
June 2023 Edition

# Recent Rulings by Courts and Authorities

## Supreme Court

### Credit note(s) issued by a manufacturer to a dealer for auto-parts replacement is subject to sales tax

The Hon'ble Supreme Court of India ("**Supreme Court"**) in the case of ***Tata Motors Ltd. vs. Deputy Comm. of Commercial Taxes and Anr.***[1], ruled upon the taxability of credit note(s) issued by an automobile manufacturer to its dealer, as consideration for replacement of defective parts.

Tata Motors Ltd. ("**Appellant**") contended that credit note(s) issued by an automobile manufacturer to a dealer for defective parts replaced by the dealer during the warranty period does not constitute a sale and that the dealer is contractually bound by the warranty obligations undertaken by the manufacturer at the time of sale. It was contended that the charge of a warranty is the exact opposite of a contract of sale, which involves transfer of goods.

The Supreme Court disagreed with the said contention, and observed that the transaction involved 2 (two) tranches:

1. Transfer of property in goods between the dealer and the customer;
2. receipt of consideration by the dealer from the manufacturer in the form of credit note(s).

It was further observed that the definition of 'sale' under the Central Sales Tax Act, 1956, and respective State enactments includes transfer of property for cash or any deferred payment or other valuable consideration, which includes a credit note. The object and purpose of including the expression, 'valuable consideration' in the definition of 'sale', apart from cash and deferred payment is to enlarge the scope of the expression 'price'.

Therefore, for the reasons mentioned above, the Supreme Court held that transaction between the manufacturer and dealer, acting pursuant to a warranty obligation, has to be construed as sale within the meaning and definition of 'sale' under the Sales Tax Acts and accordingly exigible to sales tax.

**JSA Comment**: While the ruling has been issued in the context of Sales tax laws, the same will have a persuasive value in the context of levy of GST[2] in respect of issuance of credit notes for replacements carried out by the third parties under the warranty obligations.

[1] 2023 (5) TMI 744
[2] Goods and Services Tax

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## Withdrawal of tax rate concessions by the Government, cannot be subject to judicial scrutiny

The Supreme Court , in the case of ***Union of India vs. ABP Pvt. Ltd. and Anr.***[3] ruled on the scope of judicial scrutiny in respect of withdrawal of concessional tax rates by the government. ABP Pvt. Ltd. ("**Respondent**") was engaged in importing specific printing machines, eligible for concessional rate of customs duty at the rate of 5%[4], which was subsequently withdrawn by the Government[5]. The Respondent filed the bills of entry for import of printing machines, in accordance with the notification providing concessional rate of customs duty. However, due to the withdrawal of the concessional rate, the Respondent was ineligible for such benefit. Aggrieved by the withdrawal of the concessional rate, the Respondent filed a writ petition before the High Court of Calcutta ("**Calcutta High Court**") seeking to declare the withdrawal of the concessional rate of customs duty to be *ultra vires*.

The High Court set aside the notification (withdrawing concessional rate of duty) on the ground that no intelligible differentia existed for granting concession on one type of machinery and withdrawing concession for other types of machinery, directing the government to allow concessional rate of customs duty to the Respondent. Aggrieved by the ruling of the High Court, the authorities approached the Supreme Court.

The petitioner contended that there is no vested right in the concession provided to a taxpayer and such concession can be withdrawn at any time and no time-limit should be insisted upon before it is withdrawn. The Supreme Court agreed with the arguments of the revenue authorities and held that issuance and withdrawal of any fiscal benefit is within the ambit of the executive and such withdrawal cannot be subject to judicial review.

## No service tax payable on user development fee payable at international airport

The Supreme Court in the case of ***Central GST Delhi vs. Delhi International Airport Ltd***[6]***.*** ruled upon the taxability of user development fee collected by the airport operation and maintenance entities.

Delhi International Airport ("**DIAL**") entered into a joint venture arrangement with the Airports Authority of India ("**AAI"**), whereby DIAL was required to undertake activities, enjoined upon the AAI under the AAI Act[7], for the purpose of operation, management and development of the airports. A demand was raised by the service tax authorities on the ground that development fee collected by DIAL from the passenger will be subject to service tax. The demand was confirmed at the adjudication level, which was challenged by DIAL before the Central Excise and Service Tax Tribunal ("**CESTAT**").

CESTAT Mumbai held that "user development fee" levied and collected by the airport operation, maintenance, and development entities from passengers was a statutory levy and therefore cannot be subjected to service tax. It was further observed by the CESTAT that such development fee was collected for the purpose of upgradation and renovation of airports and not for providing any services. Revenue authorities challenged the order of the CESTAT before the Supreme Court.

The Supreme Court held that as per the economic policies of Union of India, the upgradation and renovation of airports are funded through user development fee, which is a statutory levy. Further, the fact that user development fees is not deposited in a government treasury, per se, does not make it any less a statutory levy or compulsory exaction. The Respondent was authorised by notifications issued by the central government under Section 22A of the AAI Act to collect the "development fee". The Supreme Court noted that the fee was collected to bridge the funding gap of project cost for the development of future establishment of the airports. Therefore, it was held that user development fee collected by the Respondent is not subject to levy of service tax.

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3 2023 (5) TMI 620
4 Notification No 86 of 2003 (Cus) Classification, dated May 28, 2003
5 Notification No 164 of 2003 – Customs, dated November 11, 2003
6 2023 (5) TMI 867
7 Airports Authority of India Act,1994

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**JSA Comment**: While the ruling is issued in the context of levy of service tax on the user development fee charged by the airport authority, the ratio of this judgement could be extended in respect of levy of GST on other statutory levies or license fees, etc. which is already in dispute in some of the instances.

## Designs imported in paper form are taxable as services and not goods - same activity can be taxed as goods and services

In the case of ***Commissioner of Customs, Central Excise and Service Tax vs. Suzlon Energy Ltd.***[8], the assessee was engaged in manufacturing of wind turbine generators ("**WTG**") and entered into an agreement with its sister concern in Germany for import of engineering, design & drawings ("**Designs**") of various models to be used in manufacturing of WTG in India. The assessee imported and cleared the said Designs in a blueprint form on paper and claimed benefit of nil rate of customs duty. Further, the assessee adopted a tax position that the imported Designs were to be included in value of goods, and not to be treated as services, and therefore, there was no requirement of paying service tax on the same.

An audit was conducted by the authorities and a show cause notice ("**SCN"**) was issued to the assessee, for the period June 2007 to September 2010, demanding service tax on import of the Designs under the category of 'design service' of the erstwhile Service Tax Law[9]. The adjudicating authority confirmed the said demand, along with interest and penalty. Subsequently, the assessee preferred an appeal before the CESTAT, wherein it was held that Designs imported in the form of paper are goods and not services. It was further held that the taxation of goods and services are mutually exclusive, and therefore the same activity cannot be taxed as both goods and services.

Aggrieved by the order of the CESTAT, the authorities preferred an appeal before the Supreme Court. However, the Supreme Court ruled against the assessee and held that the Designs imported from sister companies are classifiable as 'design service' and leviable to service tax, based on the following observations:

1. Designs may be shown as goods in a bill of entry under the Customs Act, 1962 however, this by itself cannot lead to exclusion of such Designs from the purview of the definition of design service.
2. There is a distinction between, sale of goods and contract of services. Therefore, the intention of the contracting parties must be ascertained as to whether the contracting parties intend to transfer both goods and services, either separately or in an indivisible composite manner.
3. As per the aspect theory, different aspects of a transaction can be taxed through separate provisions. Therefore, service tax can be levied on the aspect of services, and further the same activity can be taxed both as goods and services, provided the contract is indivisible.

**JSA Comment**: This is an important ruling given the fact that industry has adopted a position that once an activity is taxed as goods, the same cannot be levied to service tax or GST as services due to mutual exclusivity of Scheme of taxation for goods and services. This ruling of Supreme Court could result in past period liability for businesses which needs to be analysed and dealt with.

## Pre-import condition under advance authorization scheme upheld by Supreme Court

In the case of ***Union of India vs. Cosmos Films Limited***[10], constitutional validity of 'pre-import' condition required to be fulfilled for availing benefit under advance authorisation scheme ("**AA"**), has been upheld by Supreme Court. The Directorate General of Revenue Intelligence, Kolkata ("**DRI"**) initiated an investigation against various manufacturers vis-a-vis compliance with the 'pre-import' condition in relation to the exemption claimed from integrated goods and services tax ("**IGST"**) and compensation cess on imports under the AA.

[8] 2023 (4) TMI 409
[9] Section 65(35b) read with Section 65(105)(zzzzd) of the Finance Act, 1994
[10] 2023 (5) TMI 42

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Prior to implementation of GST, unconditional exemption from applicable customs duty was extended on inputs imported under the AA. With the introduction of GST in July 2017, the said exemption was initially limited to basic customs duty ("**BCD"**) and excluded IGST and compensation cess leviable on import of goods. Accordingly. importers were required to pay IGST and seek refund upon export of the resultant goods. However, in October 2017, an amendment was made to include IGST and compensation cess within purview of exemption, subject to satisfaction of 'pre-import' condition and 'physical exports.' Further, a corresponding amendment to introduce the 'pre-import' condition in the AA was made effective in the Foreign Trade Policy 2015-20 ("**FTP"**) as well.

Against this background, exporters continued with their practice of making exports using old stock and importing duty-free inputs, thereby not satisfying the pre-import condition on various occasions. Noticing this, DRI sought to deny the IGST and compensation cess exemption to the businesses. As per the DRI, 'pre-import' condition meant that goods had to be imported first, and then the final products manufactured with such imported goods were to be exported. When it was established that goods imported against a particular AA were used in relation to manufacture of finished goods exported against that specific authorization, the 'pre-import condition' stood satisfied. Hence, the DRI alleged that the exporters who undertake export and import in a continuous cycle and are unable to establish that their imports are meeting the condition or have exported in anticipation of authorisation are not eligible for the exemption from IGST and compensation under AA. Subsequently, in January 2019, the 'pre-import' condition was removed.

Aggrieved by the interpretation of the DRI, the exporters/ assesses approached the Gujarat High Court challenging the 'pre-import condition'. The Gujarat High Court held that the exemption of IGST and compensation cess under pre-import condition did not meet the test of reasonableness and is therefore, *ultra vires* the FTP, and extended relief to exporters/ assesses. The central government challenged the decision of the Gujarat High Court decision before the Supreme Court.

Supreme Court has set aside Gujarat High Court's order with respect to fulfilment of pre-import condition. The key findings given by the Supreme Court in this regard are summarized below:

1. It was acknowledged that the introduction of the 'pre-import condition' may have resulted in hardship to the exporters considering that they fulfilled the physical export criteria, however, it was held that this would not make the condition invalid. Supreme Court relied on various judgements wherein it was held that inconvenience or hardship is not a ground for the court to interpret the plain language of the statute differently, to give relief.
2. It was also observed that in complex economic matters every decision is necessarily empiric, and it is based on experimentation. The courts while considering the validity of the executive action relating to economic matters grant a certain measure of freedom to the executive and cannot strike down a policy decision taken by the Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The court can interfere only if the policy decision is patently arbitrary, discriminatory or *mala fide*.
3. Further, the argument of the exporters/ assessees, that there is no rationale for different treatment of BCD and IGST under AA was held to be without merits. While dismissing the argument, the Supreme Court held that BCD is a customs levy at the point of import. On the other hand, IGST is levied at multiple points (including at the stage of import) and input tax credit gets into the stream, till the point of end user. As a result, there is a justification for a separate treatment of 2 (two) separate levies. Therefore, the exemption under pre-import condition cannot be faulted with for arbitrariness.

## High Court

### Game of skill, with or without stake, does not amount to betting or gambling

In the case of ***Gameskraft Technologies Private Limited vs. DGGI***[11], the question before the Karnataka High Court was to determine if online games based on skill, whether played with/ without stakes amounts to 'gambling' or 'betting'. Gameskraft Technologies Private Limited ("**Petitioner**") was inter-alia engaged in the business of operating

[11] 2023 (5) TMI 926

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a technology platform on which users can play online games against each other. The Petitioner merely hosted such games on the platform. Pursuant to the investigations carried out by DGGI[12], an SCN was issued alleging that the Petitioner is involved in facilitating betting and gambling, which amounts to supply of 'actionable claims' as per Entry No. 6 of Schedule III of CGST Act, on which GST at the rate of 28% has not been discharged. The SCN seeks to demand GST amounting to INR 21,000,00,00,000 (Indian Rupees twenty one thousand crore). The Petitioner filed a writ petition before the Karnataka High Court, challenging the validity of the said SCN.

The Petitioner relying on several judicial proceedings challenged the jurisdiction of the SCN on the grounds that a game of skill even if played with monetary stakes does not partake the character of 'betting' or 'gambling', as the same continues to be a game of skill. Also, the character of 'rummy' being a 'game of skill' does not change whether played online or offline. The Respondents argued that placing stakes on an outcome of a game, irrespective of the game being that of skill or chance, would amount to 'betting' or 'gambling'. The platform of the Petitioner allows players to play rummy online, by placing stakes and betting on the outcome thereof. Further, the Petitioner is making profits/ gains from such game of rummy played on its platform, which amounts to betting/ gambling. Both Petitioner and Respondent relied on landmark Supreme Court judgments to substantiate their arguments.

The Court analysed the judicial precedents relied upon by the Petitioners and the Respondents and observed that the Respondents have relied on selective portions of the decisions, not forming part of the ratio/ principle of the rulings. Relying strongly on the principles of the judicial precedents, the Karnataka High Court ruled that 'rummy' is substantially and preponderantly a 'game of skill' and not of chance. It was held that rummy, whether played with stakes or without stakes does not amount to gambling and accordingly, the SCN was quashed.

## Central and State GST not applicable on intermediary services provided to an overseas recipient - Validity of intermediary related provisions under the IGST Act, 2017 upheld

In the case of ***Dharmendra M Jani v. Union of India***[13], the assessee was engaged in providing marketing and promotion services to foreign principal by way of identifying purchasers for goods in India. The assessee treated the said services as export of services, as the same are consumed outside India and thus outside the purview of the CGST Act, whereas the GST authorities were of the view that such services are intermediary services.

The assessee challenged the provisions related to intermediary services and contended that Section 13(8)(b) of the IGST Act read with Section 2(13) and 2(6) of IGST Act seeks to levy GST on services provided by the petitioners to its overseas customers, which are consumed by such customers/ recipients outside India. Therefore, by fiction of law these supplies are being treated as intra-state supply making GST leviable on such export of service, under the CGST Act and Maharashtra Goods and Services Tax Act, 2017 ("**MGST Act**"). These provisions are violative of the provisions of Article 246A read with Articles 269A and 286 of the Constitution of India ("**Constitution**"), since the Constitution grants power to the Parliament to frame laws for inter-state trade or commerce, and not in respect of extra-territorial transactions.

Further, it was contended that Section 13(8)(b) of the IGST Act is *ultra vires* Section 5 of the IGST Act which provides for a levy on all inter-state supplies of goods/ services. However, Section 13(8)(b) runs contrary to the scheme of the IGST Act. To this extent, Section 13(8)(b) is *ultra vires* Section 9 of the CGST Act.

The primary issue before the Bombay High Court was whether Section 13(8)(b) of the IGST Act 2017 is *ultra vires* the Constitution and the provisions of the IGST Act.

In the above backdrop, one of the judges of the division bench of Bombay High Court struck down Section 13(8)(b) of IGST Act as *ultra vires* and observed that these provisions are not only against the overall scheme of CGST Act and IGST Act but also offends Articles 245, 246A, 269A and 286(1)(b) of Constitution. However, the companion judge upheld

[12] Directorate General of GST Intelligence
[13] 2023 (4) TMI 821

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the validity of the said provisions. In view of such a difference in opinion, the matters were placed before the third judge of the Bombay High Court who held as follows:

1. The transactions in question are in fact an export of service, as the recipient of service is the foreign principal and consumption of the services takes place in a foreign land. The test of "export of service" as defined under Section 2(6) of the IGST Act is satisfied.
2. One of the key principles of GST is that the place of taxation of goods and services is to be determined based on the destination. The transaction of export of services (as that of the petitioners) is being treated as inter-state trade or commerce by virtue of Section 7(5) of the IGST Act, whereas the same transaction is treated as an intra-state trade and commerce by virtue of Section 13(8)(b) of the IGST Act. Therefore, due to contradiction between the said provisions, character of export of service is being altered into a transaction of intra-state supply of service and accordingly, the fiction created by Section 13(8)(b), would be required to be confined only to the provisions of the IGST Act (i.e., inter-state supply of services).
3. By virtue of Article 286 of the Constitution, the States cannot impose tax in case, the supply takes place outside the State or in case of import or export. Therefore, the transaction of marketing and promotion services being undertaken by the assessee cannot amount to an intra-state trade. Thus, the assessee cannot be taxed under the CGST Act and MGST Act.
4. The provisions of Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional and, these are confined in their operation to the provisions of the IGST Act only and cannot be made applicable for levy of tax on services under the CGST Act and MGST Act.

## 'Recipient of supply' eligible to file an application for Advance Ruling

In the case of ***Anmol Industries Ltd & Another vs. West Bengal Authority for Advance Ruling***[14], the Calcutta High Court analyzed whether a 'recipient of supply' has the *locus standi* to file an advance ruling application before the Authority for Advance Ruling ("**AAR**").

The assessee had filed an advance ruling application for determination of GST exemption on lease agreement executed with the supplier of service i.e., a body of Ministry of Ports, Shipping and Waterways, Government of India regarding an industrial plot for setting up commercial office complex.

The AAR held that if recipient of supply files an application for advance ruling, the same is binding only on recipient and the supplier may not follow the ruling and in such a scenario, the ruling loses its relevance and applicability. Therefore, the applicant, being recipient of service, has no *locus standi* and application was not maintainable. Aggrieved by the same, the applicant filed the present writ petition before the Calcutta High Court.

The Calcutta High Court observed that for the purposes of advance ruling, the term "Applicant" has been defined under Section 95(c) of the CGST Act to mean any person registered or desirous of obtaining registration under the CGST Act. Therefore, the said term is defined in the widest possible manner to include any person to that extent. Therefore, in the present case, as the recipient was a registered person under CGST Act, it squarely falls within the meaning of the term "Applicant" and hence, it will be well within the jurisdiction of the AAR to consider its application on merits rather than rejecting the same on the ground of lack of *locus standi.*

**JSA Comment:** While the ruling may come as a beneficial relief to some of the assesses, who may approach AAR with respect to taxability of supplier received by them, it is interesting to note that Section 95(a) defines an 'advance ruling' to be in relation to the supply of goods or services proposed to be undertaken by an 'Applicant'. Given this it would be relevant to follow the matter closely and keep an eye on the interpretation adopted by other high courts or Supreme Court on the subject.

[14] TS-153-HC(CAL)-2023-GST

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### Delay of 10 (ten) years in adjudicating assessments proceedings, to be barred by limitation period

The Bombay High Court in the case of ***Siemens Ltd. vs. State of Maharashtra and Anr.***[15], has ruled on the inordinate delay in concluding adjudication proceedings initiated under Maharashtra Municipal Corporations Act, 1949. Siemens Ltd. ("**Petitioner**") had discharged cess for bringing goods within the limits of Maharashtra Municipal Corporation and filed returns for the same. Pursuant to filing of the return, the Petitioner was issued a notice requiring submission of documents by the authorities. It was contended by the authorities that the Petitioner had failed to produce relevant documents in support of the returns and accordingly, issued a reminder notice after a period of 10 (ten) years. Aggrieved by the reminder notice, the Petitioner approached the Bombay High Court.

The Petitioner contended that certain information required by the authorities was submitted. However, the Commissioner thereafter did not take any further actions to complete the assessment for a period of more than 10 (ten) years from the date of issuance of notice. It was also contended that in absence of any limitation period prescribed for completion of adjudication proceedings, the same is to be concluded within a reasonable time. The Bombay High Court concurred with the arguments of the Petitioner and held that any adjudication proceedings pending for more than 10 (ten) years, should be set aside. However, for proceedings wherein the period of 10 (ten) years had not lapsed, direction was provided to the Commissioner to conclude the adjudication proceedings expeditiously.

## CESTAT

### Hostel services, if naturally bundled with education services, is exempt from service tax

In the case of ***Mody Education Foundation vs. Commissioner of Central Excise, Jodhpur***[16], Mody Education Foundation ("**Appellant**") was engaged in functioning a boarding school, for which the Appellant received hostel fees from the students (this is in addition to the tuition fee and other charges). On an investigation initiated against the Appellant, the authorities contended that the Appellant had failed to pay service tax in respect of various services provided/received by it. Consequently, a SCN was issued demanding service tax on hostel services provided to the students, subsequently confirmed *vide* an order.

The Appellant approached the CESTAT New Delhi, contending that hostel services are naturally bundled with education services, which are exempt[17] under the Service Tax regime. Accordingly, the essential character of the transaction is education service which is exempt and therefore, the provision of hostel services is also exempt from levy of service tax. It was further contended that hostel services cannot be provided on a standalone basis, without the provision of education services by a boarding school, there being a clear nexus between the 2 (two) services.

The CESTAT observed that hostel service and education services are naturally bundled in the ordinary course of business, and it is the education service that gives the essential character to such bundle. Given that education services fall under the negative list of services, provided under Section 66D of the erstwhile Service Tax Law hostel services bundled along with the education services will not be subjected to service tax.

### Value of goods adopted by VAT authorities to be accepted by service tax authorities for computing value of services, for levy of service tax on works contract

In the case of ***Schindler India Pvt. Ltd. vs. Comm. Of Service Tax-II, Mumbai***[18]***.*** Schindler India Pvt. Ltd. ("**Appellant**") is engaged in manufacturing of elevators/ escalators and provision of installation and commissioning services for the same. The Appellant discharges VAT[19] on supply of the equipment and service tax on the component of installation

15 2023 (5) TMI 181
16 2023 (5) TMI 609
17 Sr. No. 9 of Notification No. 25/2012 -ST, dated June 20, 2012
18 2023 (5) TMI 391
19 Value Added Tax

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and commissioning services, covered under a single works contract. The Service Tax authorities disputed that the Appellant had not paid service tax on the gross amount of the equipment supplied as well as installed at the site of their customers. Aggrieved by the demand of service tax on the gross value of the contract instead of the service component, the Appellant filed an appeal before the CESTAT. The Appellant presented the following arguments:

1. A clear bifurcation of the value of equipment and the value of installation and commission service was provided in the contract;
2. The invoices issued to the end-customer also captured such bifurcation,
3. VAT was discharged on the value of equipment and the VAT authorities accepted the value on which VAT was discharged by the Appellant,
4. Service tax was discharged on the service component, value of which was arrived as per the valuation provisions prescribed under the Service Tax Law[20],
5. Availment of composition scheme for works contract was optional and at the discretion of the Appellant and not the authorities.

In light of the above arguments, CESTAT set aside the order confirming the demand of service tax and observed the following:

1. Given that 1 (one) statutory competent authority has accepted the modus operandi adopted by the Appellant (i.e., value of equipment on which VAT was discharged was accepted by the VAT authorities), for the same set of transaction, different view cannot be expressed by the service tax authorities.
2. The Appellant had maintained proper and adequate accounting records to demonstrate the segregation of the contract value towards material and installation and commissioning service and therefore, the value declared by the Appellant should be accepted for the purpose of service tax.
3. The composition scheme is optional and subject to acceptance by the assessee on accounting point of view.

## Appellate Authority for Advance Ruling (AAAR)/ Authority for Advance Ruling (AAR)

### Service supplied by the employees working in a branch office to its head office located in a different State is leviable to GST

The applicant, **Profisolutions Private Limited**[21] having its head office at Bangalore, is registered in the State of Karnataka for the purpose of GST laws. The applicant also has its branch office in Chennai, which is registered in the State of Tamil Nadu and provides various support services such as engineering services, designing services, accounting services, etc. to the head office through common employees of the applicant, working for the company as a whole (and not employed for head office or branch specifically). In relation to the aforesaid support, no invoice was issued and no GST was paid by the applicant.

Basis the above, the applicant approached the AAR to determine if provision of service by a branch office in one state to its head office in another state through common employees, constitutes a supply of service.

In the above context, the AAR held as follows:

1. In cases where an employee is deployed in a branch of an entity, the services that are rendered directly to the head office will be in the representative capacity as an employee of the branch. Entry 2 of Schedule I to the CGST Act states that supply of goods and/ or services between related persons/ distinct persons when made in the course or furtherance of business is to be treated as supply, even if made without consideration.

[20] Section 67 of the Finance Act, 1994 read with Rule 2A of Service Tax (Determination of Value) Rules, 2006
[21] 2023 (4) TMI 541

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2. Accordingly, the employees deployed at 1 (one) registered place of business, and providing services to another registered place of business of the same person (who are being treated as 'related' under the provisions of CGST Act), would be treated as 'supply' by virtue of Entry 2 of Schedule I to the CGST Act.

3. Accordingly, services, including the services of common employees of a person, provided by the branch office to its head office and vice versa, each having separate GST registration, will attract GST.

**JSA Comment:** The issue of cross charges of expenses/ costs *inter-se* offices within the same legal entity has been a vexed one and remained litigious, for which a clarity is expected to be achieved only at the highest levels of adjudication. There exists a clear argument that employees salary should not form a part of the value for such cross charges on which GST is paid, given that supply of services by an employees to an employer are not treated as a supply under the GST laws. Further, it can be argued that an employee is engaged for the entire organisation, irrespective of the location where he is situated.

## Charges inextricably linked to construction taxable as bundled-service

The Applicant, *Puranik Builders Limited*[22], is engaged in the business of construction and sale of residential apartments, wherein the applicant discharged GST on residential apartments sold prior to receipt of the occupancy certificate. The business was carried out under an 'agreement for sale' entered between the applicant and the customers, which upon completion of construction is supplemented by a sale deed. As per the agreement for sale, in addition to providing construction services, the applicant was required to provide certain other services ("Other Services"). These Other Services were separately identified and paid for under the agreement. The applicant contended that construction services and Other Services were supplied in conjunction with each other, naturally bundled, and supplied in the ordinary course of business, and hence, should be treated as a 'composite supply', of which 'construction services' was a 'principal supply'. Therefore, all the services should be subject to concessional rate of GST at 12% at abated value.

The AAR, however, rejected the applicant's contention and held that Other Services were independent supplies and would be taxed separately at 18% at full value of supply. Being aggrieved, the applicant challenged the ruling of the AAR.

The AAAR observed that out of all the Other Services, services such as water supply connection charges, electric meter installation services, legal charges, infrastructure charges, etc. were inextricably linked to residential apartments. Without these aspects, the property may not be used. Whereas services such as club house maintenance, advance maintenance, share money application, share of municipal taxes after occupancy, and the like were not inextricably linked to the construction services and were independent. It was further observed that:

1. Other Services may or may not be advertised as a single package before the customer. Consideration towards Other Services was indicated and received separately, i.e., the customer was not paying a single price for all the services;

2. The test that different elements were integral to one overall supply, even if one or more is removed, the nature of supply would be affected, was not satisfied in the present case;

3. Certain clauses in agreement for sale regarding Other Services (i.e., open spaces, common areas, road, club house, etc., would remain the property of the promoter) indicated that the property in such Other Services were not fully transferred to the customers.

In view of the above, it was held that Other Services which have an inextricable link to the construction services, the same would be treated as part of 'composite supply', of which construction services would be treated as 'principal supply' and hence, taxable at concessional rate of 12% (at the abated value). However, Other Services which do not have inextricable link with the construction services would be treated as independent supplies, subject to GST at the rate of 18% (eighteen percent).

[22] TS-116-AAAR(MAH)-2023-GST

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## Court Updates – Important issues pending before Supreme Court and various High Courts

### Myrayash Hotels Pvt. Ltd vs. Union of India[23]

In the matter of constitutional validity of GST on lease payments, the Supreme Court has clarified that there is no stay against the recovery, and it will be open for the Revenue to recover the tax in accordance with law and merits of the case. Further, the Supreme Court has directed that the matter be heard with the Civil Appeal in case of UTV News Ltd. dealing with the legislative competence to levy service tax under section 65(105)(zzzz) of the erstwhile Service Tax Law on renting of immovable property.

# Notifications and Circulars

## CBIC implements e-invoicing for taxpayers having aggregate turnover exceeding INR 5,00,00,000 (Indian Rupees five crore)

### Notification No. 10/2023 – Central Tax dated May 10, 2023

CBIC has issued a notification for revising the limit of aggregate turnover to issue e-invoice(s). As per the notification, with effect from August 1, 2023, e-invoicing is mandatory for every taxpayer with annual aggregate turnover exceeding INR 5,00,00,000 (Indian Rupees five crore) in any financial year.

## Tax Practice

JSA offers a broad range of tax services, both direct and indirect, in which it combines insight and innovation with industry knowledge to help businesses remain compliant as well as competitive. The Tax practice offers the entire range of services to multinationals, domestic corporations, and individuals in designing, implementing and defending their overall tax strategy. Indirect Tax services include services such as (a) advisory services under the Goods and Services Tax laws and other indirect taxes laws (VAT/ CST/ Excise duty etc.), and includes review of the business model and supply chain, providing tax implications on various transactions, determination of tax benefits/exemptions, analysis of applicability of schemes under the Foreign Trade Policy (b) transaction support such as tax diligence (c) assistance in tax proceedings and investigations and (d) litigation and representation support before the concerned authorities, the Appellate Tribunals, various High Courts and Supreme Court of India. The team has the experience in handling multitude of assignments in the manufacturing, pharma, FMCG, e-commerce, banking, construction & engineering, and various other sectors and have dealt with issues pertaining to valuation, GST implementation, technology, processes and related functions, litigation, GST, DRI investigations etc. for large corporates. Direct Tax services include (a) structuring of foreign investment in India, grant of stock options to employees, structuring of domestic and cross-border transactions, advising on off-shore structures for India focused funds and advise on contentious tax issues under domestic tax laws such as succession planning for individuals and family settlements, (b) review of transfer pricing issues in intra-group services and various agreements, risk assessment and mitigation of exposure in existing structures and compliances and review of Advance Pricing Agreements and (c) litigation and representation support before the concerned authorities and before the Income Tax Appellate Tribunal, various High Courts and Supreme Court of India.

[23] Special Leave to Appeal No. 6080/ 2022 – Supreme Court

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17 Practices and
24 Ranked Lawyers

16 Practices and
11 Ranked Lawyers

7 Practices and
2 Ranked Lawyers

11 Practices and
39 Ranked Partners
**IFLR1000 APAC Rankings 2022**

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Banking & Finance Team of the Year

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Fintech Team of the Year

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Restructuring & Insolvency Team of the Year

Among Top 7 Best Overall Law Firms in India and
9 Ranked Practices

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11 winning Deals in
IBLJ Deals of the Year

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10 A List Lawyers in
IBLJ Top 100 Lawyer List

Banking & Financial Services Law Firm of the Year 2022

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Dispute Resolution Law Firm of the Year 2022

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Equity Market Deal of the Year (Premium) 2022

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**The Vahura Best Law Firms to Work Report, 2022**

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Top 10 Best Law Firms for Women in 2022

For more details, please contact km@jsalaw.com



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