INDIRECT TAX CONTROVERSIES CAPSULE

ANANTHAM LEGAL

AUGUST 29, 2022

Exemption on supply of parts and accessories of hearing aids [*Sivantos India Private Limited, 2022-VIL-218-AAR*]

The taxpayer is engaged in the supply of parts and accessories of hearing aids. 'Hearing aids, excluding parts and accessories' are classifiable under Sub-heading 9021 40, whereas 'parts and accessories of hearing aids' are classifiable under Tariff Item 9021 90 10 of the First Schedule of the Customs Tariff Act, 1975 ('Customs Tariff Act'). Entry No. 221 of Schedule II to ***Notification No. 1/2017-CT(R)*** dated June 28, 2017 ('Notification 1/2017'), *viz.* exigible to GST at the rate of 12 per cent., covers various goods of Heading 9021, but specifically excludes hearing aids. Entry 142 of ***Notification No. 2/2017-CT(R)*** dated June 30, 2017 ('Notification 2/2017') grants exemption to 'hearing aids' of Heading 9021.

The CBIC *vide* ***Circular No. 113/32/2019-GST*** dated October 11, 2019 ('Circular') clarified that parts and accessories suitable for use with a medical device of Heading 9021 would also be assessable to GST at 12 per cent. along with the device. For this purpose, the CBIC relied upon Note 2(b) of Chapter 90 of the First Schedule of the Customs Tariff Act. The taxpayer contended that going by the analogy advanced by CBIC, parts suitable for use with hearing aids also ought to be classified along with hearing aids. Entry 142 of Notification 2/2017 does not exclude parts and accessories of hearing aids, as in the case of Sub-heading 9021 40.

The Authority for Advance Rulings observed that Note 2(a) to Chapter 90 of the First Schedule of Customs Tariff Act states that parts which are goods included in any heading of Chapter 90 will be classifiable in that heading. Note 2(b) covers only such parts and accessories that cannot be classified as per Note 2(a). Thus, parts and accessories of hearing aids which are specifically covered as goods under a separate Tariff Item cannot be classified along with hearing aids. The Authority further held that Entry 221 of Schedule II of Notification 1/2017 covers specific goods of Heading 9021, and conspicuously excludes hearing aids. Further, Entry 142 of Notification 2/2017 exempts only hearing aids of Heading 9021. Since the aforesaid entries fail to mention parts and accessories thereof, they will be covered under Entry 453 of Schedule III of Notification 1/2017, exigible to GST at the rate of 18 per cent.

Unutilised input tax credit will form part of cost for making exempt supply [*State Industrial Development Corporation of Uttaranchal Limited, 2022-VIL-224-AAR*]

The taxpayer received services of Uttarakhand Power Corporation Limited and Power Transmission Corporation of Uttarakhand Limited (collectively 'suppliers') for electrification, construction and increasing

capacity of electric sub-stations. The suppliers are not entitled to avail credit of input tax paid on their inward supplies of goods and services. The suppliers submit draft of cost estimates for execution of works contract. These estimates depicting GST twice: First, being GST paid by suppliers on their inward supplies; and Second, being GST computed on transaction value, inclusive of contingency charges, labour charges, supervision charges, etc. The taxpayer approached Authority for Advance Rulings to understand the correctness of imposition of GST two times.

The Authority held GST is computed on transaction value determined as per Section 15 of the Central Goods & Services Tax Act, 2017 ('CGST Act'). The transaction value being the price payable for the supply will necessarily include all the costs incurred by the supplier. The GST paid on inward supplies for which no input tax credit is admissible will form a cost to the supplier, and will be accordingly built into the price of the supply (transaction value). It is immaterial whether inward stage GST is indicated as a separate cost in the agreement or estimates submitted by the suppliers. The Authority accordingly upheld the inclusion of inward stage GST into the value of outward supply.

Comments: In this case, the taxpayer is a recipient of impugned taxable services rendered by suppliers. An application for advance ruling can be preferred only by a person liable to pay tax on the transaction for which ruling is sought. A recipient of supply cannot file an application for advance ruling, unless the transaction falls under reverse charge mechanism. The Authority clearly exceeded its jurisdiction in providing a ruling in the instant matter to the taxpayer, being recipient of the supply under consideration.

Tax on donation remitted to a society [*Mercara downs golf club v. CC, 2022-VIL-217-AAR*]

The taxpayer is a society registered under Karnataka Societies Registration Act, 1960 engaged in golf activities. The taxpayer received a donation of Rs.1 Crore from a donor, not being a member of the golf club. The taxpayer did not render any service or supply any goods in lieu of the donation. The taxpayer approached Authority for Advance Rulings to understand whether the donation is exigible to GST. The Authority held that donation was received by the taxpayer out of natural love or affection of the donor. There is no *quid pro quo* or supply for consideration by the taxpayer in favour of the donor. The present transaction is outside the scope of 'supply', and hence not exigible to GST.

Comments: This ruling is significant as it deals with taxability of donations. The issue however remains whether tax department will accept this ruling in case donation is received from a member. Section 7(1)(aa) of the CGST Act provides for imposition of tax on supply by society to its members. The provision here also uses the expression 'consideration'. Simply put, consideration is an essential feature for invocation of aforesaid provision. It is further noted that apparently there was no condition attached donation regarding

its use. The issue that arises is that fulfilment of condition attached to use of donation might be perceived as supply of service, and donation in that case consideration in lieu thereof. It will be interesting to see how this issue unfolds in future.

Composite supply when separate costs are identified under single contract [*Hyundai Rotem Company, 2022-VIL-216-AAR*]

The taxpayer has executed a contract with Delhi Metro Rail Corporation Limited ('DMRC') for design, manufacture, supply, testing, commissioning and training of rolling stock, including training of operation and maintenance personnel and supply of spares and manuals. The scope of work is divided into following distinct sets acting as separate cost centres:

Cost Centre	Description
A	Preliminaries and general requirements and design of Rolling Stock and provisions of mockup
B	Offshore manufacture, dispatch, completion of shipping to port in India, inland transportation in India, delivery and receipt of cars in depot
C	Indigenous manufacture, dispatch, inland transportation in India, delivery and receipt of cars in depot
D	Testing in the depot, integrated testing and commission of trains, service trails and final commissioning
E	Depicted in detail in the contract document
F	Depicted in detail in the contract document
G	Unit exchange spares, mandatory spares, recommended spares, consumable spares, special tools, testing and diagnostic, equipment, intermediate overhauling spares, trouble shooting and driving simulator
H	Training and manuals

The taxpayer approached Authority for Advance Ruling to understand whether the complete transaction will attract the concept of composite supply.

The Authority observed that terms of contract lay down separate scope of work in respect to supplies to be made through each cost centre. Distinct milestone completion dates are set out in case of each set. The Appellate Authority for Advance Ruling ('Appellate Authority') of Karnataka in the case of ***CGST v. BEML Limited, 2021-VIL-42-AAAR*** held bifurcation of scope of work and the cost points towards intention of

making separate supplies. The concept of composite supply is not applicable inasmuch as the supplies are not integrated with each other.

Comments: The presence of single consideration is conspicuously absent from the definition of 'composite supply' under Section 2(30) of the CGST Act. This absence becomes even more significant in light of the requirement of single consideration for mixed supply under Section 2(74) of the CGST Act. The ruling fills the gap and perceives composite consideration as a necessary concomitant for invocation of composite supply. The ruling equates the concept of composite supply under the GST laws with the concept of naturally bundled services under the *erstwhile* service tax regime. The concept of naturally bundled services required presence of a single consideration.

Input tax credit on upfront premium paid for lease of an immovable property [*Kamarajar Port Limited, 2022-VIL-223-AAR*]

The taxpayer executed an agreement with Chennai Port Trust for lease of covered space, with intention of opening an extended corporate office. The taxpayer paid an upfront amount for grant of lease and GST attributable thereto. The taxpayer approached Authority for Advance Rulings to understand whether it is entitled to the credit of said GST amount.

The revenue sought to disallow the credit under Section 17(5)(d) of the CGST Act. The provision blocks credit attributable to goods and services received by a taxpayer for construction of an immovable property on its own account. The Authority observed that leased premises already has a super structure. There is no material on record showing that the premium amount paid is related to any construction activity. Hence, taxpayer is entitled to avail credit of GST paid on upfront premium.

Comments: The scope of Section 17(5)(d) of the CGST Act is unclear to the extent it seeks to disallow credit to entities that acquire land for undertaking construction activity. The credit is not blocked if an entity acquires land with a super structure and ready for immediate use. The provision poses a significant question: whether the credit is blocked in entirety or only to the extent of time duration during construction is undertaken. The latter interpretation seems a more nuanced and appropriate interpretation.

CUSTOMS LAW

Customs officer cannot challenge the classification of goods for imposition of integrated tax [*Ortho Clinical Diagnostics (India) Private Limited v. CC, 2022-VIL-620-CESTAT-MUM-CU*]

The taxpayer imported diagnostic kits-ELISA, CLIA, diagnostic reagents on backing, controls and calibrators and other consumable reagents. The taxpayer classified imported goods under Tariff Item 3822 00 19 of the First Schedule to the Customs Tariff Act. The taxpayer discharged integrated tax at the rate of 5 per cent. under Entry 180 of Schedule I of Notification 1/2017. Entry 180 covers drugs or medicines, including their salts and esters, and diagnostic test kits, specified in List 1 thereto classifiable under under Chapter 30 or any other Chapter of the First Schedule of the Customs Tariff Act.

The customs department sought to classify imported goods under Entry 453 of Schedule III of Notification 1/2017 exigible to GST at the rate of 18 per cent. Entry 453 is a residuary entry, covering goods not classified anywhere else. The Customs, Excise and Service Tax Appellate Tribunal ('Appellate Tribunal') held integrated tax envisaged under Section 3(7) of the Customs Tariff Act is not an additional duty of customs, but a separate levy emanating from Section 5 of the IGST Act. Only central tax officers are empowered to re-assess the integrated tax payable on imported goods. The customs authorities do not have jurisdiction to challenge the assessment of integrated tax paid on imported goods.

Comments: The ratio of this decision unsettles assessment of integrated tax undertaken by the customs authorities with respect to imported goods. The customs department, especially the Directorate of Revenue Intelligence, has been regularly assuming jurisdiction and issuing notices challenging the assessment of integrated tax. The taxpayers relying on the above judgment can hereinafter assail such notices on the ground of lack of jurisdiction. The judgment certainly opens a pandora box of disputes pertaining to nature of levy. It may now be argued that taxpayers having confusion regarding levy of integrated tax under Section 3(7) of the Customs Tariff Act will be required to prefer applications for advance ruling before GST authorities.

Import value cannot be rejected based on contemporaneous imports [*Bytesware Electronics v. CC, 2022-VIL-614-CESTAT-BLR-CU*]

The taxpayer imported 23,750 units of integrated circuits, meant for students and hobbyists for their projects and for body temperature measuring devices. The revenue raised doubts regarding the declared value and contended that value should be determined as per Rule 4 of the Customs Valuation (Determination of Value

of Imported Goods) Rules, 2007 ('Customs Valuation Rules'). The revenue cited value declared on another import of integrated circuits made by importer.

The Appellate Tribunal observed that taxpayer had earlier imported only 25 units of integrated circuits. These integrated circuits were meant for use in medical devices. Owing to difference in quantity and usage of integrated circuits, value could not be determined basis Rule 4 of the Customs Valuation Rules. Reliance only on contemporaneous imports is not enough as two business models cannot be compared. The Appellate Tribunal accordingly upheld the transaction value.

Exemption on import of lithium-ion cell (Captive Consumption for LED) [*HQ Lamps Manufacturing Company Private Limited, 2022-VIL-68-AAR-CU*]

The taxpayer is a leading manufacturer of LED emergency bulb / light. The taxpayer imported 'Lithium-Ion Cell (Captive Consumption for LED)' ('impugned goods') for use in manufacturing activity. An LED Emergency bulb lights up when there is supply of power / current, and when the power / current stops, it remains illuminated with the essential property of power backup for some hours. The product is sold in the market as Emergency LED Bulb or Inverter LED Bulb, which provides backup of 3-4 hours.

S. No. 471 of ***Notification No. 50/2017-Cus*** dated June 30, 2017 ('Notification 50/2017'), as amended by ***Notification No. 2/2021-Cus*** dated February 1, 2021, grants exemption to parts imported for use in manufacture of LED lights, the extract of which is reproduced as under:

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S. No.	Tariff Item	Description	Basic Customs Duty	Integrated tax	Condition No.
471	Any Chapter	All parts for use in the manufacture of LED lights or fixtures including LED Lamps	5 per cent. [Old rate] OR 10 per cent. [Amended rate]	-	9

The revenue contented that impugned goods are not essential for an emergency bulb, but merely add an extra feature to the bulb. The entry must be interpreted strictly to allow only exemption on parts meant for manufacture of 'LED light', and not 'LED emergency light'.

The Authority held that emergency lights are neither classified elsewhere nor specifically excluded from the scope of the exemption entry. Inevitably, LED emergency lights are LED lights only. The impugned goods are pre-requisite for an emergency bulb. Hence, the benefit of exemption is admissible.

THANK YOU!

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