of the CGST Act 2017.

Grounds of Appeal to the AAAR:

1) The appellant has challenged the order of the AAR and stated that the ruling was vague or cryptic. BMW was entitled to take ITC as the vehicles were further used for specified taxable supply u/s 17(5)(a)(i)(A) of CGST Act.

2) The appellant further added that vehicles were always intended to be further supplied by the appellant after specified use. No time limit has been prescribed under the CGST Act for further supply of vehicles. The appellant added that the authorities has failed to adhere to the provisions of Section 98(6) of the CGST Act.

Ruling of the AAAR:

The AAAR observed that if the argument of the party is allowed, then in that case, all motor vehicles, irrespective of the nature of supply, will be eligible for ITC across the industries. It will no longer be a restrictive clause for car dealers, but will be an open-clause for all the trade and industry to avail of the ITC on all the vehicles purchased by them. This has never been the intent of Parliament.

The AAAR ruled that in the very first demonstration run, demo cars lose the character of the new motor vehicle, and demo vehicles are sold akin to second-hand goods, which are different from new vehicles and accordingly treated differently under GST law, so the demo car is not an input.

“The BMW vehicles received by the Appellant under stock transfer have never been received with the intent to simply ‘further supply of such motor vehicles/’sell as such’. The Input Tax Credit on these vehicles, therefore, cannot be allowed,” the AAAR added.

KEY ANALYSIS OF ADVANCE RULING

A.C.L. Education Centre (P) Ltd. v UOI 2014 (33) S.T.R. 609 (All.)

Facts of the case: Central Tax Department of GST issued intimation under Section 65(3) of the CGST Act, 2017, demanding necessary documents from the petitioners for making a reference to conduct an audit. The petitioners objected and also challenged the vires of Section 65(3) of the CGST Act, 2017, inter alia, on the ground that the provisions of Section 65 of the CGST Act, 2017 are contrary to the provisions of section 66 of the CGST Act, 2017.

Decision: In the light of the aforesaid discussion, the High Court held that Section 65 of the CGST Act, 2017. It is in consonance with section 66 of the CGST Act, 2017.

Suresh Kumar P.P. v. Deputy Director, Directorate General of GST Intelligence [2021] 123 taxmann.com 376 (Kerala)

Facts of the Case: The petitioners were Managing Director and Director of a Media Company engaged in providing cable services to its customers as Multi-Service Operator under the regulation issued by the Telecom Regulatory Authority of India (TRAI). The GST Authorities initiated search and seizure proceedings against them. The authorities issued notice and further passed an order of seizure. Thereafter, the GST Authorities issued notice to petitioners under section 65 for auditing of books. The petitioners submitted that they had never defaulted to any of the statutory responsibilities. They filed the writ petition seeking relief in this regard.

Decision: The Honourable High Court observed that provisions of the CGST Act, 2017 like inspection of the premises, powers of arrest and summons to produce documents have been incorporated with the aim to prevent evasion of GST at the hands of unscrupulous taxpayers. The process issued for auditing of the books as well as the order of seizure of the documents would help the department in co-relating the entries in the documents and at the time of auditing of the account. Therefore, it would be too premature to comment upon the act of the GST Authorities and writ petition accordingly dismissed. As a result, Authorities can initiate audit and investigation simultaneously in GST

Tuli Motors v. Union of India - [2021] 128 taxmann.com 336 (Delhi)

Facts of the Case: The petitioner received the show cause notices in the year 2021 which were related to the old assessments for the period 2015 to 2017. It filed writ petition and submitted that the old assessments for the period 2015 to 2017 cannot be reopened in the year 2021 and emphasized that after the repeal of the Chapter V of the Finance Act, 1994 by the Goods and Services Tax Act, 2017, there is no power to initiate any fresh proceeding under the repealed Act i.e. Chapter V of the Finance Act, 1994. The department submitted that this Court, in Vianaar Homes Private Limited v. Assistant Commissioner (Circle 12), [2020] 121 taxmann.com 54 (Delhi), has held that there is power to initiate fresh proceedings under Chapter V of the Finance Act, 1994 despite coming into force of the Goods and Services Tax Act, 2017.

High Court Held: The Honorable High Court after hearing both the parties directed that proceedings pursuant to the impugned Show Cause Notices and summons shall continue but the final orders shall not be given effect to till disposal of the writ petition.

KEY ANALYSIS OF ADVANCE RULING

Adfert Technologies (P.) Ltd. [2019] 111 taxmann.com 27 (Punj. & Har.)

Decision: Where petitioners, migrated from VAT regime to GST regime on introduction of GST, sought direction to respondents to permit carry forward of unutilized CENVAT credit of duty paid under Central Excise Act, 1944 and Input Tax Credit (ITC) of VAT paid under Punjab VAT Act, 2005 or Haryana VAT Act, 2003 on account of non-filing or incorrect filing of prescribed statutory Form i.e., TRAN-1 by stipulated last date, i.e., 27-12-2017 due to technical glitches, petitioners were permitted to file Form TRAN-1 either electronically or manually on or before 30-11-2019.

While doing so, the Hon'ble Court noted that the Respondent authorities were having complete record of already registered persons and at present they are free to verify fact and figures of any Petitioner thus in spite of being aware of complete facts and figures, the Respondent cannot deprive Petitioners from their valuable right of credit.

Note: Against this order of the Hon'ble P&H HC SLP was filed by the Revenue Dept. which was dismissed by the Apex Court in Adfert Technologies (P.) Ltd. (supra).

Rohan Dyes and Intermediates Ltd. v. Union of India [2020] 115 taxmann.com 387 (Guj.)

In this case, Hon'ble Gujarat High Court relying on its earlier decision given in Siddharth Enterprises held that:

In case where petitioner could not upload the form GST TRAN-1 due to technical glitches and in spite of various representations made by the petitioner, he was not allowed to upload the form GST TRAN-1, the petitioner is entitled to claim credit of CENVAT as on 30th June 2017 as per the provisions under section 140(1) of the Act, 2017 read with Rule 117 of the Rules 2017.

Taking into consideration Order No. 01/2020-GST dtd. 07.2.2020 of CBEC, the Hon'ble Court directed the Department to consider the Petitioner's declaration till 31-3-2020.

Eicher Motors Ltd. v. Union of India 1999 taxmann.com 1769 (SC)

The Hon'ble Supreme Court of India considered MODVAT Credit as an 'absolute right' regarding the input is used in the manufacture of the final product and on the date when the Assessee paid the tax on the raw materials or the inputs. In this regard, the Hon'ble Court observed that:

"..Thus, the right to the credit has become absolute at any rate when the input is used in the manufacture of the final product. The basic postulate, that the scheme is merely being altered and, therefore, does not have any retrospective or retro-active effect, submitted on behalf of the State, does not appeal to us. As pointed out by us that when on the strength of the rules available certain acts have been done by the parties concerned, incidents following thereto must take place in accordance with the scheme under which the duty had been paid on the manufactured products and if such a situation is sought to be altered, necessarily it follows that right, which had accrued to a party such as availability of a scheme, is affected and, in particular, it loses sight of the fact that provision for facility of credit is as good as tax paid till tax is adjusted

on future goods on the basis of the several commitments which would have been made by the assessees concerned.

Therefore, the scheme sought to be introduced cannot be made applicable to the goods which had already come into existence in respect of which the earlier scheme was applied under which the assessees had availed of the credit facility for payment of taxes. It is on the earlier scheme necessarily the taxes have to be adjusted and payment made complete. Any manner or mode of application of the said rule would result in affecting the rights of the assessees. We may look at the matter from another angle. If on the inputs the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are finished subsequently. Thus, a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed."

Notably, the Supreme Court in addition to the above also held that provision for facility of credit is as good as tax paid till tax is adjusted on future goods on the basis of the several commitments which would have been made by the assessees concerned.

Brand Equity Treaties Ltd. v. Union of India [2020] 116 taxmann.com 415 (Delhi)

This is a case is of immense importance wherein Hon'ble Delhi HC interalia resolved the following issues:
Basis the decision of the Apex Court given in Eicher Motors Ltd. (supra) and Dai Ichi Karkaria Ltd. (supra) (wherein the Apex Court held that the provision for facility of credit as a vested right (which is indefeasible in nature) and also held that the facility of credit is as good as tax paid till the tax is adjusted on future good) noted that "..On enactment of the CGST Act, no mechanism was provided for the refund of the credit that existed on the said date. The only mechanism was for utilization of such credit by migrating the same to the GST regime by way of filing declaration Form TRAN-1. The manner and procedure to carry forward the said CENVAT credit under Sub-Section (1) of Section 140 was to be 'prescribed'….Evidently there is no other provision in the Act prescribing time limit for the transition of the CENVAT credit, and the same has been introduced only by way of Rule 117. This provision also contains a proviso, which vests power with the Commissioner to extend the period on the recommendations of the Council….there is nothing sacrosanct about the time limit so provided. It is not as if the Act completely restricts the transition of CENVAT credit in the GST regime by a particular date, and there is no rationale for curtailing the said period, except under the law of limitations. The period of 90 days has no rationale and as noted above, extensions have been granted by the Government from time to time, largely on account of its inefficient network."

High Court further opined that "**Conscious of the circumstances that are prevailing, we feel that taxpayers cannot be robbed of their valuable rights on an unreasonable and unfounded basis of them not having filed TRAN-1 Form within 90 days, when civil rights can be enforced within a period of three years from the date of commencement of limitation under the Limitation Act, 1963**."

In view of the above, Hon'ble Delhi High Court held that entitlement of credit of taxes/duties paid on purchases made under the erstwhile regime is a vested right and cannot be taken away by virtue of Rule 117 of the CGST Rules, 2017.

R.R. Distributors Pvt. Ltd v. Commissioner Of Central Tax, GST [W.P. (C) 4143 of 2020, dated 27-5-2021]

Very recently i.e. on 27-5-2021, Hon'ble Delhi High Court in this case aptly held that the non-filing of part 7B of table 7(a) and table 7(d) of TRAN-1 Form cannot impair the rights of the petitioner to claim transitional ITC, if he is otherwise eligible.

The Hon'ble Court further noted that failure on the part of the Petitioner to give relevant details in TRAN-1 Form can only be taken as a procedural lapse which should not cause any impediment to its right to claim transitional ITC. In view thereof, the Court directed the Respondents to either open the online portal so as to enable the Petitioner to file the rectified TRAN-1 Form electronically or accept the same manually with necessary corrections, on or before 30th June 2021.