



Indirect Tax Weekly Updates

November 2022

Volume – IV



Executive summary

Judgments

- GST authorities lack jurisdiction to examine the correctness of transitional credit
- Exemption provided to the outward supplies does not have a bearing on RCM liability
- AAAR cannot pass a ruling when no ruling on the aspect of taxability has been passed by the AAR

Notifications, Circulars and Releases

- Inclusion of GSTN as a Financial Information Provider under Account Aggregator Framework
- GST Department will not appeal the Supreme Court's decision in M/s Mohit Minerals
- Certain FTA exemptions extended on Flat Panel, Display Modules without drivers or Control Circuit for cellular mobile phones

News Highlights

- A recent tweet by the GST council stated that the 48th Meeting of the GST council will be held on 17 December 2022 via video Conference.
- India-Australia free trade agreement to come into force from 29 December 2022

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Key Judgements

GST authorities lack jurisdiction to examine the correctness of transitional credit

Statute: GST

Usha Martin Ltd vs. Additional Commissioner & Ors

Forum : Jharkhand High Court

2022 (11) TMI 1266

- In terms of Section 140 of the CGST Act, 2017, read with Rule 117 of the CGST Rule, 2017, the petitioner filed TRAN-1 to carry forward the amount of CENVAT Credit.
- Order-In-Original issued by the respondent for disallowing the CENVAT Credit carried forward by the petitioner under TRAN-1, alleging that the said credit was in contravention of the Central Excise Act, 1944 and Finance Act, 1994 read with CENVAT Credit Rules, 2004.
- Writ Petition filed questioning the jurisdiction of the GST Authorities to examine the correctness of the CENVAT credit.
- The High Court held that initiation of proceedings by the respondent under section 73(1) of the CGST Act, 2017, for alleged infringement of the Central Excise Act, 1944 and Finance Act, 1994, read with CENVAT Credit Rules, 2004, against the petitioner by filing TRAN-1 for the transition of CENVAT Credit as being inadmissible under the existing law was beyond his jurisdiction.

Comments

- This decision is a welcome decision by the Jharkhand High Court and can be quoted where the department has challenged transitional credit by invoking the provision of CGST Law.
- Also, it is to be noted that High Court gave liberty to Revenue to initiate proceedings under the provisions of the existing law against the petitioner.

Exemption provided to the outward supplies does not have a bearing on RCM liability

Statute: GST

Innovative Nutrichem Pvt. Ltd.

Forum : Karnataka AAR

2022-TIOL-130-AAR-GST

- Applicant is registered under GST and is in the business of manufacture and supply of animal feeds, which are exempted goods under GST, for which they utilize the GTA / Security Services covered under Reverse Charge Mechanism (RCM).
- Applicant seeks to know whether they are liable to pay GST under RCM for the services procured from the respective service providers being the manufacturer and supplier of exempted goods falling under HSN 2309 9020.
- AAR mentioned that GST is levied on the supply of service, and liability is fastened independently for each of the supplies. Levy of tax or otherwise on a particular supply does not have a bearing on the taxability of other supplies received or provided by a taxpayer. Thus, the exemption provided to the outward supplies of the applicant does not have a bearing on the GST liabilities under RCM basis on the supplies received by the applicant.
- It is held that the applicant is liable to pay GST under RCM, for the services notified and covered under RCM despite being a manufacturer and supplier of exempted goods falling under HSN 2309 9020.

AAAR cannot pass a ruling when no ruling on the aspect of taxability has been passed by the AAR

Statute: GST

Myntra Design Pvt Ltd

Forum : Karnataka AAAR

KAR/AAAR/06/2022

- Appeal filed by the appellant against the decision of AAR for not deciding on the issue of taxability on the ground that the place of supply needs to be determined, which does not fall under the scope of permissible issues to be determined by the Authority in terms of Section 97(2)
- It was submitted that, even though the issue relating to the determination of place of supply is not expressly enumerated in any of the clauses as per clauses (a) to (g) of Section 97(2) of the CGST Act, the issue relating to the determination of place of supply, would come within the ambit of the larger issue of 'determination of liability to pay tax on any goods or services or both' as envisaged in clause (e) of Section 97(2) of the CGST Act.
- Karnataka AAAR is of the opinion that the lower Authority was incorrect in not passing a ruling on the question of taxability of the transaction of selling advertising space on its web portal to a foreign entity and accordingly remanded the matter to AAR for fresh consideration.
- However, the Karnataka AAAR disagreed with another contention of the appellant that it can give an original ruling when the AAR has refused to answer a particular question. In the instant case, there is no ruling pronounced by the lower Authority on the question of taxability. In the absence of a ruling, there is nothing for this Authority to confirm or modify. Accordingly, AAAR remanded to matter to AAR for fresh consideration

Comments

- It is further affirmed that AAR has jurisdiction to pass a ruling for the determination of place of supply if such determination is linked with the determination of liability to pay tax. Additionally, in the absence of the ruling from AAR, an appealing ruling can't be passed by AAAR.

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**Important
Notifications,
Circulars &
Releases**

GST

Inclusion of GSTN as a Financial Information Provider under Account Aggregator Framework¹

- Intending to facilitate cash flow-based lending to MSMEs, the Reserve Bank of India ("RBI") has issued a notification regarding the inclusion of Goods and Services Tax Network ('GSTN') as a Financial Information Provider ('FIP') under the Account Aggregator ('AA') framework.
- Department of Revenue shall be the regulator of GSTN for this specific purpose, and Goods and Services Tax (GST) Returns, viz. Form GSTR-1 and Form GSTR-3B, shall be the Financial Information

GST Department will not appeal the Supreme Court's decision in M/s Mohit Minerals²

- The CBIC Legal Cell *vide* letter informed that the Board has decided that the GST department will not challenge the Supreme Court decision in Mohit Minerals, in which the Apex Court quashed the imposition of IGST on ocean freight.

¹ *vide* Notification No. RBI/2022-23/140 dated 23 November 2022

² *vide* F.No. 275/11/2022-CX.8A dated 04 November 2022

Certain FTA Exemptions extended on Flat Panel, Display Modules without drivers or Control Circuit for cellular mobile phones³

- Government has issued a notification to exempt the import of Flat Panel, Display Modules without drivers or Control Circuit for cellular mobile phones classifiable under HSN 85241100 or 85241200 or 85241900 when imported from Singapore, Korea, Philippines, Malaysia and Japan, under certain Free Trade Agreements (FTA's)

³ vide Notification No. 61/2022-Customs dated 25 November 2022

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News Highlights

News Highlights

- A recent tweet by the GST council stated that the 48th Meeting of the GST council will be held on 17 December 2022 via video Conference¹
- India-Australia free trade agreement to come into force from 29 December 2022²



¹ Tweet by official handle of GST Council – 25 November 2022

² India-Australia free trade agreement to come into force from Dec 29 – Business Standard – November 2022

KPMG in India addresses:

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate Road,
Prahlaad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road,
Bengaluru – 560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

2nd Floor, Block T2 (B Wing),
Lodha Excellus, Apollo Mills Compound, N M Joshi
Marg, Mahalaxmi, Mumbai- 400011
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000



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KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000.

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