



**SNR** & COMPANY  
CHARTERED  
ACCOUNTANTS



# **GST Bulletin**

June 2022

## JUDICIAL UPDATES

### 1. *No GST on services by security manager located outside India for subscription to secured notes placed in USA:*

**Case of:** Adani Green Energy Ltd.

**Decision by:** AAR, Gujarat

- The applicant raised funds by issuing Senior Secured Notes (Notes) in terms of Subscription Agreement dated 01-09-2021 entered into with Axis Bank Limited, Singapore & others for acting as Managers. All these Managers did not have any establishment in India & also undertook business from outside India.
- The advance ruling is sought to enquire whether the Applicant is liable to discharge GST under the reverse charge mechanism in respect of the services of arranging for subscription supplied to the Applicant, by the Managers located outside India?
- The applicant submitted that the negotiation with the Managers to arrange for subscribers commenced much prior to the execution of the Agreement. Prior thereto, the Managers undertook the activity of coordinating between the subscribers & the applicant so as to arrange for subscription for the issue & had collectively secured sufficient funds. Thus, the applicant stated that since the place of supply of intermediary services supplied by the Managers is outside India, the same are not taxable & hence, no GST is payable on RCM basis.
- The authority found that the notes issued by the applicant were 'securities'. The main supply of Notes is between the applicant & investors both acting as principals & the Manager is supplying ancillary service of arranging the main supply.
- Therefore, since, both the Manager & Place of Supply were in non-taxable territory, subject transaction is not an import of service & no GST is leviable on the subject transaction.

**Read Full Ruling:** [Adani Green Energy Limited](#)

#### SNR's Take:

*"The AAR has rendered a very logical ruling. The security manager was merely facilitating the issuer as well as subscribers & thus, falls under the definition of intermediary. As such, no GST shall be charged on such a transaction, since both the service provider and the place of supply falls in the non-taxable territory as per section 13(8) of IGST Act"*

## 2. Concessional GST rate of 0.75% on construction applies to promoter and not to sub-contractor:

**Case of: OM Construction Company**

**Decision by: AAR, Karnataka**

- The applicant is engaged in the business of civil construction of residential premises & supplies works contract as a sub-contractor to the main contractor who provides works contract services to construct houses under PMAY scheme.
- The applicant has sought the advance ruling in respect of the question regarding the applicability of Serial No.3(i) of Notification No.03/2019-Central Tax (Rate), (parent Notification No. 11/2017-Central Tax (Rate) as amended by Notification No.30/2018-Central Tax (Rate) to the applicant who is one of the sub-contractors to the builder / Developer / Contractor of Affordable housing under PMAY Scheme & Eligibility of concessional rate of CGST at 0.75% as amended from time to time.
- The Applicant submitted that the government has notified the concessional rate of 0.75% to enable the Developer/Builder to undertake the Affordable housing project by engaging sub-contracts to keep the price of the Flats within the prescribed limit. If the sub-contractors are denied the concessional rate, the very purpose of the PMAY scheme & the intention of the Notification will be defeated.
- The Authority observed that the Notification No. 11/2017-Central Tax (Rate), as amended by the Notification No. 3/2019-Central Tax (Rate), provides that the concessional rate of 0.75% CGST is applicable only to the promoter in respect of the Construction of affordable residential apartments in a RREP.
- In the instant case it is an admitted fact that the applicant is not a promoter but a sub-contractor and hence, the benefit of the said entry i.e. concessional rate of GST of 0.75%, for the proposed construction, is not applicable to the applicant.

**Read Full Ruling: [Om Construction company](#)**

### SNR's Take:

*"The ruling of the AAR that Notification No. 11/2017 is applicable only on promoters of Affordable Housing Project is correct in terms of literal interpretation of the stated notifications. However, it's indeed a fact that in such projects, a lot of work has to be done by the sub-contractors resulting in increase of the cost of such projects & whole purpose of concessional rate notification is defeated. CBIC should issue appropriate clarification in this regard."*

### 3. *Ocean freight levy violates 'Composite supply' principle under GST:*

**Case of:** Union of India vs Mohit Minerals Pvt Ltd

**Decision by:** Supreme Court

- The assessee is an importer of non-coking coal by ocean transport on a 'Cost-Insurance-Freight' basis. The service of shipping in these CIF contracts is availed by the overseas exporter who engages & pays a foreign shipping line of their choice, without the involvement of the importer.
- The government on the advice of GST Council has issued Notification which levied an integrated tax at the rate of 5% on the supply of specified services, including transportation of goods, in a vessel from a place outside India up to the customs station of clearance in India. Further, it categorized the recipient of services of supply of goods by a person in a non-taxable territory by a vessel to include an importer under Section 2(26) of the Customs Act 1962. The effect of such notifications was that the Indian importer was subjected to the levy of IGST on the component of ocean freight paid by the foreign seller to a foreign shipping line, on a reverse charge basis. The Gujarat High Court struck down the impugned levy against which the Union filed appeal before Hon'ble Supreme Court.
- The Supreme Court observed that the 'recommendations' of the GST Council are an outcome of a collaborative dialogue involving the Centre and States & cannot be regarded as legally binding. Further, while holding that no such additional levy can be imposed on 'ocean freight', observed that the supply of services of transportation by the foreign shipper forms a part of the "composite supply" between the foreign exporter and the Indian importer, on which the IGST is already payable under Section 5(1) of the IGST Act read with Section 20 of the IGST Act, Section 8 and Section 2(30) of the CGST Act.

**Read Full Judgement:** [UOI v. Mohit Minerals Pvt. Ltd.](#)

**Detailed SNR Update:** [SNR GST Update 01/2022](#)

#### SNR's Take:

*"This judgement brings in a huge relief for the importers who are not eligible to claim ITC or face situation of credit accumulation. The importers who have paid IGST on ocean freight services and have not claimed ITC or claimed but not utilized the ITC of such IGST can claim refund claim u/s 54 of the CGST Act."*

#### 4. *Secondment of employees by Overseas Group Company is covered under Manpower Supply & liable to service tax:*

**Case of:** **C.C.C.E. & S.T.-Bangalore v. Northern Operating Systems (P.) Ltd.**

**Decision by:** **Supreme Court**

- The assessee had contracted with its Foreign Group Company (FGC) for rendering back-office support & information technology support services. Under the contract, the FGC was required to second its employees (Seconded Employees) to the Assessee as per the Assessee's requests. The salary, bonus/incentives, social security and welfare benefits of the Seconded Employees were paid to them by the FGC. Such expenses were subsequently reimbursed by the Assessee to its FGC on actual basis. The liability to pay service tax on reverse charge basis on such reimbursements by the Assessee was in question before the Supreme Court (SC).
- The Supreme Court while holding that service tax was payable by Indian company on reverse charge basis observed that there is not one single determinative factor, which the courts give primacy to, while deciding whether an arrangement is a contract "of" service or a contract "for" service. SC has consistently applied one test: substance over form, requiring a close look at the terms of the contract or the agreements. Further, it observed that while control over their performance and the right to ask the seconded employees to return is with Assessee, the fact remains that their overseas employer in relation to its business deploys them to Assessee on secondment.
- Further, while rejecting the revenue's claim of extended period of limitation, the court observed that CESTAT's reliance upon two of its previous orders & the fact that the Revenue discharged two SCNs, is a sufficient evidence that the view taken by the assessee was neither untenable, nor mala fide.

**Read Full Judgement:** [C.C.C.E. & S.T. v. Northern Operating Systems \(P\) Ltd.](#)

**Detailed SNR Update:** [SNR GST Update 02/2022](#)

#### SNR's Take:

*"This is a landmark and crucial decision wherein employee secondments by FGCs are held to be manpower supply service. This decision would have far-reaching implications, and companies need to evaluate its impact on similar secondment arrangements under the GST regime as well."*

## 5. Charitable clubs imparting sports training exempt, however entrance/membership fees taxable:

**Case of:** Navi Mumbai Sports Association

**Decision by:** AAR Maharashtra

- Applicant was a non-government sports organization & public charitable trust aimed to encourage & foster sports, cultural & social activities.
- The applicant has sought an advance ruling on the issue of whether the amount collected by the applicant in respect of entrance/admission fees, annual subscription fees, and annual maintenance fees from its members is liable to GST. Further, whether the amount/fees collected towards rendering training/coaching in recreational and sports activities is exempt from payment of GST under entry no. 80 of notification 12/2017-CTR dated June 28, 2017.
- The AAR held that after the presidential assent to amendment to section 7 of the CGST Act by way of inserting clause (aa) to sub-section (1), the issue of principles of mutuality in the case of clubs and associations, like the applicant, has been settled.
- It further elucidates that said clause (aa) makes it clear that “all or any activities or transactions by a person ....to its members or constituents ...for cash, deferred payment or other valuable consideration” will be treated as ‘supply’ & the said expression covers all types of activities/transactions of the present applicant without any limit or any restriction in the said amendment.
- The AAR further asserted that fees/contributions from the members, recovered for expending the same for the administration of the club, its maintenance and for provision of services, etc, to its member amounts to ‘supply’ & in such a case the presence of profit motive is immaterial.

**Read Full Judgement:** [Navi Mumbai Sports Association](#)

### SNR's Take:

*“This AAR has given a very pragmatic ruling while honoring the principle of mutuality. At the same time, it has underlined the fact that to term any adventure as ‘business’, it is not necessary that profit motive should be associated with it.”*

## CIRCULARS/ NOTIFICATIONS

### ***1. Due date for filing GSTR-3B for April 2022 extended:***

The government on the recommendations of the council extended the due date for furnishing the return in Form GSTR-3B for the month of April, 2022 till the 24th day of May, 2022.

**Read Notification:** [05/2022-Central Tax](#)

### ***2. Due date for payment of tax in GST PMT-06 for April 2022 extended:***

The government on the recommendations of the council extended the due date for depositing the tax due under proviso to sub-section (7) of section 39 of the CGST Act in FORM GST PMT-06 for the month of April, 2022 till the 27th day of May, 2022.

**Read Notification:** [06/2022-Central Tax](#)

### ***3. Late fee for delay in filing of Form GSTR-4 waived off:***

CBIC has notified sixth proviso in Notification 73/2017 to waive off the late fee for delay in filing of Form GSTR-4 for the financial year 2021-22 u/s 47 of the CGST Act. The notifications states that such late fees shall stand waived for the period from 01<sup>st</sup> May 2022 till 30<sup>th</sup> June 2022.

**Read Notification:** [07/2022-Central Tax](#)

## COMPLIANCE CALENDAR

Date	Particulars
10-06-2022	Due Date of filing GSTR-7 & 8 for the month of May 2022
11-06-2022	Due Date of filing GSTR-1 for the month of May 2022
13-06-2022	Due Date of filing GSTR-6 (ISD) for the month of May 2022 and IFF for the month of May 2022
24-06-2022	Due Date of filing GSTR-3B for May 2022, GSTR 5 (Non Resident Taxable person) and 5A (OIDAR service provider) for the month of April 2022 (Originally 20-05-2022)
24-06-2022	Due Date of QRMP Tax Payment for May 2022 (PMT-06)



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