



JSA Newsletter Indirect Tax

February 2022 Edition

Recent Rulings by Courts and Authorities

Supreme Court

Extension of limitation period considering third wave of COVID-19

The Hon'ble Supreme Court passed the following directions while deciding a miscellaneous application filed by the Supreme Court Advocates on Record Association (SCAORA)¹:

- The Supreme Court order dated March 23, 2020² is restored and it is directed that the period from March 15, 2020 till February 28, 2022, stands excluded for the purposes of computing limitation period, as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Consequently, the balance period of limitation remaining as on October 3, 2021, if any, shall become available with effect from March 1, 2022.
- In cases where the limitation period would have expired during the period between March 15, 2020, and February 28, 2022, notwithstanding the actual balance period of limitation remaining, all persons will have a limitation period of 90 days from March 1, 2022. In the event the actual balance period of limitation remaining, with effect from March 1, 2022, is greater than 90 days, the longer period will apply.

High Court

Supreme Court order extending limitation period applicable to Good and Services Tax ("GST") refund applications

In the case of *Saiher Supply Chain Consulting Pvt Ltd vs. Union of India*³, the petitioner filed a refund application for the period from July 2018 to September 2018 which was initially rejected by the revenue authorities on account of specific deficiencies. Subsequently application filed by the petitioner on September 30, 2020, was rejected for being time barred i.e., the application was filed beyond a period of 2 years from the relevant date, as prescribed under the Central Goods and Services Tax Act, 2017 ("CGST Act"). On account of the above, the petitioner filed a writ petition before the Hon'ble Bombay High Court for restoration of the refund application.

The Hon'ble High Court held as follows:

- For the refund application, which was required to be filed within two years in accordance with Section 54(1) of the CGST Act, the limitation period was falling between March 15, 2020, and October 2, 2021. In view of the

¹ In Re: Cognizance for extension of limitation- 2022 (1) TMI 385 - SC Order

² In Re: Cognizance For extension of limitation- 2020 (5) TMI 418 - SC Order

³ 2022 (1) TMI 494 - Bombay High Court

Supreme Court order dated March 23, 2020⁴ and September 23, 2021⁵, the period of limitation falling between March 15, 2020, and October 2, 2021 stood excluded for computing limitation period prescribed for filing refund application.

- Therefore, the High Court observed that order of the Hon'ble Supreme Court in respect of limitation period is applicable to refund application filed under the GST laws.

Authority for Advance Ruling ("AAR")

Transaction of procuring input services on behalf of the Branch office qualifies as supply and ISD registration compulsory to distribute common ITC

The applicant **Cummins India Limited**⁶ is engaged in the manufacture and sale of a variety of diesel engines and its parts. Applicant has branch offices/units located across different states in India. The applicant being a head office, procures common input services and avails Input tax credit ("ITC") on the same. The cost incurred for such common input services is further allocated and recovered proportionately from each of the recipient offices.

Based on the above facts, applicant sought an advance ruling from AAR on various questions involving transactions between head office and branch offices/units, wherein the AAR *inter-alia* held that procurement of common input services by head office on behalf of branch offices/ units and allocation of the cost to such offices qualifies as supply, and further that in order to distribute ITC, registration as an Input Service Distributor ("ISD") is compulsory.

Aggrieved by the order of the AAR, the applicant filed an appeal before Appellate Authority for Advance Ruling ("AAAR"). However, the appeal was dismissed by AAAR and it held as follows:

- Activities of providing facilitation services by head office to branch offices/units by way of procurement of common input services on behalf of its branch offices/units is supply of service as per the Section 7(1)(a) of the CGST Act.
- The common input services received by the applicant are being used by the branch office/units in the course or furtherance of their business and not by the head office and thus, the head office is not entitled to avail ITC of tax paid to the third party service vendors for such common input services. Further, the applicant is bound to take ISD registration for distributing ITC of the common input services received by it on behalf of the branch offices/units.
- Cost of the said common input services availed and allocated to the branch offices/units by the head office will not attract the levy of GST as, the said costs have been incurred by the head office in the capacity of a pure agent of the branch offices/units, and as such, the said cost incurred by the head office shall be excluded from the value of supply of the facilitation services.
- AAAR also held that, the assessable value of the services provided by the head office to the branch offices/units can be determined based on value of the tax invoice, deemed as the open market value of the services.
- Since the applicant is using all its human resources to facilitate the operational requirements of the branch offices/units, allocation and recovery of any amount including employees salary cost from the branch offices/units will be subject to GST.

Supply of developed plot is a taxable supply and cannot be equated to sale of land

The applicant, **Shree Dipesh Anil kumar Naik**⁷ is the owner of the land, for which the applicant got the necessary approvals for proposed project from the plan passing authority (i.e., Jilla Panchayat). As per the approval, seller of land was mandatorily required to develop infrastructure such as drainage line, water line, electricity line, land levelling etc. prior to its sale. The applicant's sales price includes the cost of the land as well as the cost of common amenities on a proportionate basis.

⁴ In Re: Cognizance for extension of limitation- 2020 (5) TMI 418 - SC Order

⁵ In Re: Cognizance for extension of limitation 2021 (11) TMI 387 - SC Order

⁶ 2022 (1) TMI 660 - Appellate Authority for Advance Ruling, Maharashtra

⁷ 2022 (1) TMI 1055 - Appellate Authority for Advance Ruling, Gujarat

In the above backdrop, the applicant filed an application before AAR seeking clarification on the question whether GST is applicable on sale of plot of land for which amenities such as, drainage line, water line, electricity line, land levelling etc. are to be provided by the applicant, as per approval plan?"

The AAR has ruled that GST is applicable on sale of developed land as plot, as the sale of such developed plot is not equivalent to sale of land but is a different transaction which tantamount to rendering of service. Being aggrieved by the ruling passed by AAR, applicant filed a present appeal before the AAAR. The AAAR after due considerations to the submissions made by the applicant held as follows:

- The Applicant develops infrastructure on lands for such amenities and later sells at a price inclusive of cost of land, cost of common amenities and other infrastructure, which clearly indicate that sale of developed plot is not equivalent to sale of land but is a different transaction.
- Since 'construction of civil structure or a part thereof, intended for sale to a buyer' is a supply of service as per schedule II of the CGST Act, the activity of applicant by way of sale of developed plots is covered under this clause and thus leviable to GST.

GST not leviable on cash discount/incentive offered by supplier

The applicant, **Rajesh Kumar Gupta**⁸, is engaged in business of trading in rice and pulses. As per the arrangement with its supplier, the applicant is offered a cash discount upon fulfilment of specified conditions. The supplier issued 'receipt cum credit note' for cash discount, without considering GST on such cash discount. Further, the supplier also offers a target incentive to the applicant on achieving the target of sales. Based on the above facts, the applicant had filed an application before AAR seeking clarification on the following question:

1. Whether applicant can claim ITC of the full GST charged on the invoice or a proportionate reversal is required in case of:
 - Post-purchase cash discount for early payment of supply invoices given by the supplier without adjustment of GST.
 - Incentive/schemes provided through credit note without adjustment of GST by the supplier.
2. Whether GST will be applicable on cash discount for target incentives/schemes offered by suppliers to the applicant through credit notes, which are issued without adjusting GST?

The AAR observed that cash discount for early payment as well as incentive/schemes are being provided without adjustment of GST, and the said discounts are not in terms of prior agreement between parties. Thus, the same are excluded from the purview of GST laws, since only those discounts which are known at the time of supply are to be considered for determining the value of supply. Accordingly, it was held that the applicant could avail the ITC of full GST charged on the invoice, and no proportionate reversal is required, subject to the conditions that the GST paid for the said goods/service is not reimbursed/re-credited by the supplier to the applicant, in any other manner. It was further held that since the amount received in the form of the credit note is a discount and not towards any supply made by the applicant, GST is not leviable on such cash discount/incentive/scheme.

Circulars

Clarification regarding Steel Import Monitoring System (SIMS)

Circular no:38/2015-20 dated January 19, 2022

Director General of Foreign Trade has clarified that re-import of steel for packaging purposes under specific Harmonized System of Nomenclature will not be covered under SIMS as it is not primarily meant for value addition, rather being re-imported for packaging only.

Further, it has been clarified that SIMS registration is not required if steel/steel item is exported from Domestic Tariff Area ("DTA") to Special Economic Zone ("SEZ") and then imported into DTA from SEZ with or without and then imported into DTA from SEZ with or without value addition.

⁸ 2022 (1) TMI 901 - Authority for Advance Ruling, Madhya Pradesh

Circular issued to expedite recovery of tax demands

Circular No. 1081/02/2022-CX dated January 19, 2022

Central Board of Indirect Taxes and Customs has issued a circular for expediting recovery of confirmed demands under indirect tax laws. Specific guidelines are issued to revenue authorities depending upon the forum before which arrears are pending. Details of the same are mentioned below:

- For cases where amount involved exceeds INR 1 Crore and the same is pending before Supreme Court/High Court/CESTAT, early hearing/ decision applications to be filed by revenue authorities.
- For cases where amount involved exceeds INR 10 Lakhs and the same is pending before the Commissioner (Appeals), immediate disposal to be done.
- For cases of restrained arrears due to financial viability of defaulter, pending before National Company Law Tribunal / Debt Recovery Tribunal / Official Liquidator etc, revenue authorities to file affidavits for first charge under respective tax laws and to attend meetings of committee of creditors to protect Government revenue as operational creditors.
- For undisputed arrears (where assessee has not filed appeal or appeal period is over), necessary enquiry to be initiated for identifying properties of defaulters and garnishee/ attachment proceedings to be initiated.

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