



Dimensions – 71st Edition

Rulings under GST era

M/s Sterlite Technologies Ltd. - Authority for Advance Ruling, Gujarat¹

Issues for Consideration

- Whether GST is payable on goods procured from vendor located outside India where such goods are not brought into India.
- Whether GST is payable on goods sold to customer located outside India, wherein the goods are directly shipped from vendor's premises located outside India to customer located outside India.

Discussion

- The Applicant is engaged in the development and supply of software in relation to telecommunication and wi-fi service management platform and trading of hardware.
- The Applicant procures requisite hardware from vendors located in India as well as outside India.
- The Applicant proposes to engage in a "Merchant Trade Transaction" for supply of hardware. In this, the Applicant will receive an order for hardware from

customer outside India, based on which the vendor located outside India will directly ship the hardware to the customer located outside India, without the goods physically coming into India.

- The payment to the vendor would be done in foreign currency against the invoice raised by the vendor. Further, the invoice would be raised by the Applicant on the customer located outside India and payment would be received in foreign currency.
- After considering the submissions of the Applicant, the Authority observed as follows:
 - According to section 2(10) of the IGST Act, 2017, import of goods means bringing goods into India from a place outside India. Furthermore, as per section 7(2) of the IGST Act, 2017, supply of goods imported into India till they cross the customs frontier of India shall be treated as an inter-state supply.
 - As per section 5(1) of the IGST Act, 2017, IGST shall be levied on all inter-state supply of goods or services or both. Further, on perusal of various provisions of the customs laws, it was observed that for import of goods, IGST shall be

¹ GUJ/GAAR/R/04/2020



- levied and collected at the point when duties under customs are levied.
- Reliance was placed on the advance ruling in the case of *M/s Synthite Industries Ltd*², wherein it was held that goods are liable to IGST when they are imported into India; hence, the sale of goods procured from China and directly supplied to USA, or the sale of warehoused goods in Netherlands and sold in and around Netherlands after being procured from China, are not liable to GST, as they are not imported into India at any point.
 - Additionally, reference was made to a circular³ issued in the context of “High Sea Sales”, which stated that IGST shall be collected only at the time of importation i.e. when the import declarations are filed with the customs authorities for customs clearance.
 - In the present case, the goods are directly shipped to customer located outside India without crossing the customs frontier of India and no bill of entry/ import declarations are filed for goods procured by the Applicant. Hence, GST is not leviable on such goods procured from the vendor outside India.
 - As regards the sale of such hardware from the vendor’s premises outside India to customers located outside India, the Applicant is selling goods in the course or furtherance of business for a consideration and hence, it shall tantamount to supply under GST law.
 - The place of supply of such sales, in terms of section 10(1)(a) of the IGST Act, 2017, would be the place where the movement of goods terminates for delivery to the recipient i.e. location of the customer outside India.
 - Furthermore, the Applicant has its principal place of business in India and thus the location of the supplier is India.
 - Thus, the said transaction is an inter-state supply of goods under section 7(5) of IGST Act, 2017 liable to IGST, unless exempt or qualifies as zero-rated supplies.

- The issue regarding whether the supply is exempt cannot be examined in the absence of exact nature of goods being made available.
- Moreover, the supply does not qualify as an export of goods in terms of section 2(5) of the IGST Act, 2017, as the goods are not physically available in India for it to take outside India.
- Hence, the sale of hardware to the customer located outside India will be subject to levy of IGST.

Ruling

GST is not leviable on goods procured from vendor located outside India. However, GST is leviable on the sale of goods to the customer located outside India where they are shipped directly from the vendor’s premises located outside India to the customer’s premises also located outside India.

Dhruva Comments:

The ruling fails to take cognizance of the amendment in Schedule III to the CGST Act, 2017 w.e.f. February 1, 2019 by virtue of which out-an-out supplies i.e. “*Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India*” have been regarded as neither a supply of goods nor supply of services.

It is also interesting to note that whilst the Authority refers to the ruling in the case of *M/s Synthite Industries Ltd (supra)* to determine the levy of GST on procurements from overseas vendors, where goods are not brought into India, it does not consider / discuss the another aspect discussed in the ruling in respect of out-an-out supplies being not liable to GST.

Furthermore, there have been other contradictory rulings pronounced in the past, as in the case of *Jotun India Pvt. Ltd.*⁴ and *Enmarol Petroleum India Pvt. Ltd.*⁵, whereby the sale of goods procured from outside India and delivered to Indian customer’s place outside India was held as not liable to GST, albeit treating it as an exempt / non-taxable supply. The ruling seems to reignite an already settled issue.

² CT/2275/18-C3 dated March 26, 2018.

³ 33/2017 Customs dated August 1, 2017.

⁴ GST-ARA-24/2018-19/B-75 dated July 26, 2018

⁵ GST-ARA-53/2018-19/B-127 dated October 10, 2018



Prasar Bharti Broadcasting Corporation of India (All India Radio) – Authority for Advance Ruling, Himachal Pradesh⁶

Issues for Consideration

- Can Input Tax Credit (ITC) be availed on renting of motor cab service for transportation of employees?
- What is the rate of GST applicable on such services?

Discussion

- The Applicant is a public service broadcaster and had entered into an agreement with contractors for hiring commercially licensed vehicles to provide pick-up / drop off facility for its employees, including transportation during odd hours within the state of Himachal Pradesh.
- The Applicant approached the Authority for Advance Ruling (“the Authority”) on the above-mentioned issues. The Authority observed as follows:
 - As per section 17(5)(b) of the CGST Act, 2017, ITC can be availed on hiring of motor vehicles provided it is **obligatory** for the employer to provide such services to its employees under any law for the time being in force. The Applicant had not been able to cite any such law which makes it obligatory to provide such services to its employees.
 - The rate of tax payable is prescribed in the notification⁷ as follows:

Description of service	Rate	Condition
Transport of passengers by motor cab where the cost of fuel is included in the consideration charged	5%	With limited ITC (of input services in the same line of business)
	12%	With full ITC

Ruling

- ITC is not eligible on renting of motor cab services.

- The applicable rate of tax is prescribed in the notification.

Dhruva Comments:

Basis the amendment in law, ITC shall be allowed on rent-a-cab services where it is obligatory for employers to provide such service under any statute / regulations.

The definition of “input service” under the erstwhile Cenvat Credit Rules, 2004, excluded the credit on services provided by way of renting of motor vehicles, even if it was obligatory under any law.

M/s Deendayal Port Trust (erstwhile Kandla Port Trust) – Authority for Advance Ruling, Gujarat⁸

Issue for Consideration

Can ITC be availed on project development services received for development of Smart Industrial Port City (SIPC)?

Discussion

- The Applicant is a port trust running a major port at Kandla. The Applicant is developing one of India’s first SIPC within the state of Gujarat. The SIPC will be developed on two land parcels owned by the Applicant.
- One land parcel would be developed to include residential development, institutional development (schools, colleges and hospitals) and green parks. The second land parcel would be developed as industrial park with logistics facilities. The Applicant would receive various project development services for development of SIPC, such as:
 - Programme management consultancy;
 - Marketing consultancy;
 - Land levelling and other related works;
 - Roads;
 - Water, electricity and drainage infrastructure; and

⁶ 2020-VIL-151-AAR

⁷ Notification no. 20/2017-Central Tax (Rate) dated August 22, 2017

⁸ 2020-VIL-140-AAR



- Other related works.
- Upon completion of the development work, the land will be auctioned for a period of 60 years or more and the consideration would be received in the form of a one-time upfront premium on which GST would be paid under Real Estate Service (HSN 9972).
- The Applicant approached the Authority for Advance Ruling (“the Authority”) to determine the eligibility of ITC on the project development services (*supra*).
- The Authority observed as follows:
 - As per section 16 of the CGST Act, 2017, a person is eligible to claim the ITC on goods or services which are used or intended to be used in the course of furtherance of business. Further, section 17(5) of the CGST Act, 2017, denies ITC in respect of certain goods and services specified therein.
 - The development of SIPC is nothing but construction of an immovable property and any project development services or goods or works contract used for construction of an immovable property shall attract provisions of section 17(5)(c) and (d) of the CGST Act, 2017, which denies ITC on works contract services or goods or services used for construction of an immovable property.

Ruling

ITC cannot be availed on the project development services (*supra*).

Dhruva Comments:

The dispute with respect to ITC on goods / services used for construction has been continuing since pre-GST regime. The ruling denies ITC on project development services without much deliberation. In the case of *M/s Safari Retreats Private Limited and Another v. Chief commissioner of Central Goods and Service Tax and Others*⁹, the High Court had allowed ITC on goods and services used in the construction of a mall,

which was to be let out and GST would have been paid on such letting out.

The said judgment has been appealed before the Supreme Court and is pending for admission.

M/s Nagri Eye Research Foundation – Authority for Advance Ruling, Gujarat¹⁰

Issue for Consideration

Does the sale of medicine by a not-for-profit charitable trust at a lower price amount to a supply in terms of section 7 of the CGST Act, 2017?

Discussion

- The Applicant is a not-for-profit charitable trust covered under section 2(84)(m) of the CGST Act, 2017. They operate a medical store for the sale of medicines at a lower price.
- The Applicant approached the Authority for Advance Ruling (“the Authority”) to determine whether the sale of medicines at a lower price constitutes a supply under the GST law. The Applicant made the following submissions:
 - Reliance was placed upon the judgment pronounced by the Hon’ble Gujarat High Court in the case of *Gujarat v. Saurashtra Kidney Research Institute*¹¹, wherein a charitable institution registered as a public trust and engaged in welfare activities provided medical treatment through a medical store on its premises. The Court observed that the medicines were purchased and sold to achieve objectives of the trust and thus concluded that the transactions should not be considered as a business activity.
 - The Applicant is a trust created by Municipal Corporation with a view to provide medical facilities to citizens. The Applicant provides medicines on a cost to cost basis to citizens.
 - The sale of medicines is not a business activity in light of the decision in the case of *Saurashtra Kidney Research Institute (supra)*.

⁹ 2019 (5) TMI 1278 - Orissa High Court

¹⁰ TS-387-AAR-2020-NT

¹¹ 2016 (9) TMI 1223 – Gujarat High Court



- The inclusive definition of supply and business under the CGST Act, 2017 does not cover charitable trusts. Hence, GST should not be applicable and the Applicant is not required to register itself under the GST law.
- After considering the facts of the case and the submissions made by the Applicant, the Authority observed the following:
 - The Authority distinguished the reliance placed by the Applicant on the case of *Saurashtra Kidney Research Institute (supra)* on the grounds that section 2(10) of the Gujarat Sales Tax Act dealing with registration specifically excludes “a charitable, religious or educational institution, carrying on the activity of manufacturing, buying, selling or supplying goods, in performance of its functions, for achieving its avowed objects, which are not in the nature of business”. Similar exclusion clauses are not enshrined under the CGST Act, 2017.
 - The Applicant is a charitable trust covered under the definition of the term “person” under section 2(84)(m) of the CGST Act, 2017 and shall not be required to obtain registration only if the activity does not fall within the definition of business or falls within the scope of Schedule III to the CGST Act, 2017.
 - The activity of sale of medicines by the Applicant at a lower price may or may not be for a less pecuniary benefit. However, the term “business” includes within its purview any supply with or without a pecuniary motive. Therefore, the Applicant is conducting a business activity as per the CGST Act, 2017.
 - Medicine is considered as goods as per section 2(52) of the CGST Act, 2017 and the sale of medicine is a taxable supply under the GST law. Even though the medicines supplied are at a lower price, the transaction meets the condition of the presence of a “consideration” to be considered as a supply under the GST law. Furthermore, the activity conducted by the

Applicant is not covered under Schedule III to the CGST Act, 2017.

Ruling

The supply of medicines by the Applicant, a charitable trust, amounts to a supply under section 7 of the CGST Act, 2017. Furthermore, the Applicant is required to obtain registration in the event aggregate turnover exceeds the threshold limit specified under section 22(1) of the CGST Act, 2017.

Dhruva Comments:

A similar ruling has been passed in the case of *Kasturba Health Society*¹², wherein it was held that the Applicant must obtain registration if the aggregate turnover exceeds the threshold limit prescribed under section 22(1) of the CGST Act, 2017.

However, it would be relevant to examine the object and purpose of the Trust and assess whether the main activity undertaken by the Trust qualifies the test of “business”. In terms of the Hon’ble Supreme Court judgment in the case of *Commissioner of Sales Tax v. Sai Publication Fund*¹³, incidental or ancillary activity would not amount to business unless an independent intention to undertake business has been established.

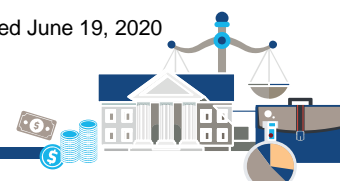
Notification under GST law

Companies allowed to file GST returns using Electronic Verification Code (EVC) till September 30, 2020¹⁴

- The Government had issued notification no. 38/2020-Central Tax dated April 5, 2020, whereby rule 26(1) of the CGST Rules, 2017 was amended to provide an option, to a registered person registered under the Companies Act, 2013, to file return in Form GSTR-3B verified through EVC for the period between April 21, 2020 to June 30, 2020.
- The said rule is now amended again to extend the period till September 30, 2020. Further, the amended rule also provides the facility to file return

¹² GST-ARA-120/2018-19/B-51 dated May 4, 2019
¹³ 2002-(ST2)-GJX-0053-SC

¹⁴ Notification no. 48/2020-Central Tax dated June 19, 2020



in Form GSTR-1 verified using EVC during the period May 27, 2020 till September 30, 2020.

Circular under Customs

Paperless Customs - Electronic communication of PDF based copies of shipping bill (“SB”) and e-gate pass to custom brokers / exporters¹⁵

- In order to promote “Faceless, Contactless, Paperless Customs”, the Customs authorities w.e.f. June 22, 2020 would only rely upon the digital copy of the SB bearing the final let export order (“LEO”). The digital copy would be electronically transmitted to the exporter and the present practice of printing copies of the said document for the exporters and also maintaining a docket in the Customs House would be discontinued.
- Directorate General of Systems has enabled a functionality of communicating the PDF version of the final LEO copy of the SB to the Customs Broker and exporter by email, if registered. This electronic final LEO copy can serve multiple purposes such as being shared with DGFT, Banks etc. Some of its salient features are as follows:
 - Digitally signed and encrypted QR code can be scanned and verified using the mobile App ICETRAK;
 - QR code would contain details like SB no., SB date, FOB value and package details;
 - QR code would have an embedded version number to ascertain that the document is indeed the latest version.
- SB printout is used extensively by logistics operators during movement of export goods (by rail, road, transshipment, etc.) as a proof of export. This is despite the electronic information being available in Customs Automated Systems and printing and use of transference copy made optional by the Board. Therefore, in order to meet the logistics need, the e-gate pass PDF copy of the SB would be

henceforth communicated through email to the customs broker and the exporter, if registered. Accordingly, printing of transference copies of SB would be discontinued.

- All the supporting documents pertaining to exports should be mandatorily uploaded in e-sanchit and collection of physical dockets shall be discontinued.
- Further, if in any other scenario where printout of SB is required, the same should be informed to CBICI. The respective Principal Commissioners / Commissioners of Customs would take a decision to allow printouts only in such exceptional situations.

Dhruva Comments:

The circular is a step in the right direction for ease of doing business especially during the current time of COVID-19 pandemic. It would also help in creating paperless environment in future.

Instruction under GST law

Payment of GST by real estate promoter / developer¹⁶

- CBIC had issued a notification¹⁷ whereby the rate of GST payable on construction of affordable residential apartments was taxable at the rate of 1% (without ITC) and 5% in respect of other residential apartments (without ITC).
- This rate was subject to a condition that minimum 80% of the value of input and input services [other than services by way of grant of development rights, long term lease of land or FSI, electricity, high speed diesel, motor spirit, natural gas] used in supplying construction service shall be received by the developer / promoter from **registered supplier** only. In case of shortfall of this threshold of 80%, the developer / promoter should pay GST under reverse charge mechanism on the shortfall. This

¹⁵ Circular No. 30/2020-Customs dated June 22, 2020

¹⁶ Instruction no. 3/2/2020-GST dated June 24, 2020

¹⁷ Notification no. 3/2019-Central Tax (Rate) dated March 29, 2019



shortfall was to be paid in the prescribed form by the end of the quarter following the financial year i.e. June 30, 2020 for FY 2019-20. However, no form was prescribed in the notification for making the tax payment.

- CBIC has now decided that **Form GST DRC-03** shall be used for making the payment of tax.





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