

TAX FLASH NEWS

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Allocation of salary cost to Branch Offices liable to GST – Maharashtra AAAR

Maharashtra Appellate Authority for Advance Ruling (AAAR)¹ has ruled that availment of common input services by Head Office from third party suppliers and further allocation to units registered as distinct persons will qualify as supply. The cost of the said common input services availed on behalf of Branch Offices/Units and allocated to such Branch Offices/Units by the Head Office will not attract GST as the said costs have been incurred by the Head Office in the capacity of a pure agent. Head Office will not be entitled to avail and utilize the credit of tax paid on common input services received by it on behalf of Branch Offices/Units. Allocation of cost of employees' salary to Branch Offices would attract GST.

On question of Input Service Distributor (ISD) registration, AAAR has held that 'Appellant' is bound to take the ISD registration as mandated by section 24(viii) of the CGST Act, 2017 and comply with all the provisions made in this regard, if it intends to distribute the credit of tax paid on the common input services received by it on behalf of the Branch Offices/Units to the Branch Offices/Units.

Facts of the case

- 'Appellant' is engaged in the manufacture and sale of a variety of diesel engines, parts thereof and related services thereof.
- It has units located at various states of India. It, being a Head Office, procures certain common input services. Cost is incurred and booked by Head Office for such common input services which is further allocated and recovered proportionately from each of the recipient units to determine office/plant-wise profitability.

- Based on these facts, it sought an advance ruling on various questions involving transactions with Branch Offices/Units. Maharashtra Authority for Advance Ruling (AAR) held the following:
 - Availment of input tax credit on common input supplies on behalf of other unit/units registered as distinct person qualifies as supply and attracts GST;
 - Assessable value shall be arrived in terms of Rule 30 of the CGST Rules, 2017 (i.e. 110% of the cost of provision of such services);
 - 'Applicant-Appellant' is required to obtain registration as ISD.
- Aggrieved by the ruling, 'Appellant' filed the appeal.

Appellant's contentions

Contentions of the 'Appellant' before the AAAR are as follows:

- a) Registration as ISD for distribution of ITC on common input supplies**
Facility of registering as an ISD is an option provided by the statute and there is no compulsion for a taxable person to register itself as an ISD.
- b) Assessable Value**
Value of supply made between distinct person is required to be assessed in view of Rule 28 of the CGST Rules. Second proviso appended to this rule provides a deeming fiction for acceptance of invoice value as an open market value.

¹ Cummins India Limited [2022-VIL-03-AAAR]

Accordingly, any nominal value assigned to supply of facilitation should be deemed to be accepted as open market value and payment of GST thereon would be treated as sufficient compliance with the obligation to discharge GST liability.

c) Allocation and recovery of the salary of the employees of the Head Office from the Branch Office/Units

Functions performed by the employee from one distinct unit for another distinct unit continue to be covered by the employer – employee relationship which is explicitly excluded from the levy of GST vide paragraph 1 of Schedule - III to the CGST Act.

AAAR's order

Maharashtra Appellate Authority for Advance Ruling (AAAR) dismissed the appeal filed by the 'Appellant' and held the following:

a) Availment of common input supplies and further allocation

- Activities of providing facilitation services by Head Office to Branch Offices/Units by way of availment of the common input services on behalf of its Branch Offices/Units would be supply in terms of section 7(1)(a) of the CGST Act, 2017.
- The cost of the common input services availed on behalf of Branch Offices/Units and allocated to such Branch Offices/Units by the Head Office will not attract GST as the said costs have been incurred by the Head Office in the capacity of a pure agent of the Branch Offices/Units.

b) Assessable Value

Assessable value of the services provided by the Head Office to the Branch Offices/Units can be determined as per the second proviso to clause (c) of Rule 28 of the CGST Rules, 2017, which provides that value of the tax invoice will be deemed as the open market value of the services.

c) Registration as ISD for distribution of ITC on common input supplies

'Appellant' is bound to take ISD registration since it, being a Head Office is not entitled to avail and utilize the credit of tax paid to the third-party service vendors for the common input services received by it on behalf of the Branch Offices/Units.

d) Allocation and recovery of the salary of the employees of the Head Office from the Branch Office/Units

Allocation of the cost of the employees' salary by the Head Office to the Branch Offices will be subject to GST as the impugned transaction of facilitation services are not affected between the employees and the employer but between the Head Office and Branch Offices/Units, which are distinct units in terms of section 25(4) of the CGST Act, 2017.

Our comments

The advance ruling pronounced by the Authority or the Appellate Authority shall be binding only on the 'Applicant'. However, this ruling can have huge implication on the industry if Department starts implementing the principle laid down under this ruling. In past, Karnataka AAAR in the case of Columbia Asia Hospitals Pvt Ltd² has dealt on similar matter which is pending before the Court. To address this obfuscation, circular by the Government could bring a great relief to the industry.



² 2018-VIL-30-AAAR

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