

# “MEGA GST WORKSHOP”



ORGANIZED BY  
WIRC OF ICAI

PRESENTED BY



AN INVESTMENT IN KNOWLEDGE PAYS THE BEST RETURN

7th July,2018

CA Rajiv Luthia

1

## COVERAGE

- ADVANCE RULING UNDER GST



7th July,2018

CA Rajiv Luthia



2

# ADVANCE RULING

7th July,2018

CA Rajiv Luthia

3

## Application for Advance Ruling – Sec 97

An Applicant desirous of obtaining an advance ruling

May make Application along with fees in such form & manner, as may be prescribed on following question

Classification of any goods or service or both

Determination of Time & value of supply of goods/Service

Whether applicant is required to be registered

Determination of liability to pay tax on goods/service or both

Applicability of Notification

Admissibility of ITC paid

Particular thing done by applicant results in supply within meaning of term supply

- No AAR for determining "Place of Supply"

7th July,2018

CA Rajiv Luthia

4

## Advance Ruling – Section 95(a)

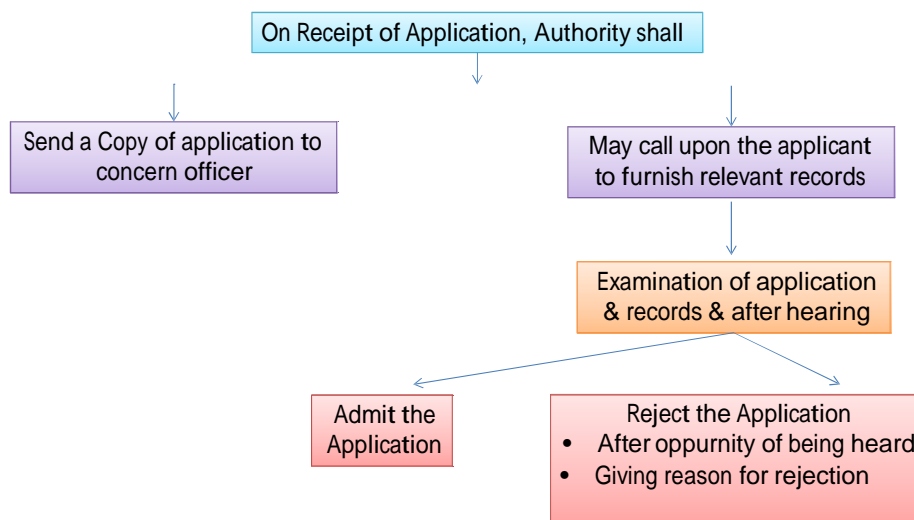
- “Advance Ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matter or on questions specified in section 97(2) or 100(1), in relation to supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

7th July,2018

CA Rajiv Luthia

5

## Procedure for Advance Ruling – Sec 98



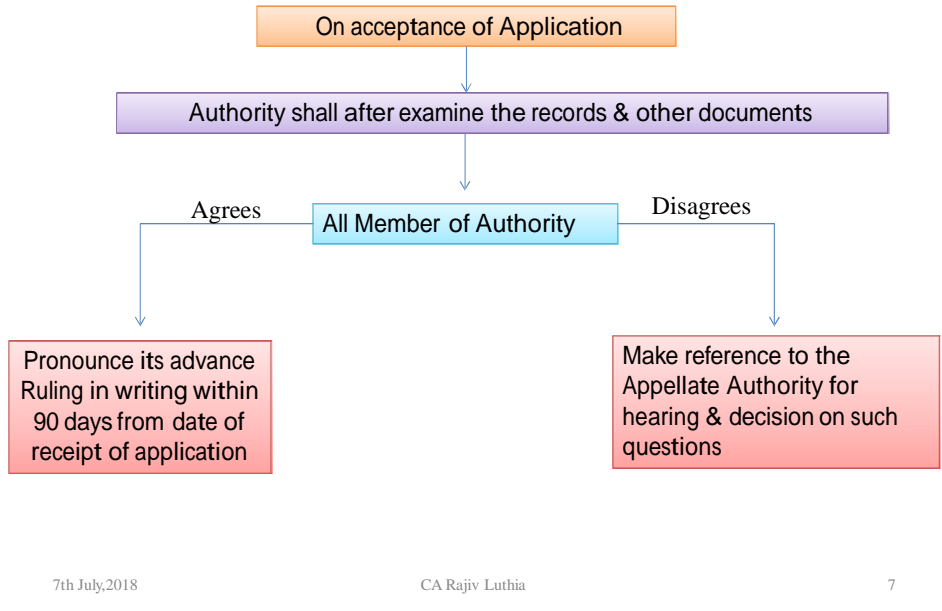
- Authority **shall not admit the application** where the question raised in application is already pending or decided in any proceeding in the case of applicant

7th July,2018

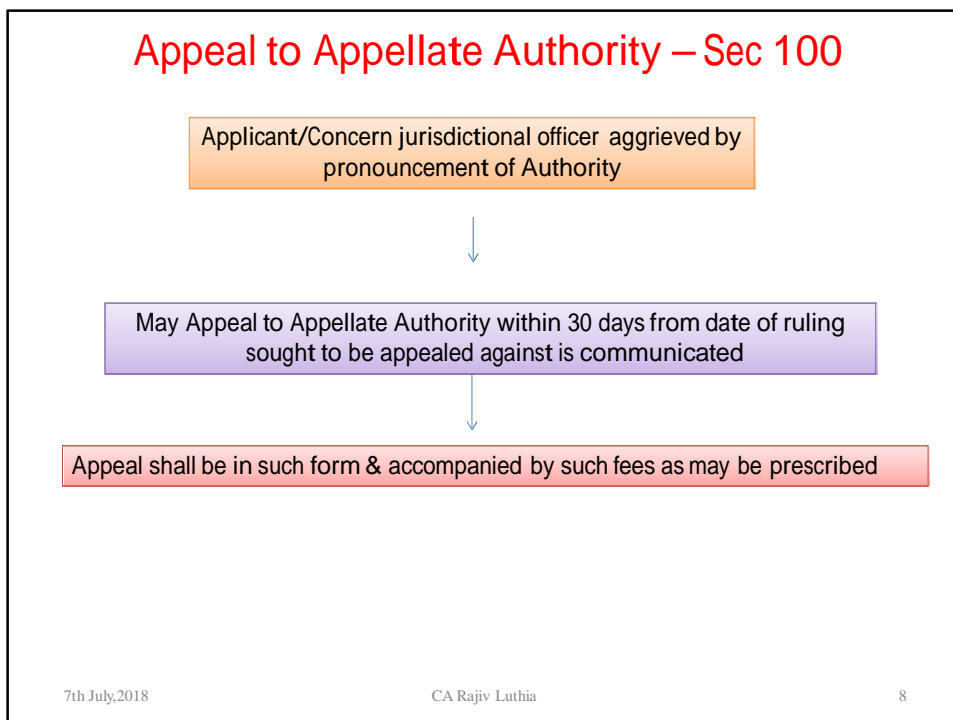
CA Rajiv Luthia

6

## Procedure for Advance Ruling – Sec 98



## Appeal to Appellate Authority – Sec 100



## Order of Appellate Authority – Sec 101

Appellate Authority after giving opportunity of being heard

Pass Such order within 90 days as it thinks fit, confirming or modifying the ruling appealed against

Appellate authority may amend any order passed by it within 6 months from the date of order , if error is apparently noticed on face of records

- If Member of Appellant Authority differs on any points, it shall deemed that no advance ruling can be issued in respect of question appealed against.

## Applicability of advance Ruling – Sec 103

Advance Ruling binding on

Applicant

Jurisdictional tax authority

Unless

Law, facts or Circumstances have Changed

## Ruling Void ab initio – Sec 104

- If Authority/ Appellant Authority finds ruling obtained by the applicant by fraud / misrepresentation / suppression of facts.
- It may by order declare advance ruling as void-ab-initio, after giving an opportunity of being heard
- All provisions of the Act or rules made thereunder shall apply as if such advance ruling had never been made.

## FEW IMPORTANT ADVANCE RULINGS IN GST

M/s Joint Plant Committee -2018- TIOL-07-AAR-  
GST, Kolkata, order dated 21<sup>st</sup> March, 2018

ISSUE

- Whether a person is required to obtain registration, if he is engaged in supplying goods & services that are wholly exempt from tax but person is liable to pay tax under reverse charge mechanism u/s 9(3) ?

7th July,2018

CA Rajiv Luthia

13

Advance Ruling – M/s Joint Plant Committee

FACTS

- M/s Joint Plant Committee, a non profit organization set up by the Central Government under Clause 17 of the Iron & Steel (Control) order.
- The main function of M/s Joint Plant committee is to
  - manage and operate the Steel Development Fund and other funds accumulated under the Iron & Steel (Control) Order, 1956;
  - study and analysis of and maintenance of a comprehensive database on market situation in the Iron & Steel Sector including fluctuation in market price, production, availability and movement of material etc.

7th July,2018

CA Rajiv Luthia

14

## Advance Ruling – M/s Joint Plant Committee

### FACTS

- The main source of appellants income is money given out of Steel Development fund resulting in
  - Interest on deposit and
  - Interest on loan.
- The secondary source of income is
  - the consideration received from sale of journals and periodicals and from
  - Rent received for providing accommodation in its guest houses.

7th July,2018

CA Rajiv Luthia

15

## Advance Ruling – M/s Joint Plant Committee

### APPLICANTS VIEW

- Its income is exempt under section 10(23C) (IV) of the Income Tax Act, 1961.
- The nature and type of charitable institutions and/or organizations registered under section 12AA of the IT Act and the charitable institutions and/or organizations registered under section 10(23C)(iv) of the IT Act are same and identical, and, therefore, all its supplies of services should come under serial no. 1 of the Notification No. 12/2017 – Central Tax (Rate) & are therefore exempt.

7th July,2018

CA Rajiv Luthia

16



## Advance Ruling – M/s Joint Plant Committee

### AUTHORITYS VIEW

- Exemption under serial no. 1 of Notification 12-2017 CT ® (R) for Services is granted for charitable activities within the meaning of definition clause (r) of the said notifications
- The following activities are covered in said notification
  - activities relating to public health of specific categories,
  - advancement of religion, spirituality or yoga,
  - advancement of educational programmes or skill development relating to specific categories and
  - preservation of environment, including watershed, forests and wildlife

7th July,2018

CA Rajiv Luthia

17

## Advance Ruling – M/s Joint Plant Committee

### AUTHORITY VIEW POINT

- None of the applicant's services are cover under this clause. Serial no. 1 of the Exemption Notifications for Services, therefore, not applicable.
- Serial Number 14 of Notification 12/2017-CT is grants exemption to exemption to accommodation in guest house if declared tariff is below Rs. 1,000/-

7th July,2018

CA Rajiv Luthia

18

## Advance Ruling – M/s Joint Plant Committee

### AUTHORITY VIEW POINT

- Since applicant provide guest house accommodation at declared tariff below Rs. 1,000/- per day it will be covered by the said exemption notification
- Supply of journal & periodicals are wholly exempt under serial no. 120 of notification 2/2017-CT (R) – Tariff head : 4907

7th July,2018

CA Rajiv Luthia

19

## Advance Ruling – M/s Joint Plant Committee

### AUTHORITY VIEW POINT

- Applicant main income of interest on deposits, loans or advances is exempt under serial no. 27 of Exemption notification 12/2017
- Therefore, applicants income is wholly exempt under GST, applicant need not register as per section 23(1).

7th July,2018

CA Rajiv Luthia

20

## Advance Ruling – M/s Joint Plant Committee

### AUTHORITY VIEW

- However, if the applicant is required to pay tax under reverse charges under section 9(3) of CGST Act, 2017, will he require to get registered as per section 24(iii) inspite of fact that his total turnover is exempt under exemption notification?
- Reverse charge is defined under section 2(98) of the GST Act as “liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both u/s 9(3) or 9(4).

7th July,2018

CA Rajiv Luthia

21

## Advance Ruling – M/s Joint Plant Committee

### RULING

- Person is not required to be obtain registration under the GST if he is **not otherwise** liable to pay tax under reverse charge under section 9(3) of the GST Act.

7th July,2018

CA Rajiv Luthia

22

## Advance Ruling – M/s Joint Plant Committee

### AUTHORITY VIEW POINT

- Section 24 is not subject to the provisions of Section 23 of the GST Act.
- If a person, therefore, is not liable to be registered for making exclusively exempt supplies but is liable to pay tax under Reverse Charges under Section 9(3) of the GST Act or 5(3) of the IGST Act, he shall be required to get himself registered under the GST Act, irrespective of the quantum of the aggregate turnover.
- **Similar view taken by authority in Sonka Publications (India) Pvt. Ltd. (2018) TIOL 30, Delhi dated 6<sup>th</sup> April, 2018.**

7th July, 2018

CA Rajiv Luthia

23

## M/s Synthite Industries Ltd 2018-TIOL-02-AAR-GST, KERALA, order dated 26<sup>th</sup> March, 2018

### Issue

- Whether GST is payable on sale of goods procured from outside India & supplied directly to customer located out of India ?

7th July, 2018

CA Rajiv Luthia

24

## Advance Ruling – M/s Synthite Industries Ltd

### □ Facts

- M/s Synthite Industries Ltd are in the business of trading in spices and spice products.
- Transaction 1 :
  - They receive order from a customer in USA for the supply of spice products.
  - They place a corresponding order to a supplier in China for supplying the goods ordered by the customer in USA.
  - The supplier in China, based on the request of the applicant, ship the goods directly to the customer in USA.
  - In other words, the goods do not come to India.
  - The Chinese supplier issues invoice to the applicant, for which, payment will be made by the applicant in due course. Subsequently, the applicant will raise invoice on the customer in USA, and collect the proceeds.

7th July, 2018

CA Rajiv Luthia

25

## Advance Ruling – M/s Synthite Industries Ltd

### □ Facts

- Transaction 2 :
  - They avail storage facility in the form of a residential warehouse in Netherlands for storing their products and subsequent delivery to their customers in and around Netherlands.
  - The storage facility is open to all, and interested entities across the globe can keep their products, by paying applicable storage rent. The applicant is availing a portion of the storage facility as and when required.
  - They use the facility for quick and timely delivery of their products to their customers based on demand.
  - When an order is received from the customer by the applicant, they can immediately deliver the products from this warehouse and this reduces the freight expenses and delay in delivery.
  - These types of transactions are legally permitted and they have obtained necessary permission from Reserve Bank of India.

7th July, 2018

CA Rajiv Luthia

26

## Advance Ruling – M/s Synthite Industries Ltd

### □ Facts

- Whether on procuring goods from China, in a context where the goods purchased are not brought into India, is GST payable by them?
- On the sale of goods to the company in USA, where goods sold are shipped directly from China to USA without entering India, is GST payable by them?
- On procuring goods from China not against specific export order, in a context when the goods purchased are not brought into India, is GST payable by them?
- On the sale of goods from Netherlands warehouse to their end customers in and around Netherlands, without entering India, is GST payable by them?

7th July,2018

CA Rajiv Luthia

27

## Advance Ruling – M/s Synthite Industries Ltd

### □ Authority view point

- As per Section 2(10) of the IGST 2017, “Import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India
- As per 7(2) of the IGST Act, 2017, supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-state trade or commerce.

7th July,2018

CA Rajiv Luthia

28

## Advance Ruling – M/s Synthite Industries Ltd

### Authority view point

- Section 5(1) of the IGST Act, 2017 states that, subject to the provisions of sub - section (2), there shall be levied a tax called the integrated goods and services tax in all inter-state supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under Section 15 of the Central Goods and Services Tax Act, and at such rates, not exceeding forty percent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

**Provided that** the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975, on the value determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962

7th July,2018

CA Rajiv Luthia

29

## Advance Ruling – M/s Synthite Industries Ltd

### Authority view point

- The Customs Tariff Act, 1975 was amended by The Taxation Laws Amendment Act, 2017 by introducing section 3(7) of the Customs Tariff Act, 1975 with effect from 01.07.2017 to enable collection of integrated tax on the goods imported
- From a combined reading of the above provisions of the IGST Act, 2017, the Customs Tariff Act, 1975, and the Customs Act, 1962, it is evident that the integrated tax on goods imported into India shall be levied and collected at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 i.e. on the date determined as per provisions of Section 15 of the Customs Act, 1962.

7th July,2018

CA Rajiv Luthia

30

## Advance Ruling – M/s Synthite Industries Ltd

### □ Authority view point

- When a question regarding the leviability of IGST on High Sea Sales of imported goods and point of collection thereof was raised before the CBEC, the CBEC vide Circular No. 33/2017-Customs dated 01.0B.2017 had clarified that IGST shall be levied & collected only at the time of importation i.e. when import declaration are filed before the customs authority for custom clearance.

7th July,2018

CA Rajiv Luthia

31

## Advance Ruling – M/s Synthite Industries Ltd

### □ Ruling

- The goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India.
- The applicant is neither liable to GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in Netherlands, after being procured from China, to customers, in and around Netherlands, as the goods are not imported into India at any point

7th July,2018

CA Rajiv Luthia

32



## Advance Ruling – M/s Synthite Industries Ltd

### Issue

- Territorial jurisdiction for levy on supply
  
- “export of goods” – With its grammatical variation & cognate expression, means taking goods out of India to a place out of India

7th July, 2018

CA Rajiv Luthia

33

## BASF India Ltd. (2018) TIOL 82 Maharashtra, order dated 21<sup>st</sup> May, 2018

### Issue

- Whether high seas sales is liable to GST when customers are known to the applicant at the time of placing order on the overseas party?
  
- Whether ITC would be required to be reversed in case high seas sales is not liable to GST?

7th July, 2018

CA Rajiv Luthia

34

**BASF India Ltd. (2018) TIOL 82 Maharashtra, order dated 21<sup>st</sup> May,2018**

Facts

- The applicant is manufacturer and trader of chemicals and allied products.
- The applicant buys goods from their overseas related party at arm's length price against the purchase order received by them from their customers.
- The Bill of Lading ("BL") shows applicant as buyer of goods.
- The applicant executes high seas sale agreement before the goods cross the customs frontier of India and endorses the BL in the name of end customer. Such end customer is already identified at the time of placing order to overseas party for purchase of goods.
- The Import General Manifest ("IGM") will be filed by the shipping line in the name of end customer.
- The end customer clears the goods by filing Bill of Entry and paying appropriate customs duties along with IGST.

7th July,2018

CA Rajiv Luthia

35

**BASF India Ltd. (2018) TIOL 82 Maharashtra, order dated 21<sup>st</sup> May,2018**

Applicant View Point

- As per Section 7(2), supply of goods imported into India, till they cross customs frontiers of India, are treated as inter-state supplies.
- As per Section 5(1), IGST is leviable on all inter-state supplies
- However, as per proviso to Section 5(1), when goods are imported into India, the IGST would be levied U/s.3(7) of CTA at the point of levy of Customs Duty.
- Circular No.33/2017-Customs dated 1<sup>st</sup> August,2017 clarifies that IGST on high seas sales would be levied only at the time of importation i.e. when the import declaration are filed before customs authorities.
- In view of above, high seas sales affected by the applicant are not liable to IGST.

7th July,2018

CA Rajiv Luthia

36

BASF India Ltd. (2018) TIOL 82 Maharashtra, order dated 21<sup>st</sup> May,2018

Applicant View Point

- As regards reversal of ITC, Section 17(2) contemplates reversal of ITC in case of exempt supplies.
- In the case of the applicant, since the end customer pays IGST at the time of importation of goods in India, the same does not get covered in definition of “exempt supply” U/s.2(47)

7th July,2018

CA Rajiv Luthia

37

BASF India Ltd. (2018) TIOL 82 Maharashtra, order dated 21<sup>st</sup> May,2018

Department View Point

- The department agreed on the point that the applicant is not liable to pay IGST in view of clarifications issued through Circular No.33/2017-Customs.
- The definition of exempt supply U/s.2(47) also includes non-taxable supply hence the applicant is required to reverse ITC.

7th July,2018

CA Rajiv Luthia

38

**BASF India Ltd. (2018) TIOL 82 Maharashtra, order dated 21<sup>st</sup> May,2018**

**□ Authority View Point**

- As per Section 7(2), supply of goods imported into India till they cross the customs frontiers are treated as inter-state supply of goods.
- When the applicant is selling these goods on high seas basis, these goods have not crossed the customs frontiers of India hence the transaction is in the nature of inter-state supply of goods.
- As per proviso to Section 5(1), IGST on such transactions is levied & collected in accordance with Section 3 of Customs Tariff Act & Section 12 of Customs Act at the time of import into India.
- Thus in case of good sold on high seas basis, though they are clearly covered in the definition of inter-state supplies, they would be covered in the definition of “exempt supply” as no duty is leviable on them except in accordance with proviso to Section 5(1).

7th July,2018

CA Rajiv Luthia

39

**BASF India Ltd. (2018) TIOL 82 Maharashtra, order dated 21<sup>st</sup> May,2018**

**□ Authority View Point**

- The definition of exempt supply U/s.2(47) also includes “non-taxable supply”.
- Section 2(78) defines “non-taxable supply” which includes goods on which no tax is leviable under CGST Act or IGST Act.
- Thus sale of goods on high seas basis is clearly covered within the definition of “exempt supply” as being “non-taxable supply”.
- This is clarified by Circular No.3/1/2018-IGST dated 25<sup>th</sup> May,2018 issued by CBIC, GST Policy Wing.

7th July,2018

CA Rajiv Luthia

40

**BASF India Ltd. (2018) TIOL 82 Maharashtra, order dated 21<sup>st</sup> May,2018**

**□RULING**

- Applicant is not liable to pay IGST in respect of High Seas Sales.
- However, the applicant is required to reverse ITC by treating the same as exempt supply.

7th July,2018

CA Rajiv Luthia

41

**M/s Switching Avo Electro Power Ltd- 2018-TIOL-05-AAR-GST, Kolkata, order dated 21<sup>st</sup> March, 2018**

**□Issue**

- Whether supply of UPS along with the battery is composite supply u/s 2(30) or Mixed Supply u/s 2(74)?

7th July,2018

CA Rajiv Luthia

42

## Advance Ruling – M/s Switching Avo Electro Power Ltd

### Facts

- Company is engaged in business of supplying Power Solutions, including UPS, Servo Stabiliser, batteries etc.
- They supply UPS & battery separately as well as UPS along with batteries.
- Batteries are classified under Tariff Heads 8506 (Primary cells/ batteries) and 8507 (Electrical accumulators) of the First Schedule of the Tariff Act.
- The basic difference between the two Tariff Heads is the ability of accumulators to be recharged, whereas primary cell batteries cannot be recharged.
- An accumulator is an energy storage device, which accepts energy, stores it and releases it when needed. Rechargeable batteries, flywheel energy storage, capacitors etc. are examples of accumulators. In common usage in an electrical context, an accumulator usually refers to a lead-acid battery.

7th July,2018

CA Rajiv Luthia

43

## Advance Ruling – M/s Switching Avo Electro Power Ltd

### Facts

- A UPS is classified under Tariff Head 8504.
- It is an electrical apparatus that provides emergency power to a load when the input power source or mains power fails. A UPS differs from an auxiliary or emergency power system or standby generator in that it provides immediate protection from input power interruptions by supplying energy stored in batteries, super capacitors or flywheels. The on-battery runtime of most UPS is relatively short but sufficient to start a standby power source or properly shut down the protected equipment. A UPS is typically used to protect hardware such as computers, data centres, telecommunication equipment or other electrical equipment where an unexpected power disruption could cause injuries or data loss.

7th July,2018

CA Rajiv Luthia

44

## Advance Ruling – M/s Switching Avo Electro Power Ltd

### □ Authority View Point

- Section 2(30) of the GST Act defines “Composite Supply” as “a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply”.
- Principal Supply is defined under Section 2(90) of the GST Act as “the supply of goods/services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary”

7th July, 2018

CA Rajiv Luthia

45

## Advance Ruling – M/s Switching Avo Electro Power Ltd

### □ Facts

- The UPS serves no purpose if the battery is not supplied or attached. It cannot function as a UPS unless the battery is attached

7th July, 2018

CA Rajiv Luthia

46

## Advance Ruling – M/s Switching Avo Electro Power Ltd

### Authority View Point

- “Mixed supply” is defined under section 2(74) of the GST Act as one where “two or more individual supplies of goods/services or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply”

7th July,2018

CA Rajiv Luthia

47

## Advance Ruling – M/s Switching Avo Electro Power Ltd

### Authority View Point

- Since UPS & batteries can be separately supplied in retail set up. A person can purchase standalone UPS & a battery from different vendors. Therefore, it is obvious that the UPS & battery have separate commercial values as goods & should be taxed under respective tariff heads when supplied separately.
- Even if UPS & batteries are supplied together for a single price under a single contract, still it cannot be termed as composite supply. They are not naturally bundled in ordinary course of business.

7th July,2018

CA Rajiv Luthia

48



## Advance Ruling – M/s Switching Avo Electro Power Ltd

### RULING

- Supply of UPS & battery is to be considered as Mixed supply as they are supplied under a single contract at a single price.

7th July,2018

CA Rajiv Luthia

49

## Kansai Nerolac Paints Ltd. (2018) TIOL 09-AAR Maharashtra, order dated 5<sup>th</sup> April, 2018

### Issue

- Whether accumulated credit by way of KKC appearing in ST Return of ISD as on 30<sup>th</sup> June,2017 and carried forward in ECL under GST would be admissible as ITC?

7th July,2018

CA Rajiv Luthia

50

**Kansai Nerolac Paints Ltd. (2018) TIOL 09-AAR  
Maharashtra, order dated 5<sup>th</sup> April, 2018**

**□ Facts**

- The applicant was manufacturer of paints as well as rendering works contract services.
- Applicant was registered as Input Service Distributor and was availing and distributing credit of Service Tax along with KKC.

7th July,2018

CA Rajiv Luthia

51

**Kansai Nerolac Paints Ltd. (2018) TIOL 09-AAR  
Maharashtra, order dated 5<sup>th</sup> April, 2018**

**□ Applicant View Point**

- KKC was levied by Section 161(5) of the Finance Act,2016.
- 122<sup>nd</sup> amendment to Constitution of India has deleted Entry No.92C of Union List-I in view of implementation of GST. This implies that KKC is subsumed in GST along with Service Tax.
- Section 140(1) of CGST Act allows registered person to carry forward CENVAT balance of his last return in ECL.
- Chapter V of Finance Act,1994 and rules made thereunder including that of refunds, exemptions etc. shall equally apply to levy and collection of KKC.
- Vide Notification No.28/2016-CE (NT) CENVAT credit for KKC was allowed by inserting relevant clause in Rule 3 in CCR,2004.

7th July,2018

CA Rajiv Luthia

52

**Kansai Nerolac Paints Ltd. (2018) TIOL 09-AAR  
Maharashtra, order dated 5<sup>th</sup> April, 2018**

**Department View Point**

- Section 140(1) of CGST permits carry forward in GST regime of closing balance of credit in respect of Central Excise, Service Tax, local VAT etc. and definition of input tax as per Section 2(62) does not include any cess.
- KKC was notified by Notification No.28/2016-CE (NT) and the same was allowed to be used as CENVAT Credit for paying liability of KKC only.
- Tax, duty and cess are distinct levy as held in the WP of Cellular Operators Association of India.
- Levy of KKC was in line with SBC.
- CBEC, vide its FAQ, has clarified that SBC is not integrated into CENVAT Credit chain therefore credit for SBC is not permitted.
- Since SBC & KKC are on same line, the FAQ issued in respect SBC would equally apply to KKC.

7th July,2018

CA Rajiv Luthia

53

**Kansai Nerolac Paints Ltd. (2018) TIOL 09-AAR  
Maharashtra, order dated 5<sup>th</sup> April, 2018**

**Authority View Point**

- Agreed with departmental view.

7th July,2018

CA Rajiv Luthia

54

Kansai Nerolac Paints Ltd. (2018) TIOL 09-AAR  
Maharashtra, order dated 5<sup>th</sup> April, 2018

RULING

- Credit of KKC cannot be carried forward in GST Regime.

7th July,2018

CA Rajiv Luthia

55

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR  
Karnataka, order dated 21<sup>st</sup> March, 2018

Issue

- Whether the Hotel Accommodation & Restaurant services provided by the applicant, within the premises of the Hotel to the employees & guests of SEZ units be treated as supplies classifiable as “Zero Rated supplies” in view of Section 16(1)(b) of the IGST Act?

7th July,2018

CA Rajiv Luthia

56

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR  
Karnataka, order dated 21<sup>st</sup> March, 2018

Facts

- The applicant is supplying services of hotel accommodation and restaurant services to the employees and guests of SEZ units through its hotel located at Belgaum, Karnataka.
- The hotel of the applicant is situated outside the SEZ.
- The applicant raises bills for such services on the units located within SEZ wherein the applicant charges CGST & SGST on such supplies.
- The recipient of supplies, i.e. SEZ units, contend that such supplies are covered as “Zero Rated Supplies” and hence liable for GST at NIL rate.

7th July, 2018

CA Rajiv Luthia

57

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR  
Karnataka, order dated 21<sup>st</sup> March, 2018

Applicant View Point

- Supplies to SEZ Units are covered under the definition of “Zero Rated Supplies” in view of Section 16(1)(b) of the IGST Act.

7th July, 2018

CA Rajiv Luthia

58

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR  
Karnataka, order dated 21<sup>st</sup> March, 2018

□ Authority View Point

- Rule 46 stipulates that invoice shall carry endorsement “Supply to SEZ unit/Developer for authorised operations”
- On combined reading of Section 16(1)(b) & Rule 46, it is clearly evident that supplies of goods / services / both towards authorised operations only shall be treated as supplies to SEZ units/developers.
- Place of Supply for hotel accommodation services is location of immovable property in view of Section 12(3)(b).
- Similarly, the Place of Supply for restaurant services is the location of performance in view of Section 12(4).
- Such services cannot be said to have been “imported or procured” into SEZ unit/developer.

7th July,2018

CA Rajiv Luthia

59

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR  
Karnataka, order dated 21<sup>st</sup> March, 2018

□ RULING

- Such supplies provided by the applicant within the hotel premises cannot be treated as supplies of goods or services to SEZ Units.
- Hence such supplies cannot be covered under “Zero Rated” supplies.
- Such supplies are covered as “intra-state” supplies and accordingly liable to GST.

7th July,2018

CA Rajiv Luthia

60

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR  
Karnataka, order dated 21<sup>st</sup> March, 2018

□ Issues

- Section 16(1)...Supply of goods or services or both to a SEZ Developer / Unit treated as “Zero Rated Supply”.
- Act does not specify any condition related to procurement of goods / services by such SEZ unit for authorised operation in order to be treated as “Zero Rated Supply”.
- Rule 46....Tax invoice to carry additional endorsement related to supply meant for authorised operations.
- Similarly, Rule 89 requires evidence regarding receipt of goods/services for authorised operations while claiming refund in respect of such supplies.
- Can Rules prescribe any condition which the Act has not envisaged?
- The ruling suggests that any service performed outside the SEZ area is not covered within the meaning of “Zero Rated Supply”

7th July,2018

CA Rajiv Luthia

61

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR  
Karnataka, order dated 21<sup>st</sup> March, 2018

□ Issues

- The ruling treats such supplies as “intra-state supplies”.
- However, Section 7(5)(b) of the IGST Act defines such supplies as “inter-state supplies”.
- Further, 1<sup>st</sup> proviso to Section 8(2) of the IGST Act clearly provides that “the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit”
- **Circular No.48/22/2018-GST dated 14<sup>th</sup> June,2018....** Section 7(5)(b) of the IGST Act is a specific provision relating to supplies made to SEZ & would prevail over Section 12(3)(c) hence services of Short Term Accommodation, conferencing, banqueting etc. provided to SEZ unit shall be treated as inter-state supply.

7th July,2018

CA Rajiv Luthia

62

Shreenath Polyplast Pvt. Ltd. (2018) TIOL 26 Gujarat,  
order dated 19<sup>th</sup> February, 2018

Issue

- Whether interest charged by Del Credere Agent to buyers of material for short term loan given is exempt from levy of GST under Entry No.27 of Notification No.12/2017-Central Tax (Rate)?

7th July,2018

CA Rajiv Luthia

63

Shreenath Polyplast Pvt. Ltd. (2018) TIOL 26 Gujarat,  
order dated 19<sup>th</sup> February, 2018

Facts

- Applicant is Del Credere Agent appointed by supplier of goods.
- Applicant performs dual roles; i) promote sale and take orders for goods supplied directly by principal and ii) guarantee the payment of goods supplied by principal.
- Applicant gets commission from principal on which applicant pays GST.
- On many occasions, the applicant extends short term financing facility to buyers of goods by making payment of sale price to principal on behalf of buyers.
- Such short term loan is repaid by buyers of goods after agreed period along with applicable interest on which buyers deduct TDS.

7th July,2018

CA Rajiv Luthia

64



Shreenath Polyplast Pvt. Ltd. (2018) TIOL 26 Gujarat,  
order dated 19<sup>th</sup> February, 2018

Applicant View Point

- Amount charged by applicant from buyers of goods is covered within the meaning of “interest”.
- Such interest charged by the applicant is not for delayed payment of consideration of any underlying supply since the applicant is not supplying any goods to the buyer but it is the principal who is directly supplying the goods.
- Hence such interest is not includible in value of taxable supply as envisaged U/s.15(2)(d).
- The arrangement of short term financing is equivalent to loan hence interest charged by applicant is exempt under Entry No.27 of Notification No.12/2017-CT (R).

7th July,2018

CA Rajiv Luthia

65

Shreenath Polyplast Pvt. Ltd. (2018) TIOL 26 Gujarat,  
order dated 19<sup>th</sup> February, 2018

Authority View Point

- Extension of loan by the applicant to the customers is a transaction separate from the transaction of supply of goods by the principal to the customers against consideration wherein the applicant also gets the commission from the principal.
- Interest received by the applicant is consideration towards loan extended to the customers and such interest is not towards the payment of consideration for supply of goods by the principal to the customers which is a separate transaction.

7th July,2018

CA Rajiv Luthia

66

**Shreenath Polyplast Pvt. Ltd. (2018) TIOL 26 Gujarat,  
order dated 19<sup>th</sup> February, 2018**

**□ RULING**

- Interest received by the applicant as consideration for extending short term loans to buyers of goods is covered under Entry No.27 of Notification No.12/2017-Central Tax (Rate) and hence exempt from payment of GST.

7th July,2018

CA Rajiv Luthia

67

**Maharashtra State Power Generation Co. (2018) TIOL  
33 Maharashtra, order dated 8<sup>th</sup> May, 2018**

**□ Issue**

- Whether GST is applicable on liquidated damages (“LD”) levied by service recipient in case of delay on the part of contractor to complete the services?

7th July,2018

CA Rajiv Luthia

68

## Maharashtra State Power Generation Co. (2018) TIO

33 Maharashtra, order dated 8<sup>th</sup> May, 2018

### Facts

- The applicant is State Power Utility engaged in generation of power with objective to make power available to all at affordable rates.
- The applicant has entered into contract for construction of new power plants / renovation of old plants on turnkey basis.
- Normally, the contracts are awarded in 3 parts viz. supply of materials, erection & commissioning and civil work.
- Generally, the period of completion of work is fixed and mentioned in the contract.
- If there is any delay in completion of contract and such delay is on account of contractor, the applicant recovers LD from the contractor.
- The said LD is reduced from the total project cost while capitalizing the asset.

7th July,2018

CA Rajiv Luthia

69

## Maharashtra State Power Generation Co. (2018) TIO

33 Maharashtra, order dated 8<sup>th</sup> May, 2018

### Applicant View Point

- There is no explicit agreement between the applicant and the contractor wherein the applicant is intending to supply services of “tolerance” of delay.
- The delay is neither desired by the applicant nor by the contractor. LD is levied merely to impress upon the contractor to adhere to timelines.
- It is never the intention of the applicant to get it’s project delayed nor the contractors want to make delay thereby causing the applicant to tolerate.
- Since the recovery of LD is part of the contract, the value of main supply reduces to the extent of recovery of LD.

7th July,2018

CA Rajiv Luthia

70

## Maharashtra State Power Generation Co. (2018) TIO

33 Maharashtra, order dated 8<sup>th</sup> May, 2018

### Applicant View Point

- The applicant relied on the GSTR Ruling 2003/11 issued by Australian Tax Authority wherein it is clarified that if the clause relating to early termination has been specified in contract of lease and the early termination has been made in accordance with the said contract, then payment towards termination will be considered as change of consideration of earlier supply and not as separate supply.
- If LD are to be borne by service provider then same will be considered as towards deficiency of services and thereby reduces the original consideration. It will not be considered as separate service and hence is not covered by the term “obligation to tolerate an act or a situation”.
- LD are in the nature of a measure of damages to which parties agree rather than a remedy. By charging damages or forfeiture, one party does not accept or permit the deviation of the other party. It is an expression of displeasure.
- For determining the tax implications with regard to a transaction, reliance needs to be placed on the intention of the contracting parties as gathered from the contract or conduct of the parties.

7th July,2018

CA Rajiv Luthia

71

## Maharashtra State Power Generation Co. (2018) TIO

33 Maharashtra, order dated 8<sup>th</sup> May, 2018

### Authority View Point

- On perusal of different clauses of contract, it is observed that the contract price and LD are two different aspects. Deduction of one from the other is a mere facilitation towards settlement of accounts.
- **The obligations on the contractor calling for supply of the deliverables is one event.** This event consisting of a supply occurs first. After occurrence of this event, there is evaluation in terms of whether the supply of deliverables under the agreement were supplied within the time frame. This evaluation results in either a timely or delayed or premature performance. **The finding of this evaluation when there being a delay, the contingent liability of LD translates into actual recoverable liability. This is the second event.**

7th July,2018

CA Rajiv Luthia

72

Maharashtra State Power Generation Co. (2018) TIO

33 Maharashtra, order dated 8<sup>th</sup> May, 2018

□ Authority View Point

- Both the events have their consequences. The first event calls for the payment of a contract price to the contractor. The second event calls for payment of LD to the applicant. **Both the contract price and levy of LD are distinct events.**
- The clauses related to contract price and contract value also do not specifically indicate any reduction in the contract price due to levy of LD.
- The clause relating to payment towards advance or payment for execution, testing, commissioning also does not require invoices to be considered taking into consideration the liability towards LD.
- Thus, the value of work done and which is to be paid is not affected by amount deducted therefrom towards LD. Thus, the consideration for the work done remains unaltered.

7th July,2018

CA Rajiv Luthia

73

Maharashtra State Power Generation Co. (2018) TIO

33 Maharashtra, order dated 8<sup>th</sup> May, 2018

□ RULING

- The empowerment to levy LD is for the reason that there has been a delay and the same would be tolerated, but for a price or damages.
- The impugned income though presented in the form of deduction from the payments to be made to the contractor is the income of the applicant and would be a supply of “service” by the applicant in terms of clause (e) of para 5 of Schedule II i.e. “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”.

7th July,2018

CA Rajiv Luthia

74

**CMS Info System Ltd. (2018) 5 TMI 649 Maharashtra,  
order dated 19<sup>th</sup> March, 2018**

**□ Issue**

- Whether supply of motor vehicles after it's usage can be treated as "supply in the course or furtherance of business" and accordingly, whether such supply would attract GST?
- Without prejudice, if the applicant is held to be liable to GST in respect of such supply, whether the applicant can claim ITC?

7th July,2018

CA Rajiv Luthia

75

**CMS Info System Ltd. (2018) 5 TMI 649 Maharashtra,  
order dated 19<sup>th</sup> March, 2018**

**□ Facts**

- The applicant is engaged in Cash Management Services which includes providing ATMs and it's installation, managing cash circulation through transporting cash from currency chests to bank branches, cash pick up and delivery from and to dedicated banks.
- Such transportation of cash is done through security vans popularly known as "cash carry vans".
- The applicant purchases raw motor vehicles and gets is converted to cash carry vans with requisite fabrications.
- When these vans cannot be used further, the applicant sells these motor vehicles as scrap.
- The applicant does not avail Input Tax Credit either on purchase of vehicles or on fabrication.

7th July,2018

CA Rajiv Luthia

76

**CMS Info System Ltd. (2018) 5 TMI 649 Maharashtra,  
order dated 19<sup>th</sup> March, 2018**

**□Applicant View Point**

- A transaction would be treated as supply only when the transaction is in the course or furtherance of business.
- To call some transaction/activity as business, it has to be in the nature of any 'trade', 'commerce' etc.
- From the above dictionary meanings of above terms, it appears that to consider something as business, it should be an 'activity' and not a stray transaction.
- On analysing clarification issued by Finance Ministry through Press Release dated 13<sup>th</sup> July,2017 on activity of selling old gold, it clearly appears that the intention of Government is not to treat all the transactions as 'supply' unless the same are carried in the normal course of business activities which are carried with an intention to engage supplier into the activities of buy and sell of relevant commodities/services.

7th July,2018

CA Rajiv Luthia

77

**CMS Info System Ltd. (2018) 5 TMI 649 Maharashtra,  
order dated 19<sup>th</sup> March, 2018**

**□Applicant View Point**

- Entry No.1 of Schedule I also covers permanent transfer or disposal of business assets as deemed supply only when input tax credit has been availed on such assets.
- As regards claim for ITC, the same should be allowed in view of Section 17(5) on two counts viz i) the vehicles are used for further supply of such vehicles and ii) they are used for transportation of goods.
- In the instant case, transportation of currency should be treated as transportation of goods and not transportation of money. Sr. No.6 of Annexure to Rule 138 exempts preparation of e-way bill for transportation of currency which clearly implies that the term "currency" is different than the term "money".
- Besides, such vans are also used for transportation of other valuable items such as gold, silver, coins, ingots etc. which are clearly goods.

7th July,2018

CA Rajiv Luthia

78

**CMS Info System Ltd. (2018) 5 TMI 649 Maharashtra,  
order dated 19<sup>th</sup> March, 2018**

**Department View Point**

- The definition of “business” U/s.2(17)(a) includes any trade, commerce, manufacture, vocation etc. whether or not for a pecuniary benefit.
- Similarly Section 2(17)(c) includes any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction.
- Therefore the activity of supply of vehicles as scrap after usage shall fall under the definition and scopes of supply comes under the definition of Business.
- As regards ITC, Cash Management Services do not fall within exceptional cases as mentioned in Section 17(5)(a). So also, the definition of goods excludes “money” hence the vans cannot be said to be used for transportation of goods hence ITC is not available.

7th July,2018

CA Rajiv Luthia

79

**CMS Info System Ltd. (2018) 5 TMI 649 Maharashtra,  
order dated 19<sup>th</sup> March, 2018**

**Authority View Point**

- The disposal of the cash carrying vans is a transaction in connection with or incidental or ancillary to the business of having a cash management network.
- Buying new assets and discarding the old and unusable assets is an activity in the course of carrying on of the business.
- “supply” in section 7 says that supply is one which is made or agreed to be made for a consideration. Therefore, Schedule I comes up with cases made exceptional for being treated as 'supply' for the reason that they lack the crucial element of 'consideration'.

7th July,2018

CA Rajiv Luthia

80



CMS Info System Ltd. (2018) 5 TMI 649 Maharashtra,  
order dated 19<sup>th</sup> March, 2018

Authority View Point

- As regards ITC, there is a difference of opinion.
- As per one member, ITC is not available since Section 17(5) carves out exception for “further supply” which means resale. The word “further” before the word “supply” has to be given its proper weightage.
- However, the member agreed to the applicant’s view point that currency in the instant case would be treated as goods and not money, hence the applicant is eligible to claim ITC since vans would be used for transportation of goods.
- The dissenting member did not agree with the view point that the currency in the instant case would be treated as goods. As per his view, the currency would remain money and hence excluded from the definition of goods hence no ITC can be availed.

7th July,2018

CA Rajiv Luthia

81

CMS Info System Ltd. (2018) 5 TMI 649 Maharashtra,  
order dated 19<sup>th</sup> March, 2018

RULING

- Supply of motor vehicles after it’s usage would be treated as “supply in the course or furtherance of business” and accordingly, such supply would attract GST.
- In view of difference of opinion on the issue related to eligibility of ITC, appropriate reference is made to the Appellate Authority for hearing and decision.

7th July,2018

CA Rajiv Luthia

82

Reliance Infrastructure Ltd. GST-ARA-11/2017-B-14  
Maharashtra, order dated 21<sup>st</sup> March,2018

Issue

- Whether reinstatement charges & access charges paid to Municipal Authorities in order to get permission for carrying out excavation of roads for laying, repair and maintenance of electric supply lines are liable to GST?

7th July,2018

CA Rajiv Luthia

83

Reliance Infrastructure Ltd. GST-ARA-11/2017-B-14  
Maharashtra, order dated 21<sup>st</sup> March,2018

Facts

- Applicant is engaged in the business of generation, transmission and distribution of electricity and is operating & maintaining a robust distribution system for supplying electricity to consumers.
- In view of the powers conferred U/s. 67 of the Electricity Act, the applicant makes payment of various charges to MCGM for granting trench excavation permission to carry out work such as laying of new lines, maintenance of existing lines etc. Such charges are levied based on the dimension of trench, nature of surface etc.

7th July,2018

CA Rajiv Luthia

84

Reliance Infrastructure Ltd. GST-ARA-11/2017-B-14

Maharashtra, order dated 21<sup>st</sup> March,2018

Applicant View Point

- Such charges paid to MCGM are exempt in view of Entry No.4 of Notification No.12/2017-Central Tax (Rate) as “services by Central Government, State Government, Union Territory, Local Authority or Governmental Authority by way of **any activity in relation to any function entrusted to a municipality under Article 243W** of the Constitution of India.”
- Schedule 12 of Constitution prescribes the functions entrusted to a Municipality under Article 243W.
- The activity of “restoration of roads, bridges etc.” is covered under Entry No.4 the said schedule therefore reinstatement charges paid for restoration of roads is exempt from levy of GST.
- Similarly, the access charges paid for granting rights for carrying out excavation work for laying of cables are in conjunction with reinstatement charges hence would amount to composite supply and the same would also be exempt from levy of GST.

7th July,2018

CA Rajiv Luthia

85

Reliance Infrastructure Ltd. GST-ARA-11/2017-B-14

Maharashtra, order dated 21<sup>st</sup> March,2018

Department View Point

- The local authorities are bestowed with powers & responsibilities for the activities mentioned in 12<sup>th</sup> Schedule towards economic development and social justice of the people.
- Such authorities also build roads and bridges, including restoration, repair etc., among other activities for the development & interest of the locality.
- In the instant case, the services provided by MCGM to applicant are purely for furtherance of applicant’s business which is a commercial purpose hence doesn’t come under the purview of Article 243W.
- Accordingly, no exemption is available to the said activities hence the applicant is liable to pay tax under RCM.

7th July,2018

CA Rajiv Luthia

86

Reliance Infrastructure Ltd. GST-ARA-11/2017-B-14

Maharashtra, order dated 21<sup>st</sup> March,2018

Authority View Point

- The function as entrusted by Constitution in relation to “roads” is the construction of roads for the use by the general public. **These are sovereign functions.**
- The activity in present case is the charges recovered by the MCGM to restore that portion of the street or pavement which has been dug up. It does not amount to construction of entire road as such.
- The function in relation to “roads” as entrusted by the Constitution does not entitle the Municipality to receive any charges from anyone for doing the said work. It is by nature a sovereign function done for community at large. These are governmental functions which are legislated to be performed by the Municipalities. Such functions are in the nature of performing works for the public.

7th July,2018

CA Rajiv Luthia

87

Reliance Infrastructure Ltd. GST-ARA-11/2017-B-14

Maharashtra, order dated 21<sup>st</sup> March,2018

Authority View Point

- In the present case, the business entities, while performing their business activities, request the Municipal Authorities to be allowed to dig up trenches for works such as laying or repairing some cables or pipes.
- This restoration work would not result in performing of sovereign function. The sovereign function has already been performed by constructing the road or undertaking maintenance works of the roads. The restoration work can be equated neither to construction work nor to maintenance work as suo-motu undertaken by the Municipal Authorities. The restoration charges are also not in nature that the Municipal Authorities are performing any job of construction for the applicant.
- These activities cannot be equated to performing a sovereign function as envisages under Article 243W.

7th July,2018

CA Rajiv Luthia

88

Reliance Infrastructure Ltd. GST-ARA-11/2017-B-14  
Maharashtra, order dated 21<sup>st</sup> March,2018

RULING

- Reinstatement charges & access charges paid to Municipal Authorities in order to get permission for carrying out excavation of roads for laying, repair and maintenance of electric supply lines are liable to GST since the same does not amount to sovereign function.
- Accordingly, the applicant is liable to pay GST under RCM in view of Entry No.5 of Notification No.13/2017-Central Tax (Rate).

7th July,2018

CA Rajiv Luthia

89

Zaver Shankarlal Bhanushali (2018) TIOL 84  
Maharashtra, order dated 22<sup>nd</sup> May,2018

Issue

- Whether compensation received by the tenant for arranging alternate accommodation during the course of redevelopment of building is liable to GST?
- Whether compensation received by the tenant for delayed handover of possession of the constructed premises is liable to GST?

7th July,2018

CA Rajiv Luthia

90

**Zaver Shankarlal Bhanushali (2018) TIOL 84  
Maharashtra, order dated 22<sup>nd</sup> May,2018**

Facts

- Applicant is tenant of a commercial building owned by the owner M/s. Future Communication Ltd.
- The owner has entered into agreement with builder to redevelop the existing building.
- Consequently, the owner has entered into agreement with the applicant to vacate the premises for the purpose of redevelopment.
- The applicant would be allotted commercial premises in the newly redeveloped building.
- The applicant would also be paid monthly compensation by the owner/builder for arranging alternate accommodation during the course of redevelopment.
- In addition, the applicant would also be paid a monthly compensation in case of delay in handing over the possession of new premises.

7th July,2018

CA Rajiv Luthia

91

**Zaver Shankarlal Bhanushali (2018) TIOL 84  
Maharashtra, order dated 22<sup>nd</sup> May,2018**

Applicant View Point

- The receipt of compensation is not treated as “rent” under the Income Tax Act,1961.
- The same is not liable to TDS U/s.194I in view of the decision of Hon’ble Mumbai ITAT in the case of Sahana Dwellers Pvt. Ltd. Vs ITO (ITA No.5963/Mum/2013)

7th July,2018

CA Rajiv Luthia

92

**Zaver Shankarlal Bhanushali (2018) TIOL 84**

**Maharashtra, order dated 22<sup>nd</sup> May,2018**

**□ Department View Point**

- Section 7(1) of the CGST Act includes all forms of supply such as sale, transfer, barter, exchange etc. in the course or furtherance of business.
- Section 9 levies CGST on all intra-state supplies of goods or services.
- Entry No.5(e) of Schedule-II covers “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or todoan act” as supply of services.
- The applicant is doinganact of vacating the premises rented by the owner.
- The developer would be liable to pay GST on the construction services rendered to the applicant in respect of the constructed unit in the newly redeveloped building and would be eligible to take ITC in respect of GST paid by applicant on compensation.

7th July,2018

CA Rajiv Luthia

93

**Zaver Shankarlal Bhanushali (2018) TIOL 84**

**Maharashtra, order dated 22<sup>nd</sup> May,2018**

**□ Authority View Point**

- Supply as per clause 7(1)(a) must be supply of goods or services for a consideration in course or furtherance of business.
- Clause 7(1)(d) does not define supply but classifies supply into either “supply of goods” or “supply of services”.
- Clause 5(e) of Schedule-II defines “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” as supply of services.
- The applicant has agreed to do an act that of vacating the premises to facilitate supply of service by the developer to the owner for which the applicant is to receive compensation.
- During the period of redevelopment, the applicant remains tenant of the owner and continues to pay them fixed rentals.

7th July,2018

CA Rajiv Luthia

94

Zaver Shankarlal Bhanushali (2018) TIOL 84

Maharashtra, order dated 22<sup>nd</sup> May,2018

Authority View Point

- By vacating the premises for redevelopment, the applicant is agreeing to the obligation to refrain from an act or tolerating an act or situation of redevelopment in place of old premises and of not causing hindrance or creating obstacle in the same.
- The compensation received towards alternate accommodation or delayed possession of premises would be receipt of amount towards doing an act i.e. vacating the premises for redevelopment as well as tolerating the construction cum redevelopment work till possession of new redeveloped premises and further for tolerating an act i.e. the act of not having completed the redevelopment within prescribed time period.
- The decision cited under Income Tax provisions does not alter the position under GST.

7th July,2018

CA Rajiv Luthia

95

Zaver Shankarlal Bhanushali (2018) TIOL 84

Maharashtra, order dated 22<sup>nd</sup> May,2018

RULING

- The applicant is liable to pay GST on compensation received for arranging alternate accommodation as well as for delay in handing over the possession of newly constructed premises.

7th July,2018

CA Rajiv Luthia

96



M/S CALTECH POLYMERS PVT. LTD. – 2018-TIOL-01-AAR-GST, KERALA – order dated 26<sup>th</sup> March, 2018

ISSUE

- Whether recovery of food expenses from employees for the canteen services provided by company is outward supplies ?
- Whether liable to GST ?

7th July,2018

CA Rajiv Luthia

97

M/S CALTECH POLYMERS PVT. LTD. – 2018-TIOL-01-AAR-GST, KERALA

FACTS

- M/s. Caltech Polymers Pvt. Ltd., Kerala are engaged in manufacture and sale of footwear.
- They are providing canteen services exclusively for their employee
- They are incurring the canteen running expenses and are recovering the same from their employees without any profit margin.

7th July,2018

CA Rajiv Luthia

98

## M/s Caltech Polymers Pvt. Ltd.

### FACTS

- Canteen Service provided to the employee is not being carried out as a business activity.
- As per section 46 of The Factories Act, 1948, any factory employing more than 250 workers is required to provide canteen facility to its employees.

7th July,2018

CA Rajiv Luthia

99

## M/s Caltech Polymers Pvt. Ltd.

### APPLICANT'S VIEW

- Entry 19 of Notification 25/2012-ST dated 20<sup>th</sup> June, 2012 exempts service provided in relation to serving of food or beverage by a canteen maintained in a factory covered under the Factories Act, 1948 including a canteen having the facility of Air-conditioning or central air heating at any time during the year.

7th July,2018

CA Rajiv Luthia

100

## Advance Ruling – M/s Caltech Polymers Pvt. Ltd.

### APPLICANT's VIEW

- The said activity does not fall within the scope of “Supply” as the same is not in course or furtherance of its business.
- It is only facilitating the supply of food to the employees, which is a statutory requirement, and they are recovering only the actual expenditure incurred for food supply, without making any profit.

7th July,2018

CA Rajiv Luthia

101

## Advance Ruling – M/s Caltech Polymers Pvt. Ltd.

### Authority's view

- Section 2(17) - “Business” includes:-
  - (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit:
  - (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- From plane reading of section 2(17), supply of food by the applicant to its employee would fall under definition of Business, as the transaction is incidental or ancillary to main business

7th July,2018

CA Rajiv Luthia

102

## M/s Caltech Polymers Pvt. Ltd.

### Authority view

- [Schedule I](#) to the [CGST Act, 2017](#) describes the activities to be treated as supply of goods or supply of services.
- As per clause 6 of the said Schedule, the following composite supply is declared as supply of service. "supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration"

7th July, 2018

CA Rajiv Luthia

103

## Advance Ruling – M/s Caltech Polymers Pvt. Ltd.

### Authority's view

- Even though there is no profit as claimed by the applicant on the supply of food to its employees, there is "supply" in view of [Section 7\(1\)\(a\)](#) of the [CGST Act, 2017](#)
- Section 2(105) of CGST Act, "Supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied
- The applicant would definitely come under the definition of "Supplier" as provided in [sub-section \(105\) of Section 2](#) of the [CGST Act, 2017](#).

7th July, 2018

CA Rajiv Luthia

104

## M/s Caltech Polymers Pvt. Ltd.

### Authority view

- Section 2(31) of CGST Act, 2017 - "Consideration" in relation to the supply of goods or services or both includes—
  - (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
  - (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:
- Since, Applicant recovers the cost of food from its employees, there is consideration as defined in [Section 2\(31\)](#) of the [CGST Act, 2017](#).

7th July, 2018

CA Rajiv Luthia

105

## Advance Ruling – M/s Caltech Polymers Pvt. Ltd.

### RULING

- Recovery of food expenses from the employees for the canteen services provided by company would be covered under the definition of 'outward supply' as defined in [Section 2\(83\)](#) of the [CGST Act, 2017](#), and therefore, taxable as a supply of services under GST.

7th July, 2018

CA Rajiv Luthia

106

## Advance Ruling – M/s Caltech Polymers Pvt. Ltd.

- Issues

- Snacks , Tea, Coffee etc. provided to employees during office hours as a general business practice without any consideration
- Umbrellas, Rain Coats etc. provided to employee without any consideration
- Employer & employee are “Related person” in view of section 15(5).
- Schedule I of section 7 treat transaction without consideration as supply of goods/service between related person when made in course or furtherance of business.
- Valuation rules will trigger.

7th July,2018

CA Rajiv Luthia

107

## Shri Sanjeev Sharma – 2018 (4) TMI 1077, New Delhi, order dated 28<sup>th</sup> march, 2018

### Issue

- Whether GST will be applicable on sale of undivided & impartible share of land represented by agreement to sell the Land ?
- Whether GST shall be applicable on sale of Superstructure which is under construction?

7th July,2018

CA Rajiv Luthia

108

## Shri Sanjeev Sharma – 2018 (4) TMI 1077, New Delhi

### Development and construction of Project

- Post purchase of land/ acquisition of land rights:
  - a. The applicant shall apply for the requisite approvals.
  - b. The applicant plans to get the construction work done by contractors as well as on its own.
  
- Following agreements would be entered into by the Applicant:
  - a. One for sale of undivided and impartible share in land; and
  - b. Another agreement for sale of superstructure.

7th July,2018

CA Rajiv Luthia

109

## Shri Sanjeev Sharma – 2018 (4) TMI 1077, New Delhi

### Facts

- The applicant plans to engage itself in the development and sale of residential houses, generally floors/ flats in India.

### Acquisition of Land

- The proposed modus operandi shall be that the applicant shall either purchase land or it shall enter into collaboration agreements with various land owners whereby the applicant shall acquire the right to develop the property and further sell the units developed thereon.
  - a. In case of purchased land: the applicant shall be entitled to sell all the units developed thereon,
  - b. In cases of development and sale rights: the applicant shall be entitled to sell the flats/ unit falling to the applicant's share, in terms of the collaboration agreement.

7th July,2018

CA Rajiv Luthia

110

## Shri Sanjeev Sharma – 2018 (4) TMI 1077, New Delhi

- In case where there are two transactions each represented by a separate Agreements i.e.
  - i. One for sale of undivided and impartible share in land @ say ₹ 100; and
  - ii. Another agreement for sale of superstructure @ say ₹ 15
- Following are the questions on which the applicant is seeking advance ruling:
  - a) Whether GST will be applicable on the sale of undivided and impartible share of land represented by Agreement to sell the land?
  - b) Whether GST shall be applicable on sale of superstructure (which is under construction)?
  - c) If yes:-
    - i. What will be the value on which tax is payable?
    - ii. What would be the applicable rate for charging GST?

7th July,2018

CA Rajiv Luthia

111

## Shri Sanjeev Sharma – 2018 (4) TMI 1077, New Delhi

### □ Applicant View Point

- Sale of land is out of the scope of the definition of Supply under GST, as the same has been prescribed under Entry 5 of Schedule III of the CGST Act, 2017. Consequently, transfer of undivided and impartible share in land would not be leviable to GST.
- From a conjoint reading of Section 7 and Entry 5 of Schedule III of CGST Act, any activity/ transaction which is in the nature of 'sale of land' is not covered within the purview of GST. Consequently, no GST is payable on the transactions resulting in the sale of land.

7th July,2018

CA Rajiv Luthia

112



## Shri Sanjeev Sharma – 2018 (4) TMI 1077, New Delhi

- In case of supply of service of construction, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation .– For the purposes of paragraph 2, “total amount” means the sum total of,-

- (a) consideration charged for aforesaid service; and
  - (b) amount charged for transfer of land or undivided share of land, as the case may be.
- Further, even in respect of superstructure, GST should be imposed only on the value of construction on or after the agreement with the buyer i.e. after deducting the value of construction already completed till the date of agreement

7th July,2018

CA Rajiv Luthia

113

## Shri Sanjeev Sharma – 2018 (4) TMI 1077, New Delhi

- The applicant has submitted that laws in India recognises “land” and “super-structure” as separate and independent immovable properties. The applicant has referred to provision of General Clauses Act, Indian Contract Act, 1872, Specific Relief Act, Transfer of Property Act, The Indian Evidence Act, Registration Act, Stamp Act, Income Tax Act etc. to claim that land and building are two different assets or immovable property and that land and superstructure can be independently sold and purchased. However, under GST, the valuation of supply of goods and services has to be done in accordance with Section 15 of the CGST Act, 2017
- The supply in this case is a composite supply consisting of three components, namely
  - (i) land on which the complex or building is constructed,
  - (ii) goods which are used in construction activities and
  - (iii) services undertaken by the applicant directly or through other contractors.

7th July,2018

CA Rajiv Luthia

114

## Shri Sanjeev Sharma – 2018 (4) TMI 1077, New Delhi

- While admitting that GST cannot be levied on the value of land or value of undivided share of land, the question which needs to be answered is how the value of the said land needs to be ascertained.
- In this case, the measure of tax should be the value of goods and services supplied by excluding the value of land. However, since land cannot be separately sold, a deemed value of land need to be ascertained on which GST would not be payable.
- The applicant wants the value of land to be ascertained by him on the basis of Rule 30 of CGST Rules, 2017, as the said Rules, do not provide any other specific provision to ascertain the value of land for exclusion.

7th July,2018

CA Rajiv Luthia

115

## Shri Sanjeev Sharma – 2018 (4) TMI 1077, New Delhi

### □ Authority View Point

- GST Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 - S. No. 3 r/w Paragraph 2, the deemed value of land or undivided share of land has been fixed at one-third of the total amount charged. Hence, in GST, the machinery provisions to ascertain the value of land is available in the notification which has been issued under Sub-Section (5) of Section 15 of the CGST Act, 2017 regarding value of taxable supply
- The said Notification has been issued under Section 15(5) of the CGST Act, 2017 by the Government on the recommendation of the GST Council and hence, no separate Rule was required to be issued. Hence, Paragraph 2 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 is fully authorised by Section 15(5) of the CGST Act, 2017 to provide machinery provisions to ascertain the value of land for exclusion and to measures the value of supply of goods and services for levy of GST.

7th July,2018

CA Rajiv Luthia

116

## Shri Sanjeev Sharma – 2018 (4) TMI 1077, New Delhi

### □RULING

- In the case of supply of services by way of construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier, the GST would be payable on two-third of the total amount consisting of amount charged for transfer of land or undivided share of land, as the case may be, and whole of the consideration charged for the supply of goods and service.
- Hence, the value of land, or the undivided share of land, as the case may be, would be deemed to be one-third of the total amount, which is excluded from the value for the purposes of payment of GST. Even if agreement between the applicant and the buyer is entered after part of the construction is already completed, whole of the consideration would be added for payment of GST.

7th July,2018

CA Rajiv Luthia

117

WITH KNOWLEDGE..... WE KNOW THE WORDS,  
BUT WITH EXPERIENCE..... WE KNOW THE MEANING

*Thank You!*



**CA. Rajiv Luthia**

7th July,2018

CA Rajiv Luthia

118