



Dimensions – 70th Edition

Rulings under GST era

NMDC Ltd. - Appellate Authority for Advance Ruling, Chhattisgarh¹

Issues for Consideration

- Whether Input Tax Credit (“ITC”) can be availed on:
 - Civil and railway allied works in connection with the laying of private railway siding?
 - Signalling and telecommunication system, mechanical and structural works in relation to railway siding?
 - Execution of P-Way, Civil overhead electrification, general electrical and signalling & telecommunication works for the proposed block station yard in relation to private railway siding?

Discussion

- The Appellant is setting up an integrated greenfield steel plant (“the plant”) in the State of Chhattisgarh. For the purpose of receiving raw material and dispatching finished products from the plant, a railway siding was proposed to be constructed. The

construction project was awarded to M/s IRCON International Ltd.

- The project was divided into three major packages, namely:
 - Civil and railway allied works in connection with laying of railway siding;
 - Execution of civil, S&T, mechanical and structural works in connection with laying of the railway siding; and
 - Execution of civil, P-way, over-head electrification, general electrification and signalling and telecommunication works for the proposed block station yard in connection with the plant.
- The Appellant had approached the Authority for Advance Ruling (“the Authority”) to determine whether ITC could be availed on the above-mentioned supplies. The Authority vide its order² denied ITC on the said supplies in view of the exclusions stipulated under section 17 of CGST Act, 2017, on the ground that the railway siding qualified as a civil structure (immovable property) and cannot be regarded as plant and machinery.

¹ 2020-VIL-29-AAAR

² Ruling no. STC/AAR/03/2019 dated April 24, 2019



- Aggrieved by the order, the Appellant filed the impugned appeal before the Appellate Authority for Advance Ruling (“the Appellate Authority”) and contended that it was eligible for ITC on the following grounds:
 - The main objective and purpose of laying railway track is for transporting raw materials inside the factory and for outward transportation of the finished product. Therefore, railway siding forms an integral and inseparable part of the manufacturing process without which steel cannot be manufactured.
 - As per sections 17(5)(c) and (d) of the CGST Act, 2017, the test of movability / immovability is immaterial to determine the eligibility of credit if the items in question qualify as ‘plant and machinery’ irrespective of they being attached to earth. The Authority did not examine the meaning of ‘plant and machinery’ and confined to examine if the supplies tantamount to immovable property or not. If an immovable property qualifies as plant and machinery it is excluded from the restriction under section 17(5) of the CGST Act, 2017 and the ITC is eligible including on the foundation and structures.
 - Schedule XIV of the Companies Act, 1956 which prescribes the rate of depreciation, ‘Railway Sidings’ is categorized under plant and machinery. Therefore, railway sidings in the present case qualify as a ‘plant and machinery’ and ITC should be eligible. Reliance was also placed upon Income tax judgments wherein railway siding was construed as a plant and machinery.
 - Reliance was placed upon the Supreme Court’s judgment in the case of *Jayaswal Neco Ltd. v. Commissioner of Central Excise, Raipur*³ wherein it was held that railway track used inside the plant was an integral part of the manufacturing process without which manufacturing was not possible and the Cenvat credit was allowed on the railway tracks. Reliance was also placed upon various other similar judgments of the Supreme Court and High Courts.
 - Reliance was also placed upon the Tribunal judgment in the case of *Orient Cement Ltd. v. Commissioner C., CE & ST, Hyderabad*⁴ wherein Cenvat credit was allowed in respect of the railway siding laid outside the factory.
 - The Authority had wrongly placed reliance upon the Bombay High Court judgment in the case of *Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune*⁵ and ignored the reliance placed by the Appellant on the Delhi High Court judgment in the case of *Vodafone Mobile Services Ltd. v. Commissioner of Service Tax, Delhi*⁶. The principle debated in both these cases were the same, but the Authority rejected the Appellant’s contention and relied on the Bharti Airtel judgment.
 - The expression ‘plant and machinery’ not only includes mechanical items but also those that assist the manufacture of goods. The rail network within the plant, signalling and other telecom system established in the factory, can be regarded as ‘apparatus’ or ‘equipment’ or ‘machinery’. Even if such items are not regarded as plant and machinery, they can be considered foundations and supporting structures on which locomotives and torpedo ladles shall ply. The locomotives owned by the Appellant cannot be used or operated effectively without these supplies.
 - Reliance was also placed upon various judgments and dictionary meanings to explain the meanings of the terms ‘plant’, ‘equipment’, ‘apparatus’ to substantiate that railway siding qualifies as ‘plant and machinery’.
- After taking into account the submissions of the Applicant and after analysing the tender documents of the project, the Appellate Authority observed as follows:

³ 2015 (319) ELT 247 (SC)

⁴ 2016-VIL-1075-CESTAT-HYD-ST

⁵ 2014-VIL-242-BOM-CE

⁶ 2018-VIL-506-DEL-CE



- The scope of work being undertaken includes, construction of pathways, platforms, level crossing gates, drains, locomotive shed, signalling and telecommunication works, station building, railway staff quarters, etc. There is hardly any doubt that such work is civil work, eventually result in civil structures. The present contract is a works contract within the meaning of section 2(119) of the CGST Act, 2017.
- The essential character of an ‘immovable property’ is that it is attached to the earth, or permanently fastened to anything attached to earth, or forms part of land and not agreed to be severed before supply or under a contract of supply.
- The present scope of work consists of an entire system comprising of a variety of different structures which are installed after a lot of prior work which involves civil work, civil engineering, ground work, supply, foundation work, fabrication, erection of building steel structures etc. In no case, would it be viable to move these items from one place to other. Thus, the project of construction of railway sidings fulfils the conditions of being an immovable property.
- Reliance was placed on Supreme Court’s judgment in the case of *TTG Industries Ltd. v. Collector of Central Excise, Raipur*⁷ wherein it was observed that mudguns and drilling machines erected at site on a concrete platform above ground level on a base plate secured to the concrete platform brought into existence not excisable goods but immovable property which could not be shifted without dismantling and re-erecting it at another site. Further, reliance was also placed upon the Supreme Court’s judgment in the case of *Duncans Industries Ltd. v. State of U.P. & ORS*⁸.
- Accordingly, the project of railway siding consists of civil structures with foundations and are immovable in nature.
- The laying of railway sidings can in no way be related to the outward supply of goods. The words ‘used for’ in the definition of ‘plant and

machinery’ under section 17(5) of CGST Act, 2017 implies that there should be a nexus between the items on which ITC is claimed and the outward supply which in the present case is tenuous.

- Reliance was placed on the sectoral FAQ issued by the CBIC which stated that ITC cannot be claimed on railway sidings since they were not plant and machinery as defined in section 17 of the CGST Act, 2017.
- Various rulings relied upon by the Appellant pertain to erstwhile Central Excise regime pertaining to the eligibility of Cenvat credit on items qualifying as ‘capital goods’. Further, in most of the cases referred by the Appellant, the credit was claimed on items which were used within the factory premises, whereas in the present case the railway siding (including electrical, telecommunication works and other resultant structures) are constructed / located outside the premises of the Appellant.
- The said supplies cannot be said to be ‘plant and machinery’ used for making outward supply as they had no nexus with outward supply made by the Appellant.
- The contention of the Appellant in respect of the railway siding being categorized as ‘plant and machinery’ in Companies Act, 1956 stands changed post the Companies Act, 2013 wherein the railway sidings are not included under plant and machinery and is shown separately.

Ruling

The Appellant is not eligible to claim the ITC on the above-mentioned supplies.

Dhruva Comments:

The order of the Appellate Authority has been stayed by the High Court of Chhattisgarh⁹ which took into account the provisions of section 16 of the CGST Act, 2017 and

⁷ 2004-VIL-55-SC-CE

⁸ 1999-VIL-30-SC

⁹ 2020-VIL-239-CHG



the judgment of the Supreme Court in the case of *Jayaswal Neco Ltd. (supra)*.

Under the Pre-GST regime, the disputes pertained to as to what constitutes an immovable property and now under the GST regime the said dispute still continues with an additional element as to what constitutes as a 'plant and machinery'.

The definition of plant and machinery under section 17(5) of the CGST Act, 2017, though excludes 'civil structures' but as to what constitutes a civil structure has not been defined or explained by CBIC. Thus, one would have to approach the higher forums for finality on such contentious issues.

A similar Appellate Authority order¹⁰ has been pronounced in the Appellants' (*supra*) case itself, wherein the issue involved eligibility of ITC on design and engineering, supply and erection of plant and equipment for lighting of plant road, boundary wall and watchtower. The ITC has been denied in this case on grounds similar to those discussed in the above ruling and the said order has also been stayed by the High Court of Chhattisgarh¹¹.

M/s ID Fresh Food (India) Pvt. Ltd. - Authority for Advance Ruling, Karnataka¹²

Issue for Consideration

Can preparations of whole wheat parota and malabar parota ("parota") be classified under chapter heading 1905 and attract GST at the rate of 5%?

Discussion

- The Applicant is engaged in preparation and supply of a variety of ready to cook foods including parota. Parota is sold both in ambient and frozen forms and has a shelf life of three to seven days.

- The ingredients used to make parotas are wheat flour (maida), RO purified water, edible vegetable oil, edible vegetable fat and edible vegetable salt. They need to be heated on a pan or tawa to be ready for consumption.
- GST goods rate notification¹³ ("the rate notification") was amended¹⁴ whereby a new entry at sl. no 99A was inserted which levied tax of 5% (CGST and SGST) on goods falling under the chapter headings 1905 or 2106 and having description as '*khakhra, plain chapatti and roti*'. The Applicant approached the Authority for Advance Ruling ("the Authority") to contend that the parotas fall under the said chapter heading and are taxable at the rate of 5% on the basis of the following grounds:
 - As per the rate notification one needs to refer to the Customs Tariff Act, 1975 ("CTA"), explanatory notes ("HSN") in order to determine the classification of a product.
 - Parota falls under Chapter 19¹⁵ of Section IV of the First Schedule of the CTA. Further, within the said chapter, it merits classification under tariff item 1905¹⁶. Thereafter, it merits classification under 1905 90 90 ('others').
 - Reliance was also placed on the advance ruling in the case of *M/s Signature International Foods India Pvt. Ltd.*¹⁷ wherein it was held that paratha and paratha wraps are covered by sl. no. 99A of Schedule I of the rate notification.
 - Without prejudice, the product cannot be classified under residual entry at sl. no. 453¹⁸ of Schedule III of the rate notification due to the following contentions:
 - Application of residual entry can be resorted to only when no other heading either explicitly or implicitly applies to the product.

¹⁰ 2020-VIL-30-AAAR

¹¹ 2020-VIL-239-CHG

¹² 2020-VIL-130-AAR

¹³ Notification no. 1/2017-Central Tax (Rate) dated June 28, 2017

¹⁴ Notification no. 34/2017-Central Tax (Rate) dated October 13, 2017

¹⁵ Chapter 19 reads as Preparations of cereals, flour, starch or milk; pastrycooks' products

¹⁶ Tariff item no. 1905 reads as Bread, pastry, cakes, biscuits and other baker's wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, Sealing wafers, rice paper and similar products.

¹⁷ 2019 (20) G.S.T.L. 640 (A.A.R. - GST)

¹⁸ Sl.no. 453 of Schedule III is a residual entry specifying 18% (CGST and SGST) GST for goods not specified in Schedules I, II, III, IV, V and VI.



- Courts have consistently held that application of residual entry can be resorted to only when it is not possible to classify the goods under a specific entry in the tariff.
- Accordingly, parota in sum and substance is akin to roti and is manufactured / prepared through an identical process and hence cannot be classified under the residual entry.
- After considering the submissions of the Applicant, the Authority observed as follows:
 - Heading 1905 covers bread, pastry, cakes, etc. which are completely cooked foods ready for consumption.
 - The product ‘parota’ does not have any specific entry in the CTA / GST Tariff.
 - The products covered under heading 1905 are already prepared or completely cooked products and do not require being subjected to any further process before consumption. Such products are therefore ready to use food items.
 - In the instant case, the product is not readily consumable and needs to be heated before consumption. Hence, the product does not merit classification under chapter heading 1905.
 - Chapter heading 2106 covers miscellaneous edible food preparations not elsewhere specified.
 - Further, explanatory notes to the harmonized commodity description and coding system specify that chapter heading 2106 90 covers preparations for use either directly or after processing (cooking, boiling etc.) for human consumption not covered by any other heading.
 - In the instant case, parota is not covered under any other heading and needs to be processed for human consumption. Hence, the products are classifiable under chapter heading 2106 90.
 - Even if the Applicant’s argument of classification of the products under heading 1905 as well as under heading 2106 are considered as two relevant headings, the heading 2106 occurs last in numerical order

and hence the heading 2106 would be more appropriate and right classification. This is in line as per rule 3(c) of the General Rules of Interpretation for classification of goods under the Customs Tariff Act, 1975.

- GST rate of 5% is applicable if the product fulfils two conditions: namely, the product must be classified under chapter heading 1905 or 2106 and the product must be either khakhra, plain chapatti or roti. The products in the instant case fall under chapter 2106 and hence they fulfil the first condition.
- The products are described as parota and hence they are not khakhra, plain chapatti or roti. Khakhra, plain chapatti or roti are completely cooked preparations and do not require any processing for human consumption and hence they are ready to eat preparations. However, parota in the instant case is not only different from khakhra, plain chapatti or roti but also not like these products in common parlance as well as in respect of the essential nature of the product. Parota requires further processing for human consumption.
- Accordingly, the benefit of sl. no. 99A of Schedule I of the rate notification (*supra*) is not available.

Ruling

Parota is classifiable under chapter heading 2106 and not covered in sl. no. 99A of Schedule I of the rate notification.

Dhruva Comments:

A similar ruling has been given in the case of *Modern Food Enterprises Pvt. Ltd.*¹⁹.

On the other hand, in the case of *Signature international Foods India Pvt. Ltd. (supra)* by applying the common parlance test, it was observed that a paratha is like a plain chapati (unlike stuffed gobhi paratha etc.) and the word paratha is a misnomer. Accordingly, the Authority held that the product would be covered by sl. no. 99A of Schedule I of rate notification and liable to 5% GST.

¹⁹ 2018 (18) G.S.T.L. 837 (A.A.R. - GST)



Further, the Authority in the present case has not discussed the said ruling.

Hence, owing to the contradictory advance rulings regarding classification of parota / paratha, it would be interesting to see how the higher forums classify the parota / paratha.

Judgment under GST era

*M/s A. B. Enterprises v. State of U.P. and two others*²⁰

Issue for Consideration

Whether a Writ Petition can be filed before the High Court to bypass the remedy of appeal to the Hon'ble Appellate Tribunal ("the Tribunal") available under section 112 of the CGST Act, 2017.

Discussion

- The Petitioner has filed a Writ Petition against orders for the seizure of goods. The details of the orders are as follows:
 - Seizure order MOV 06 – order for detention;
 - Consequential order MOV 09 – a demand added in the electronic liability register of the Petitioner on the common portal; and
 - Order passed by the Appellate Authority under section 107(11) of the CGST Act, 2017.
- The Petitioner filed this Writ Petition to bypass the remedy of appeal to the Tribunal on the grounds that the Tribunal has not been constituted till date.
- The Respondents, on the other hand, contended as follows-
 - In view of the difficulty faced by the taxpayers due to non-constitution of appellate tribunal, the Government issued the Central Goods and Service Tax (Ninth Removal of Difficulties) Order, 2019²¹ ("the Order") providing that the three-month period for filing an appeal before

the Tribunal should be considered from the date on which the President or the State President of the Tribunal enters office.

- The Petitioner can wait and use the remedy of filing an appeal when the Tribunal is constituted.
 - The seized goods have already been released and therefore no harm has been caused to the Petitioner.
- The Hon'ble High Court disposed the Writ Petition and observed that the Petitioner can invoke the remedy of filing an appeal before the Tribunal in the terms of the Order (*supra*).

Judgment

The Hon'ble High Court disposed of the Writ Petition.

Dhruva Comments:

While the constitution of the Goods and Services Appellate Tribunal ("GSTAT") remains pending following the Hon'ble Madras High Court decision in the case of *Revenue Bar Association v. Union of India*²², the High Courts are disposing Writ Petitions and directing the assesseees to exercise the appeal remedy in wake of the recent Order (*supra*). Separately, a circular²³ has been issued advising the Appellate Authorities to dispose of the pending appeals without waiting for the constitution of the Tribunal. This would leave taxpayers in limbo until the GSTAT becomes functional.

It is also important to note that another judgement on similar facts has been passed by the Hon'ble Allahabad High Court in the case of *Polo International v. State of U.P.*²⁴.

²⁰ 2020 (6) TMI 215 – Allahabad High Court

²¹ Order No. 09/2019-Central Tax dated December 3, 2019

²² 2019-VIL-466-MAD

²³ Circular No. 132/2/2020 – GST dated March 18, 2020

²⁴ 2020-VIL-241-ALH



Press Release

bills for distribution of accumulated IGST which would assist States during the current pandemic.

Recommendations made by the GST council in its 40th meeting held on June 12, 2020

- In order to clean up the pendency in return filings, the late fee for non-furnishing of Form GSTR-3B for the tax period July 2017 to January 2020 has been reduced / waived as under:

- Nil, if there is no tax liability;
- Maximum ₹500, if there is tax liability.

The reduced late fee would apply for all GSTR-3B furnished between July 1, 2020 to September 30, 2020.

- Small taxpayers (i.e. those with aggregate turnover upto ₹ 5 crore) will not be charged any interest for late furnishing of the returns for the period February, March and April 2020 (due dates staggered up to July 6, 2020). Thereafter, interest will be charged at the reduced rate of 9% upto September 30, 2020.
- Taxpayers having an aggregate turnover upto ₹ 5 crore would be granted waiver on late fee and interest, if the returns in Form GSTR-3B for the months of May, June and July, 2020 are filed by September, 2020 (staggered dates will be notified)
- A one-time extension is being granted to taxpayers to file application for revocation of cancellation of registration by September 30, 2020 in all cases where registrations have been cancelled till June 12, 2020.
- Certain clauses of the Finance Act, 2020 amending the CGST Act, 2017 and IGST Act, 2017 would be brought into force by June 20, 2020.

Dhruva Comments:

The trade at large was expecting certain rate cuts which did not happen as a result of the sharp decline in GST collections due to the COVID-19 pandemic. Further, while the Council continued the discussion on inverted duty structure and agreed to address the issues, the decision currently stands postponed. The Council would be having a single agenda meeting in July 2020 to discuss payment of Compensation cess to states and modalities around the same. The Centre has cleared





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