Dimensions – 37th Edition

Rulings under GST era:

1. Hical Technologies Private Limited - Karnataka[1]	
Issue for Consideration	Whether the value of free-of-cost (FOC) goods supplied by the principal in a contract for assembly, integration and testing of wind power converters is included in the value of supply by the job worker/service provider for the purpose of GST?
Discussion & Ruling	**Discussion:** • The Applicant is engaged in the supply of goods and services and is basically a job worker. The Applicant is proposing to undertake a job work for M/s Woodward India Private Limited (WIPL) involving the assembly, integration and testing of converters. • WIPL would import critical components from its overseas entity upon payment of applicable customs duties. These components would be supplied to the Applicant on a FOC basis for undertaking the job work activity under the cover of a job work challan. • The Applicant would procure the remaining non-critical components from its own supply to complete the job work process and the Applicant would be eligible for job charges which are comprised of labour cost for undertaking the job work process and the cost of ancillary components added by the Applicant. • The Applicant stated that work done by the Applicant amounts to job work**,** and the value of FOC goods which are owned and supplied by WIPL should not be added to the value of supply by the Applicant for the following reasons: - The Applicant is not liable to procure critical components and the responsibility to make available such critical components to the Applicant belongs to WIPL.

[1] Ruling no. KAR ADRG 25/2019 dated September 12, 2019

	Moreover, these critical components shall always remain the property of WIPL during the execution of work. - WIPL supplies goods to the Applicant not at the desire of the Applicant, nor as a consideration for supply. WIPL supplies the goods to enable the Applicant to complete the job work process. If WIPL does not provide the goods, the Applicant will not be able to perform the job work activity. Accordingly, WIPL is not supplying FOC goods to the Applicant as a consideration for the job work process. - The Applicant and WIPL are non-related parties. - Reference to the draft Model GST law released in June 2016 was also made, wherein there was a specific provision to include the value of FOC supplies made by the recipient to the supplier whether directly or indirectly. However, in the Final GST Act, the above provision was amended. Accordingly, the intention of the Government was to bring only those FOC supplies within the ambit of valuation, which are the responsibility of the supplier but incurred by the recipient. - Reliance was also placed upon the larger bench decision of the Tribunal in the case of *Bhayana Builders Ltd.* v. *CST* [2013 (32) STR 49], which upholds the matter of non-inclusion of FOC supplies in the value of works contracts for payment of service tax. • The Authority observed the following: - As per Section 2(68) of the CGST Act: 'job work' means any treatment or process undertaken by a person on goods belonging to another registered person, and the expression 'job worker' shall be construed accordingly. - In this instance, the Applicant is not doing anything on the critical components supplied by WIPL. In fact, these critical parts are merely used as a part in the manufacturing of the final product. - The activity done by the Applicant is of a composite supply of goods and services with the manufacturing services of assembling, integrating and testing of final products being the principal supply. **Ruling:** The nature of the supply provided by the Applicant is one composite supply consisting of two supplies - one relating to manufacturing services on the physical inputs (goods) owned by others and the other relating to supply of non-critical components, with the former being the principal supply. Furthermore, the value of the goods provided by WIPL would not form part of the value of the supply and must be excluded while valuing the supply.
Dhruva comments / observations	• The Authority has given a narrow meaning to the definition of 'job work' by concluding that something has to be done to the critical components for the activity to constitute 'job work'. The term 'process' is of a wider amplitude and should take within its fold an activity involving assembly and integration. • It is also interesting to note that while the question asked for determination was whether the value of free of cost supplies by the principal is included in the value of supply by

	the job worker, it appears that some of the questions framed and determined were significantly different. There was no issue or contention raised as to whether the activity per se is job work or not and therefore, no arguments were placed on this aspect by the applicant.

2. Volvo-Eicher Commercial Vehicles Limited - Karnataka[2]	
Issue for Consideration	Whether activity of providing warranty services and replacing defective parts for customer in India on behalf of Volvo Sweden amounts to supply of services (to Volvo Sweden) under the GST law and consequently qualifies as export of service?
Discussion & Ruling	**Discussion:** • The Applicant is engaged in the business of selling of Volvo branded trucks and thereafter providing after sales support services including warranty services in respect of products sold in India • The cost of servicing the warranty claims along with replacement of goods (if any) are reimbursed by Volvo Sweden in the form of issuance of a 'Warranty Credit Note Acceptance'' • The Applicant has approached the Authority and contended that the supply of parts for repair and replacement under warranty claims along with services of fitting out of defective parts, is composite supply, where supply of services being the principal supply on the basis of the following grounds: - As per section 7 of the CGST Act, the transaction between the applicant and Volvo Sweden is supply of goods and services for a consideration received from Volvo Sweden; - As per section 2(30) of the CGST Act, the transaction is primarily supply of services and in certain cases the applicant provides replacement of defective parts in the course of honouring the warranty claim. Hence, replacement of defective parts being ancillary to the principal supply of service; - The transaction is providing warranty services to recipient (Volvo Sweden) located outside India. Though the goods are required to be made physically available for providing services, as the goods are made available by the Customers in India and not the recipient of service i.e. Volvo Sweden, the place of supply of services would not fall in the ambit of section 13(3)(a) of the IGST Act; - Accordingly, in the absence of specific provision for determination of place of supply of service, reliance shall be placed on the default provision for determination of place of supply of service i.e. the location of service recipient; - Further, the applicant has fulfilled all the conditions set out in section 2(6) of the CGST Act. Thus, the transaction of supply of warranty services along with replacement of defective parts (whenever required) shall qualify as export of service

[2] Ruling no. KAR-ADRG 32/2019 dated September 12, 2019

	Ruling: The Authority disagreed with the contentions of the Applicant and held that the services are provided to customers located in India, where the consideration is paid by Volvo Sweden. The transaction is not an export of services and consequently will not be treated as 'Zero-rated supply' under the IGST Act.
Dhruva Comments / Observation	• The Authority has given a finding that there is supply of parts and services to the customer for consideration and the same amounts to a supply transaction, with the applicant being the supplier and the customer being the recipient of services, but the amount collectable from the customer is being paid by Volvo Sweden. • The Authority has completely ignored the aspect of privity of contract i.e. the contractual obligation to provide services and to receive services is between Volvo Sweden and Volvo-Eicher Commercial Vehicles Limited (Volvo Eicher) and not between Volvo Eicher and the customer. It seems that the definition of 'recipient' has neither been argued nor considered, which *inter alia* is defined to mean *'where a consideration is payable for the supply of goods or services or both,* ***the person who is liable to pay that consideration****'.* In the current facts, it is Volvo Sweden who is liable to pay consideration to Volvo Eicher. In addition, no amount is collectable from the customer of warranty services. The applicant's contention that provisions of section 13(3)(a) of the IGST Act are not applicable for the reason that goods are made available by the customers in India (and not by recipient of service i.e. Volvo Sweden) has not been dealt with by the Authority. If the legal position that the 'recipient' is Volvo Sweden is accepted, then clearly, the recipient is not making available any goods to the customer to provide the service and hence, section 13(3)(a) would not apply.

3. M/s Shri Keshav Cement and Infra Limited - Karnataka[3]	
Issues for Consideration	• Whether ITC is eligible in respect of 'inputs/ capital goods or input services' used in setting up of solar power plant? • Can ITC be availed for items used in respect of electricity generated from captive power plant located at distinct location? • Whether the Company is required to reverse the ITC in respect of electricity generated, banked and subsequently consumed by the distribution licensee?
Discussion & Ruling	**Discussion:** • The Applicant is engaged in the manufacture of cement. The applicant has installed a solar power plant for generation of electricity to be used for captive consumption. The location of power plant is included as place of business in the GST registration • Various inputs, capital goods and services are procured for erection and commissioning of the solar power plant. Further, inputs, capital goods and services are also used in generation of electricity.

[3] Ruling no. KAR-ADRG 26/2019 dated September 12, 2019

- Electricity generated is statutorily required to be transmitted to its plants only through licensed State transmission Companies which operate the electricity grid
- In case of surplus transmission or short withdrawal of electricity, the applicant is allowed to bank the electricity energy with the distribution licensee. The surplus electricity energy is allowed to be banked for a period of 6 months after which it would be deemed to be utilized by the distribution licensee as per the general tariff applicable
- The Applicant contended that:
  - The Applicant has satisfied the primary conditions of availing ITC as provided in section 16 of the CGST Act. Further, the solar power plant would qualify as plant and machinery in terms of section 17 of the CGST Act, hence, ITC in respect of inputs, capital goods and services used for erection, commissioning and installation of power plant shall be eligible ITC;
  - Electricity generated at the solar power plant is used in manufacture of cement hence, the criteria of being used in business is fulfilled and hence the applicant is eligible for ITC in respect of all the inputs, capital goods and input services;
  - Further, though supply of electricity is exempt supply in terms of Notification no. 2/2017 Central tax (Rate), there is no requirement of reversal of ITC, as the electricity generated is used captively for manufacture and supply of taxable goods;
  - With respect to excess electricity banked beyond six months and used by the distribution licensee, such transfer of electricity being an act of Statue, cannot be termed as exempt supply. Accordingly, there is no requirement for reversal of ITC.

Ruling:

- The definition of inputs under section 2(59) of the CGST Act does not cover capital goods. Further, from the list of goods submitted by the applicant, it cannot be inferred as to where the capitalization is done, and no separate order can be made in respect of each and every item separately. Hence applicant is entitled to ITC in respect of goods other than capital goods.
- Only those apparatus, equipment, and machinery which are fixed to earth by foundation or structural support are entitled to qualify as plant and machinery. The goods answering to this definition alone shall qualify as 'plant and machinery'. Other goods failing to be treated as plant and machinery shall be subject to provisions of section 17(5)(c) of CGST Act, and ITC shall not be available.
- Generation of electricity is an intermediate process in the manufacture of cement and shall not form a separate supply. The applicant shall be entitled to claim ITC in respect of inputs required for generation of electricity, to an extent such electricity is captively consumed for manufacture of taxable goods.
- The electricity is transferred to the distribution licensee and a price is paid to the applicant. Moreover, the agreement does not mandate generation of excess electricity and transfer thereof to the distribution licensee, as a condition for issue of license to

	setup the solar power plant. Hence, transfer of surplus electricity shall be treated as supply under GST. • Supply of electricity being exempt, the applicant would be required to reverse the ITC in the prescribed manner.
Dhruva Comments / Observations	• The eligibility to claim ITC in respect of plant and machinery has been dealt in various AARs and the position is litigious. • The term 'Capital goods' under the erstwhile CENVAT Credit Rules, 2004 was defined to include '*goods which are used outside the factory of the manufacturer of the Final products for generation of electricity* or for pumping of water *for captive use within the factory'*. While there is no specific provision under the GST regime on this aspect, however, the concept of 'used in a factory' also does not remain relevant. Also, there is only a specific restriction qua credit on pipelines laid outside the factory premises under Explanation to section 17. It will have to be seen as to how the judicial precedents on eligibility of credit for generation of electricity (which is captively used for manufacturing taxable goods) is dealt with by the GST Authorities in absence of any specific provisions. It may be noted that there are multiple judicial precedents under the erstwhile regime which have allowed such credits.

4. McAfee Software (India) Pvt. Ltd. - Bangalore[4]	
Issue for Consideration	Would marketing service qualify as 'Intermediary services'?
Discussion & Ruling	**Discussion:** • The Applicant is engaged in the sale of software security products and services. The Applicant entered into a marketing services agreement with the parent company outside India to provide marketing support services to support and facilitate selling, marketing and distribution of products by the parent company and its affiliates. The scope of the agreement would cover market research and forecasts, collection of data of target market, identification of potential clients and business opportunities. Further, the Applicant would be the point of contact for the customers in India and the overseas parent company and facilitate communication between the existing and / or prospective customers. • The Applicant would maintain inventory of the parent company and demonstrate the products to the potential clients in India. Further, the Applicant would provide other ancillary services to the parent company on request. However, the Applicant shall have no power or authority to conclude or accept any contracts on behalf of the parent company. • The Applicant would be paid consideration on a cost-plus basis for these services.

[4] Ruling no. KAR ADRG 56/2019 dated September 19, 2019

	• The Authority observed that any person who arranges or facilitates the supply of goods or services or both or securities between two or more persons would be covered under the definition of 'Intermediary' as provided under section 2(13) of the IGST Act. • The exception clause prescribed under the definition excludes a person who supplies ***such*** goods or services or both or securities on his own account. *'Such'* supply would relate to the supply of such goods or services facilitated by the Applicant and not the services provided by him. • In the given case, the Applicant is not supplying the goods or services on his own account. The ultimate supply of goods or services is made by the parent directly and hence, the Applicant would not fall within the scope of exception clause. • The definition of intermediary does not provide any condition regarding payment of consideration as percentage of turnover or in any other prescribed manner. A person who facilitates supply of goods or services or both or securities between two or more persons shall qualify as an 'Intermediary' irrespective of manner of computation of the consideration or manner of payment. **Ruling:** The Authority concluded that the market support services provided by the Applicant to the parent company would qualify as intermediary services. Such services are covered under Service Accounting Code (SAC) 998599 i.e. Other support services not elsewhere covered. The Authority didn't comment on 'Export of service' as it would be dependent on determination of place of supply which is out of scope of the Authority.

5. M/s ANSYS Software Pvt. Ltd - Bangalore[5]	
Issues for Consideration	• Whether the marketing and pre-sales technical services would qualify as 'Intermediary services'? • Whether post sales technical support services would fall under the ambit of 'Intermediary services'?
Discussion & Ruling	**Discussion:** • The Applicant, inter alia, is engaged in the business distribution of off the shelf software in India, the proprietary ownership of which lies with the parent company situated outside India. The Applicant is in the process of entering into two separate agreement with its parent company, first for marketing and pre-sales technical support services and second for post sales technical support service. • Both agreements shall be mutually exclusive. Further, post sales technical services may not necessarily flow as a result of the marketing and the pre-sales technical services. **Marketing and pre-sales technical services:** • The agreement for provisions of marketing and pre-sales technical support services would cover functions of the Applicant regarding understanding the customer's

[5] Ruling no. KAR ADRG 30/2019 dated September 12, 2019

requirements, demonstration of solutions to the potential customers using the software, exploration of new business opportunities, co-ordination between the parent company and customer for signing of software license agreement and collection of the consideration. The order of such software would be directly raised on the parent company.

- The consideration in respect of such marketing and pre-sales support services shall be calculated based on fixed percentage of the sales value.
- The Authority observed that the Applicant is performing all the necessary pre-sale co-ordination work so that the parent company can make the supply of the relevant software. Such performance of services would facilitate supply of goods or services or both by the parent company to the customers. Further, since the Applicant is not making the supply in its own account, the Applicant would be covered under the definition of an 'intermediary'.

Post sales technical support services

- Post sales of the software, the customer in India would be entitled to technical enhancement and customer support services for a specified period. Further, after the completion of the period, the customer may also extend the service for further period. The parent company would provide upgradation services for such software to the customers. However, the parent company would engage the Applicant under the second agreement for providing 24*7 customer support for any technical support in using the software on its behalf. Such support shall be provided by the Applicant through e-mail, telephone or over internet.
- The remuneration for such support services would be calculated as a percentage of sales value or as may be mutually agreed.
- The Authority observed that –
  - The services are provided by the Applicant on behalf of the parent company in respect of which the parent company would be liable to pay consideration to the Applicant. Hence, the parent company would qualify as 'Recipient' of the service as per section 2(105) of the CGST Act.
  - The services would be classified under SAC 998313 i.e. Information Technology consulting and support services.
  - The manner of computing the value of supply is merely method adopted to value the supply and hence, it would not change the nature of services provided.

Ruling:

The marketing and pre-sales services provided by the Applicant shall be qualified as intermediary services, whereas, the post sales services provided by the Applicant would be classified under information technology consulting and support services.

6. M/s Infernia India Pvt. Ltd - Karnataka[6]	
Issues for Consideration	Whether the pre-sales and marketing services would qualify as 'Intermediary services'?
Discussion & Ruling	**Discussion:** • The Applicant is predominantly engaged in software development services. Along with it, the Applicant entered into pre-sale and marketing services agreement with parent company outside India to provide services related to marketing research. The service includes making sales presentation and educating potential customers about the benefit and salient features of the product offered by parent company. The scope of the agreement covered: - assisting parent company through the co-ordination of sales promotion and advertising for its products in India. - conduct market research and - provide informational, educational and service programs in India as may be requested by parent company. • The Applicant stated that they have not entered into negotiation of contractual terms and price with respect to product sold by parent company. The decisions related to pricing with customers were at the sole discretion of the parent company and the Applicant gets compensation irrespective of whether there is sale of products or not. Hence, the services provided by the Applicant are on a principal-to-principal basis and not in the capacity of agent or broker. Accordingly, the services provided does not qualify to be an intermediary. The Applicant also relied on the advance ruling of *GoDaddy India Web Services Pvt. Ltd.* [Ruling no. AAR/ST/08/2016 dated March 04, 2016] and *The Universal Services India Private Limited* [Ruling no. AAR/ST/07/2016 dated March 04, 2016] of Service tax regime. • The Authority emphasised on the definition of intermediary and observed that any person who arranges or facilitates the supply of goods or services or both or securities between two or more persons would be covered under definition of 'Intermediary' as per definition of section 2(13) of the IGST Act. • The authorities admitted that the Applicant did not supply the goods to the customers. However, the Applicant acted as the conduit, the bridge, the go-getter who created visibility for the parent company and thus facilitated or enabled the sale of their goods the customers. The action of the Applicant, therefore, falls in the definition of intermediary. • With regards to applicability of advance ruling of GoDaddy India, the Authority held that the role of GoDaddy India was purely advisory in nature and it was restricted to advising its parent company about the places where advertisements should be placed or located. Also, there was no third person with whom GoDaddy India interacted. In the present

[6] Ruling no. KAR ADRG 31/2019 dated September 12, 2019

	case the Applicant had direct contact with the customers in India forming a triumvirate which is considered to be an essential feature of an Intermediary services. **Ruling:** • The Authority concluded that the pre-sale and market services provided by the Applicant to the parent company would qualify as intermediary services
Dhruva Comments / Observations	• The services would qualify as an 'intermediary service' if they involve 'arranging' or 'facilitating' i.e. if it can be established that the services provided by a service provider aid / facilitate the provision of the main service between two or more persons. However, if it can be established that the services are independent services and there is no nexus / incidental nexus with the main service, the same would not qualify as 'intermediary service'. • Most of the contractual arrangements under consideration have been entered into on a principal to principal basis and entail provision of services by the provider to the recipient. The Authorities have opined that the said arrangements are 'intermediary service' even if there is an indirect/ remote nexus to a third person. There are multiple Advance Rulings that have been issued on the issue, and most are pro-revenue. It is important that a detailed circular is issued as soon as possible to avoid future litigation. • It is also relevant to note that the 139th Report of Parliamentary Standing Committee on Commerce suggested of doing away with the definition of intermediary services and to change the place of supply rule in respect of such intermediary services. It is time the said recommendation is accepted by making the required amendments in the IGST Act.

7. Humble Mobile Solutions Pvt. Ltd. - Karnataka[7]	
Issue for Consideration	Whether the applicant is liable to pay tax for supply of services by another person through the e-commerce platform operated and maintained by the applicant.
Discussion & Ruling	**Discussion:** • The applicant operates an electronic platform called 'DriveU' which enables the customers using such platform to avail services of car drivers. • The platform allows the drivers to list their services which in turn enables the customers to book and avail their services. The drivers who offer their services on the platform are individuals and independent service providers. Further, the terms and conditions hosted on the DriveU website expressly provide that the drivers are independent service providers and are not employees of the applicant. There is privity of contract between the driver and customer and the applicant is not a party to such agreement (i.e. there is no tripartite agreement). • The drivers are charged a service fee by the applicant (plus applicable GST) for using the electronic platform and the applicant duly deposits the GST so collected into the Indian Government Treasury.

[7] Ruling no. KAR ADRG 58/ 2019, dated September 19, 2019

- The customer is provided with 2 payments options:
  - Payment in cash directly to the driver; or
  - Electronic payments.

  Under second option, the customer makes a payment through online payment gateways to the applicant who in turn remits the proceeds to the respective drivers (after deduction of appropriate taxes under the Income-tax Act, 1961).
- In the instant case, the entire gamut can be split as under:
  - Provision of drivers to customers - In such case, the applicant is only acting as a facilitator between the drivers and the customers and there is privity of contract between the driver and the customer.
  - E-commerce services to the drivers - The applicant acts as an e-commerce platform service provider and the driver is the recipient of such service and is liable to pay to the applicant a fee for using such online platform services.
  - Provision of manpower service by the drivers to the customers - The drivers are not employees of the applicant and the applicant only provides a platform to the drivers for providing their services. Thus, the contract entered into between the customer and driver is on principal-to-principal basis as the customer also has the option of making the payment directly to the driver or electronically to the driver (through the applicant).
- Section 9(5) of the CGST Act was referred which notifies categories of services for which the tax shall be paid by the e-commerce operator. Notification no. 17/2017- Central Tax dated June 28, 2017, in pursuance to the said section has notified the below services, for which an e-commerce operator is liable to pay GST:

  (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;

  (ii) & (iii) …….
- It is evident that the services provided by the drivers do not fall in the above category, as they drive the vehicles of the customers and thus are not providing transportation service by taxi, motorcab and the likes. The AAR held that no GST liability is triggered in respect of the payments received by the applicant on behalf of the drivers (in cases where electronic payment options are used by the customers) as the services provided by the drivers are not covered under Notification no. 17/2017 and hence not covered under section 9(5) of the CGST Act.
- Further, Section 52 of the CGST Act provides for collection of tax at source which mandates every E-commerce operator, not being an agent, to collect an amount at a rate to be notified (but not exceeding 1%) on the net value of taxable supplies made through it by other suppliers where the consideration in respect to such supplies is to be collected by such electronic commerce operator. The AAR held that the TCS provisions would be applicable in the instant cases and that every person who supplies goods or services or both (other than those supplies specified under section 9(5)), through an E-

	commerce operator who is required to collect tax at source under section 52 is mandatorily required to be registered under section 24 of the CGST Act. **Ruling:** The applicant is not liable to pay GST under section 9(5) of the CGST Act. However, the Applicant is required to collect tax under section 52 on the net value of taxable supplies made by the drivers, only to the extent where the applicant receives the consideration and not when the consideration is directly paid to the driver.
Dhruva Comments / Observations	The ruling at Para 10.2 makes an observation that every person who supplies goods or services or both (other than those supplies specified under Section 9(5) of CGST Act, through an e-commerce operator who is required to collect tax at source under section 52 is liable to be registered compulsorily under section 24 of the CGST Act. It is however relevant to note that the FAQs pertaining to TCS issued by CBIC on September 28, 2018, clarify that Notification no. 65/2017 - Central Tax dated November 15, 2017 exempts the suppliers [other than those covered under section 9(5) of the CGST Act] from obtaining a registration where such suppliers do not have a turnover that exceeds ₹ 20 lakhs (or ₹ 10 lakhs in case of specified special category States) in a financial year. The FAQ goes on to state that since such suppliers are not liable for registration, ecommerce operators are not required to collect TCS on supplies by such persons. Though the FAQ has clarified that such transactions should be outside the ambit of TCS liability, the provisions of section 52 of the CGST Act, creates a liability for the e-commerce operator for supplies made by all supplier and does not restrict it only to registered taxable persons.

8. M/s Karnataka Food & Civil Supplies Corporation - Karnataka[8]	
Issue for Consideration	Whether services of storage of food commodities at the Godown of Central Warehousing Corporation (CWC), Belgaum, liable to GST on the entire value or only in relation to storage of taxable commodities?
Discussion & Ruling	**Discussion:** • The Applicant, a Government Company, is in the business of distributing agricultural commodities under the Public Distribution System (PDS). It has entered into an agreement with CWC for providing storage area, for storing the taxable as well as exempt commodities. • The CWC has charged GST on the entire amount per the warehousing agreement, however, the applicant has sought an Advance Ruling to determine whether entire storage charges are liable to tax or only to the extent of storing taxable goods, in light of the exemption available for storage of agricultural produce. • The AAR examined the agreement executed between the Applicant and CWC and observed as follows: - The Applicant shall store commodities either belonging to him or to his clients;

[8] Ruling No. KAR ADRG 112/2019 dated September 30, 2019

	- The storage charges shall be payable on gross area basis depending on the space utilised for storage; - Applicant shall make own arrangements for insurance of stock & seek clearances/permissions for storage. Further, the applicant is allowed to maintain own stock accounting, deploy own security personnel, install separate sub-meter and electricity charges be paid on actuals; - Applicant is entitled to remove its goods at their own cost and hand over the Godown to CWC after restoring it to the original condition; - Applicant cannot sub-let the premises to third party. **Ruling:** Based on the terms and conditions set out in the agreement, the Authority observed that the services provided by CWC is renting of an immovable property, taxable at 18% and not storage services.
Dhruva Comments / Observations	• In the aforesaid agreement, it was stated that CWC is providing storage space to the Applicant. The Agreement was not for leasing / renting. The Applicant had to arrange for insurance cover and permissions mandatorily. Additionally, an option was provided to the Applicant for arranging its own security subject to overall discipline and control of CWC's warehouse manager, conduct stock accounting etc. • Under the erstwhile Service tax regime, the TRU issued a circular F. No. B11/1/2002-TRU dated August 1, 2002 wherein it was clarified that It is clarified that the services provided by public / private warehouses, **Central Warehousing Corporation**, Airport authorities, Railways, Inland Container Depots, CFS, Storage godown and tankers operated by private individuals are covered. The services include space to keep goods, loading/unloading and stacking of goods, keeping inventory of goods, security arrangement, providing insurance cover etc. *However, mere renting of storage premises cannot be said to be in the nature of service provided for storage or warehousing of goods.* ***Essential test is whether the storage keeper provides for security of goods, stacking, loading/unloading of goods in the storage area***. • It is also relevant to note that according to the website of CWC, the corporate mission is to provide integrated warehousing infrastructure and other logistics services. CWC's objective is to provide storage and warehousing activities of goods including agricultural produce. However, in the present facts as reported, there is no clarity on what services CWC was providing to the Applicant.

9. M/s Aquarelle India Pvt Ltd - Karnataka[9]	
Issues for Consideration	• Whether the delivery of the possession of the assets that are fastened to the building and on which no credit has been availed under pre-GST regime, would amount to supply under section 7 of CGST Act?

[9] Ruling no. KAR ADRG 63/2019 dated September 20, 2019

	• If yes, whether the value appearing in the books as on date of disposal may be construed as 'open market value' for discharging GST as per rule 27 of CGST Rules?
Discussion & Ruling	**Discussion:** • The Applicant had taken an office on lease in Bengaluru from where it is providing various services. The said office was taken on lease from July 2011 to June 2022. There were various fixtures which were installed in the premises. The assets were capitalized in books of accounts and no credit was taken in the pre-GST regime. • The Applicant wishes to vacate this premise in the near future. The possession of the premises will be handed over to the owner along with the fixtures which cannot be dismantled on vacating the premises. No consideration would be received by the Applicant for such disposal of assets. • The Applicant contended as follows: - The assets were put to use in the pre-GST regime without the availment of credit and the disposal of assets in the GST regime should not amount to supply and thereby not liable to GST; - Treating the transaction as *supply* in terms of Schedule II of the CGST Act, might lead to double taxation, which goes against the spirit of GST law. - If the transaction is treated as supply, then the value for such capital goods shall be determined in terms of Rule 27 of CGST Rules. • The Authority observed as follows: - The transaction is not covered under para 1 of Schedule I of the CGST Act since the input tax credit has not been availed on the same and thereby is not covered under section 7(1)(c) of the CGST Act; - The transaction is covered within para 4(a) of Schedule II of the CGST Act, since there is disposal of assets. It is immaterial whether transaction is with or without consideration; - The amendment made in section 7 of CGST Act, whereby a new sub-clause (1A) was inserted w.e.f. February 01, 2019 would not be relevant in the present case if the transaction has been concluded before the effective date of the amendment; - In terms of section 2(31)(b) of the CGST Act, consideration includes the monetary value of any act or forbearance in response to supply of goods / services. Writing off value of assets in the balance sheet by the Applicant is an act for transfer of property in assets and this monetary value would form consideration for the supply; - The amount of consideration should be determined in terms of Rule 27, 30 and 31 of the CGST Rules. **Ruling:** • The transfer of assets fastened to the building will amount to supply under section 7 of CGST Act. • The value of supply would be determined by the following (in same order):

	- Open market value of such supply, - Value of supply of goods of like quantity and quality, - 110% of book value of such goods, and, if none of above is possible, it needs to be determined under rule 31 of CGST Rules.
Dhruva Comments / Observation	• The amendment made in section 7(1A) of CGST Act, was made retrospectively w.e.f. July 01, 2017 and not w.e.f. February 01, 2019. Hence, the entry in Schedule II must be examined post the transaction qualifying as a supply. • Also, it needs to be separately deliberated as to whether write-off of assets constitutes *consideration* for alleging supply.

10. M/s Kwality Mobikes Private Limited - Karnataka[10]	
Issues for Consideration	• Whether the volume discount received on purchases should attract GST? If yes, under which HSN/SAC? • Whether volume discount received on sales should attract GST? If yes, under which HSN/SAC? • Whether the Applicant is required to issue taxable invoice to this effect?
Discussion & Ruling	**Discussion:** • The Applicant is an authorised dealer for Harley Davison India (authorised supplier) and is in the business of supplying motor vehicles. • The Applicant is eligible for volume discount on purchases as well as on sale of vehicles which are over and above the limit fixed on regular purchases. These discounts take effect through the issue of credit notes without any adjustment of GST. • The Applicant contended that no GST is payable on these discounts. • The Authority observed as follows: - The credit note issued by the authorised supplier on account of more purchases made by the Applicant neither affects the price of the goods already sold nor any adjustment of GST is made in the credit note. This is in the form of an incentive; - Further, when the Applicant sells more than his target, he is eligible for sales discount, by issuance of a credit note which does not affect the price of the goods already purchased or sold. This is also in the form of incentive: - Reference was made to Section15(3) of the CGST Act, which states the conditions when a discount should not form part of the value of supply. As the credit issued is a post-sale event and the Applicant has not reversed the input tax credit attributable to the discount received the said discount is not covered under section 15(3); - The credit note is only a financial document for adjustment of the incentive provided.

[10] Ruling no. KAR ADRG 76/2019 dated September 24, 2019

	Ruling: • No GST is payable on the discounts received on sales / purchase from the authorised supplier. • The amount received in the form of credit note is actually a discount and not a supply, and the Applicant is not required to issue tax invoice for this transaction.
Dhruva Comments / Observations	• In case of a financial credit note there is no revenue loss to the exchequer since GST has been discharged on full value of supply. • The said ruling is in line with the circular no. 92/11/2019-GST dated March 07, 2019 wherein it has been clarified that financial / commercial credit notes can be issued if the conditions specified under section 15(3)(b) of the CGST Act are not satisfied. • The Government on the recommendation of the GST council, in order to ensure uniformity in application of law, has withdrawn the circular no. 105/24/2019 GST dated June 28, 2019 which provided clarifications in respect of treatment of post sales discounts. • Also, such discounts have been a subject matter of dispute during the pre-GST regime.

11. M/s Embassy Industrial Park Private Limited - Karnataka[11]	
Issue for Consideration	Whether input tax credit can be availed on the Electrical Works, pumps, pumping systems and tanks, lighting system, physical security system and fire system?
Discussion & Ruling	**Discussion:** • The Applicant is engaged in the building and managing industrial warehousing spaces for consumers and industrial centres. The Applicant is proposing to construct a new Industrial warehouse in Karnataka. • The Applicant procures various goods and services from various contractors for fitting-out of the warehousing spaces and pays GST on the same. The applicant provides the space with all the infrastructural facilities on rent to various industrial consumers and manufacturers. • The Applicant has approached the Authority to contend that input tax credit is eligible on Electrical Works, Pumps, Pumping systems and tanks, Lighting system, Physical security system and Fire System on the basis of the following grounds: - Section 16 of the CGST Act, entitles every registered person to take input tax credit of tax charged on supply of goods or services or both which are used or intended to be used in course or furtherance of business; - Input tax credit restriction provided under section 17(5)(c) & (d) of the CGST Act, does not apply to procurement of items listed above since input tax credit restriction is only in so far as inputs/ input services for construction of an immovable property and when capitalized as immovable property. However, in the present case such

[11] Ruling no. KAR ADRG 109/2019 dated September 30, 2019

	items are capitalized under plant and machinery which is specifically excluded from section 17(5)(c) & (d) of the CGST Act; - Electrical Works, Pumps, pumping systems and tanks, lighting system, physical security system and fire system can be detached and re-used and are not considered to be the permanent civil assets. - Anything embedded to the earth which cannot be dismantled and moved without substantial damage are only strictly covered under the ambit of 'Immovable property'. **Ruling:** The Authority did not agree with the contentions of the Applicant and held that input tax credit cannot be availed by the applicant on Electrical Works, Pumps; Pumping systems and tanks, Lighting system, Physical security System and Fire System as they are covered under section 17(5) of the CGST Act, and these items do not have an independent existence and form part and parcel of the entire building with infrastructure qualifying as construction of immovable property.

12. M/s Tarun Realtors Private Limited - Karnataka[12]	
Issue for Consideration	Whether taxes paid on procurement of following goods and/or services (installations) are regarded as blocked credits under section 17(5) of the CGST Act? (a) Chillers, (b) Air Handling Unit, (c) Lift, Escalators and Travellator, (d) Water Treatment Plant, (e) Sewage Treatment Plant, (f) High Speed Diesel Yard, (g) Mechanical Car Park, (h) Indoor / Outdoor Surveillance System (CCTV), (i) D.G. Sets, (j) Transformers, (k) Electrical wiring and fixtures, (l) Public Health Engineering (PHE) and (m) Fire-fighting and water management pump system.
Discussion & Ruling	**Discussion:** • The Applicant is developing a shopping mall which will include a hypermarket, multiplex cinema theatre complex, departmental stores, retail shops and food courts.

[12] Ruling no. KAR ADRG 103/2019 dated September 30, 2019

	• For the purpose of developing the shopping mall, the applicant has procured the above-mentioned installations and paid taxes on the same. • The Applicant will be entering into lease agreements with tenants and will be leasing all units at the mall together with the right to use the staircases, common areas and other common facilities. • The Applicant has approached the Authority to contend that the taxes paid on all the installations would not be regarded as blocked credits under section 17(5)(d) read with explanation to chapter V and chapter VI of the CGST Act, on the following grounds: - The phrase, *Plant or Machinery* used in Section 17(5)(d) of the CGST Act has not been defined under the GST laws. Hence, references must be drawn from the dictionary meanings, meanings ascribed to it under other laws, and judicial pronouncements under the allied laws to understand the phrase; - Installations are recorded in the books of accounts under separate heads under Plant and Machinery as per Indian Accounting Standards i.e. independent of building or civil structure which is sufficient justification that these installations are distinct from the land and building; - Reliance was also placed upon the ruling of Honourable Supreme court in the case of *Sirpur paper Mills Limited* v. *CCE, Hyderabad* [1998 (97) E.L.T. 3 (S.C)] by stressing that the 'Installations' are fixed to the building/ earth and movable and hence they qualify as 'Plant' or 'Machinery' under the CGST Act. **Ruling:** The taxes paid on procurement of goods and/or services for installations are regarded as blocked credits under Section 17(5) of the CGST Act, since they are involved in the construction of immovable property which is part of civil structure or building.

13. M/s We Work India Management private Limited - Karnataka[13]	
Issue for Consideration	Whether input tax credit can be availed by the Applicant on the detachable 14mm Engineered Wood with Oak top Wooden Flooring and also on the detachable sliding and stacking glass partition which are movable in nature and capitalized as Furniture and fixture in the books of accounts?
Discussion & Ruling	**Discussion:** • The Applicant is in the business of supplying shared work space / office space to the freelancers, start-ups, small businesses and large enterprises. Accordingly, the Applicant procures goods and services from various contractors for fitting-out of the workspaces and provides the workspace on rent as sharing work spaces. • The Applicant has approached the Authority to contend that input tax credit is eligible on the detachable 14mm Engineered Wood with Oak top Wooden Flooring and also on the detachable sliding and stacking glass partition on the basis of the following grounds:

[13] Ruling no. KAR ADRG 106/2019 dated September 30, 2019

	- Section 16 of the CGST Act, entitles every registered person to take input tax credit of tax charged on supply of goods or services or both which are used or intended to be used in course or furtherance of business; - Input tax credit restriction provided under Section 17(5)(c) & (d) of the CGST Act, is only in so far as inputs / input services for construction of an immovable property and when capitalized as immovable property; - Chartered Accountant Certificate to prove that the detachable 14mm Engineered Wood with Oak top Wooden Flooring and detachable sliding and stacking glass partition has been capitalized in the books of accounts as Furniture and Fittings rather than capitalizing as immovable property; - Anything embedded to the earth which cannot be dismantled and moved without substantial damage are only strictly covered under the ambit of immovable property. **Ruling:** • The input tax credit of GST can be availed by the applicant on the detachable 14 mm Engineered wood with Oak top wooden flooring as these are not fixed and permanently fastened to the building and only adds to the value of the building. Thus, not *sine qua non* for the letting out of the office space. • The input tax credit is not available on the detachable sliding and stacking glass partitions as these are fixed and permanently fastened to the building which is an immovable property and hence is *sine qua non* for the letting out of the office space.
Dhruva Comments / Observation	• The following aspects may be noted with respect to the aforesaid Rulings: - Explanation to section 17(5)(c) and (d) of the CGST Act, defines the expression *construction* to include re-construction, renovation, additions or alterations or repairs, **to the extent of capitalization of the said immovable property.** Per the definition, there has to be first an activity of construction which then also would include re-construction etc. The issue that merits consideration is whether 'goods' which are erected or installed can per se be called as 'constructed' and therefore whether credit can be denied. - The Authority has held that items given do not have independent existence and are part and parcel of the entire building, a building with infrastructure and hence, get excluded from the definition of 'plant and machinery'. The exclusion clause u/s. 17(5)(d) of the CGST Act clearly provides that even if the activity tantamount to construction of immovable property, credit should be allowed. It should then not matter whether the same form integral part of the building or not. The capitalisation to a different asset class has completely been disregarded as an argument. - In We Works Management Pvt. Ltd., credit was allowed on detachable 14 mm Engineered wood with Oak top wooden flooring as these were not fixed and permanently fastened to the building and only adds to the value of the building. However, this aspect was not considered in the other Rulings.

	- The ruling also overlooks the settled position of law as envisaged by the Honourable Supreme court in the case *of Commissioner of Central Excise., Ahmedabad* v. *Solid & Correct Engineering Works* [2010 (252) ELT 481 (SC)] wherein the meaning of words 'immovable property' were extensively discussed and it was held that every property embedded in earth is not automatically an immovable property. If the property cannot be dismantled without substantial damage to its components, then the property may be considered as immovable property. In the current facts, evidently, there were multiple items which were clearly moveable. - The rulings could open up another chapter of litigations where authorities would try and classify anything which has some relation to construction of building or civil structure as 'construction of Immovable property' and deny the legitimate input tax credits.

14. Surfa Coats (India) Pvt Ltd. - Karnataka	
Issue for Consideration	Whether GST input tax credit is eligible on the goods and services given as gifts procured for the promotion of business?
Discussion & Ruling	**Discussion:** • The Applicant is in the business of manufacturing decorative paints meant for interiors as well as exterior surfaces and has three manufacturing plants. • In the course of business, the Applicant frames various incentive schemes depending on the market conditions such as Painters Schemes, Dealers Incentive Schemes, Gold Schemes, Foreign and Local Trip Schemes etc., to persuade dealers and painters to promote the sale of their paint. The incentives given to the dealers and painters are mostly in kind. • Under the incentive schemes, the Applicant distributes goods such as TVs, refrigerators, washing machines, mixers, wet grinders, watches, mobiles, gold coins, bed sheets, rice bags, t-shirts, raincoats, etc., or also offers foreign and local trips as incentives subject to fulfilment of the terms mentioned in each scheme. • The Applicant submitted that the painter plays a vital role to market the Applicants products and they act as middlemen between the customer and the Company. • The Applicant purchases goods to be distributed from GST registered dealers who issue GST input tax invoices, such goods procured are not sold by the Applicant but are provided as gifts/ incentives (without consideration) to dealers and painters on completion of targets. • The Authority observed as follows: - The goods or services are distributed to the dealers and painters as gifts / incentives without receiving any consideration and thus they do not qualify as a supply per section 7 of the CGST Act;

	- As per section 17(5)(h) of the CGST Act, input tax credit is not available in respect of goods disposed off by way of gift; - Further, the free travel schemes provided to the dealer and painters without any consideration do not qualify as a supply as per section 7(1)(a) read with Schedule I of the CGST Act. In this regard, Circular No.92/11 /2019-GST dated March 07, 2019 issued by the CBIC clarifies that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. **Ruling:** The Applicant is not eligible to avail input tax credit on the procurement of goods and services given as gifts to the dealers and painters under the various incentive schemes.
Dhruva Comments / Observations	• As per the GST Law, credit is available for inputs used in the course or furtherance of business, which inter alia would also cover expenses on promotion or marketing. Providing incentives for achieving targets is a known business practice and hence the CBIC should re-look at the provisions to allow credit of GST on expenses incurred on goods provided as gifts etc. for promoting and marketing. • The Ruling has not gone into the above aspect because of specific provisions under Section 17(5)(h) of the CGST Act [as non-obstante clause] which specifically disallows credit on 'gifts'. The meaning of the term 'gift' per dictionary meaning is '*a thing given willingly to someone without payment; a present'.* There is no quid pro quo in a gift. However, incentives / gifts provided to promote business / achieve a particular output cannot be considered to be without quid pro quo and therefore, do not strictly qualify as a 'gift'.

ADDRESSES

Mumbai
11th Floor,
One IndiaBulls Centre, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad
B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahladnagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434

Bengaluru
Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560 001
Tel: +91-80-4660 2500

Delhi / NCR
101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000

Pune
305, Pride Gateway, Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Kolkata
4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Singapore
Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai
WTS Dhruva Consultants
U-Bora Tower 2, 11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel: + 971 56 900 5849

Bahrain
WTS Dhruva Consultants
2301, Level 23, P.O. Box No. 60570,
Harbour Tower (East), Bahrain Financial Harbour,
Kingdom of Bahrain
Tel: +973 1663 1921

New York
Dhruva Advisors USA, Inc.
340 Madison Avenue, 19th Floor, New York,
New York 10173 USA
Tel: +1-212-220-9494

Silicon Valley, USA
Dhruva Advisors USA, Inc.
5201 Great America Parkway,
Santa Clara, California 95054
Tel: +1 408 930 5063

KEY CONTACTS

Dinesh Kanabar (Mumbai)
Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Ritesh Kanodia (Mumbai)
ritesh.kanodia@dhruvaadvisors.com

Niraj Bagri (Mumbai)
niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani (Mumbai)
ranjeet.mahtani@dhruvaadvisors.com

Amit Bhagat (Delhi / NCR)
amit.bhagat@dhruvaadvisors.com

Dhruva Advisors has been named **"India Tax Firm of the Year"** for 2017, 2018 and 2019 by International Tax Review

Dhruva Advisors has been named **"India Disputes and Litigation Firm of the Year 2018"** by International Tax Review

Dhruva Advisors ranked as a **Tier 1 Firm** in India in Tax and Transfer Pricing by International Tax Review.