



## Dhruva Alert for ADVANCED RULINGS - GST

Sr No	Applicant	State	Issue for consideration	Final Order	Dhruva Comments / Observations
1	Akansha Hair & Skin Care Herbal Unit Pvt Ltd (9 <sup>th</sup> April 2018)	West Bengal	Classification of skin care products (whether such products would be 'medicaments'?)	The AAR concludes that the tests to be applied for determining whether the goods which fall broadly within the description of skin care preparations are to be classified as medicaments is the 'common parlance test' and the intention of the customer purchasing such product. If the potential of a product as a medicament to cure any skin ailments is not clear or is not established, it cannot be placed under Chapter 30 as a Medicament.	These observations, although only on skin care products, may be applicable to various food supplements that claim to have medicinal benefits but are not commonly referred to or perceived as medicines.
2	SIKA India Pvt Ltd (9 <sup>th</sup> April 2018)	West Bengal	Classification of SIKA Block Joining Mortar – whether under CTH 3214 or 3824 (ready to use grey cement	According to the Explanatory Notes to the Customs Tariff Act, heading 3214 includes preparations that are usually put up in a more or less pasty form and in general which harden after	



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			based water resistant mortar for fixing AAC blocks, fly ash bricks etc)?	application. Some of them are solid or in powdered form made pasty at the time of use by heating or by addition of a liquid like water. They are usually applied with a caulking gun, a spatula, a trowel or similar tools, therefore, the product is classified under CTH 3214. CTH 3824 is a residuary entry and would not be applicable where there is a specific category for the specified products.	
3	Caltech Polymers Pvt Ltd (26 <sup>th</sup> March 2018)	Kerala	Whether recovery of food expenses from employees for the canteen services provided by applicant comes under the definition of outward supply under the GST Act?	<ol style="list-style-type: none"><li>1. Supply of canteen facility is supplementary to the business activity;</li><li>2. Even in the absence of a profit, there is a 'supply' of services (as under Clause 6 Schedule II);</li><li>3. There is a flow of consideration from the employee to the employer; and</li><li>4. Therefore, GST is leviable on such supply</li></ol>	The term "supply" defined under GST is very wide to include all kinds of transactions. Furthermore, the exemption / exclusion in law is only for services provided by the employee to the employer and any benefits / facilities that flow to the employee in pursuance to the employment contract / policy. Where one fails to prove the above any recoveries made by the employer from the employee would typically attract GST. This was an accepted position under the erstwhile VAT law. The order has not discussed the clarification released by CBEC on the perquisites through the Press Release dated 10.07.2017 whereby supply by the employer to



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					the employee within the employment contract will not be subjected to GST; however, the applicability of GST for such recoveries and facilities from the employer to the employee would need to be analysed on a case to case basis after considering the arrangement between the employer, employee and third-party vendors (if any). Another important aspect is the valuation of the supply, as employer and employees have been recognized as 'related persons' under the CGST Act.
4	Sri. N.C. Varghese (26 <sup>th</sup> March 2018)	Kerala	Whether GST is leviable on standing rubber trees which are agreed to be severed before supply?	In this case, it was held that under the contract of supply, growing crops i.e. rubber trees were agreed to be severed before supply and hence, such trees / logs would be covered under the definition of 'goods' and would be treated as 'wood in rough form'. These goods accordingly, would not be entitled to the exemption.	
5	M/s Synthite Industries Ltd., Ernakulam (26 <sup>th</sup> March 2018)		Whether IGST is applicable on the transaction where the goods being bought and sold never come to India (i.e. are directly shipped from a foreign country	Placing reliance on Circular No. 33/2017-Customs dated 01.08.2017 issued by CBIC, it was observed that since IGST was levied on High Seas Sale only at the time of importation, the same position should be applicable mutatis mutandis to out and out sales and accordingly,	Currently, there is no clarity on the levy of GST on supply of goods that do not physically enter the territory of India. Section 7(5)(a) of the Integrated Goods and Services Tax Act, 2017 ("IGST Act"), indicates a specific intent of the law to levy IGST on supply of



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			to another foreign country)?	since there was no import in the present case, there could be no levy of IGST.	<p>goods where supplier is located in India and the place of supply is outside India. However, considering that the scope of GST law extends to the whole of India, but not outside India, arguably, supply of goods out and out of India should not be taxable under GST.</p> <p>Additionally, it may have to be evaluated whether such a supply would entail reversal of ITC since it is characterised as a non-taxable supply, it would then be covered under the definition of 'exempt supply' under Section 2(47) of the CGST Act.</p>
6	Joint Plant Committee (21 <sup>st</sup> March 2018)	West Bengal	Whether the NGO which makes only an exempt supply and receives only exempt interest income is liable to be registered?	On a combined reading of Section 23 and 24 of the CGST Act, it is seen that a person making solely exempt supplies need not be registered but a person who has to discharge tax under reverse charge is required to be registered. Therefore, the NGO is not required to be registered unless they are otherwise required to discharge GST under reverse charge.	
7	Global Reach Education Services Pvt Ltd	West Bengal	Whether promoting the courses of foreign universities among	On a detailed analysis of the agreement between the Applicant and the foreign university, it was found that if promotion of university courses were the principal	What qualifies as an intermediary and whether a party operates in the capacity of a principal or an agent / facilitator has been a subject of litigation since



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	(21 <sup>st</sup> March 2018)		prospective students would be considered an export of service or would it be considered an intermediary service?	supply, the applicant should have been remunerated for its promotional activity no matter whether it facilitates recruitment or not. If the Applicant receives 'commission' based on recruitment / enrolment through it the principal supply is clearly facilitating the foreign university in recruitment/enrolment with promotional services ancillary to the principal supply. Therefore, being an intermediary service provider, the place of supply would be determined in accordance with Section 13(8) of the IGST Act, and not Section 13(2) of the IGST Act and therefore the provision of service would not qualify as an export of service.	<p>the introduction of the negative list. Not all commercial agents would automatically fit into a mould of an intermediary and what needs to be analysed is whether the services provided are merely arranging or facilitating, or whether it entails undertaking activities which constitute the rendition of the services on his own account. In the present case although the agreement clearly indicated that there was no principal agent relationship between the parties, the terms of the contract implied that the Applicant was a representative of the Universities, in India. Furthermore, the AAR concluded that the main services are that of recruitment and not that of promotion by relying on the mode of computation of consideration.</p> <p>The cardinal rule of interpretation of a contract is to ascertain and give effect to the expressed intention of the parties to the contract. Contradictions in the contract can clearly completely overturn / nullify the intended effect and thus, care is required at the</p>



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					time of drafting and capturing the true nature of supply intended to be undertaken by the service provider.
8	Switching Avo Electro Power Ltd (21 <sup>st</sup> March 2018)	West Bengal	Whether supply of UPS along with batteries and servo stabilizers may be considered a composite supply?	<p>When the UPS is supplied with a built-in battery so that the supply of the battery is inseparable from the principal supply, then the same would be considered a composite supply.</p> <p>Otherwise, since both the UPS and the batteries can be sold and used separately and have separate commercial values then they should be taxed under their respective tariff heads.</p> <p>Goods would be considered a part of a composite supply where there is an indivisible contract.</p> <p>If the UPS and battery are supplied separately but for a single consideration, the same would constitute a mixed supply.</p>	<p>The ruling indicates that the nature of supply (whether composite or mixed or separate supplies) would be based on the divisibility of the contract and the same would have to be evaluated on a case-to-case basis.</p> <p>Though the ruling acknowledges that the UPS cannot operate without the battery, but as they can be sold as two independent items in the retail market, the supply of the said items together [where the battery is not built-in into the UPS] would be considered as a supply of separate goods with a single price and hence a mixed supply. But where the battery is built-in the supply will actually be a composite supply.</p> <p>The divisibility of the contract is required to be determined in terms of what is being requisitioned by the customer from the supplier, and condition of the goods should only have a persuasive value for determining the nature of supply. Also, divisibility of contract is too open a</p>



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					criteria to determine the taxability and nature of supply and could lead to increased litigation on the issue.



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