



GST BULLETIN

JUNE 2023

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JUDICIAL UPDATES

1. Supply of goods and services thereto through separate contracts cannot be treated as 'composite supply' if 'natural bundling' absent:

Case of : PES Engineers Pvt Ltd

Decision by : Telangana Advance Ruling

Date of Judgement : 13-04-2023



- Applicant is engaged in supply of Flue Gas Desulphurization (FGD) system, items related to chimney and spare parts along with its transportation and erection at site. Applicant sought advance ruling for whether the entire supply involving two separate contracts though under a single bidding document, can be treated as a 'composite supply'.
- Applicant entered into two separate agreements with Singareni Collieries Company Limited (SCCL), one for supply of goods and second for various services to be provided.
- Applicant contended that there are two separate contracts so each contract has to be assessed independently and since the "initial advance" of 5% and "interim advance" of 7.5% on Ex-works value of goods supplied under 'First Contract', it is entitled for the benefit of Notification No.66/2017 Central Tax i.e., can pay tax at the time of supply of goods and no tax is required to be paid on advances received.

- AAR noted that two contracts were totally independent of each other i.e. scope of works/supply undertaken by the applicant under the individual contracts are specific to that contract and are not associated with other contract.
- Further, AAR also observed that the supply under first contract terminates with making goods available ex-works and loading them on to the mode of transport and the second contract commences with service of transportation of the said goods supplied under first contract and involves unloading at site, storage, erection, civil works, Safety aspects/Compliance to Safety Rules and other services.
- The AAR further noted that the concept of 'naturally bundled' is not visible as both the contracts can be executed independently. Further for a supply to be considered 'Composite Supply' its constituent supplies should be so integrated with each other that one cannot be supplied in the ordinary course of business without or independent of the other.
- Further the AAR explained that, since the transfer of property in the goods supplied under first contract is not taking place during the execution of the 'Works Contract' under second contract, the value thereof cannot be included in 'Works Contract' and is eligible for benefit under Notification No.66/2017, as both the contracts are viewed as separate contracts, notwithstanding that both were mentioned in the Conditions of Contract.
- Thus, the AAR held taxpayer is eligible for exemption for the outward supply of goods and that supply of goods and services under two contracts with separate invoicing cannot be construed as composite in absence of being "Naturally Bundled".

Full Judgement : [PES Engineers Pvt Ltd](#)

SNR's Take

AAR has deeply delved into the concept of composite supply and naturally bundled. Supplies which are independent of each other and are executed via two different contracts cannot be clubbed together to make a composite supply until and unless both are naturally bundled and are supplied in conjunction with each other.

2. Betting cannot include any Game, outcome of which is predominantly dependent on Skills of the participants:

Case of : Gameskraft Technologies Pvt Ltd (“GTPL”)

Decision by : Karnataka High Court

Date of Judgement : 13-05-2023



- The Assessee is an Online Intermediary Company that runs technology platforms that allow users to play skill based online games against each other and is registered in Bangalore with over 10 lakh users from across India.
- Revenue passed Provisional Attachment Orders attaching the Bank accounts of Assessee under Section 83 of the CGST Act after search and seizure operations of the premises, to which, objections were filed by assessee and court passed an interim order permitting the petitioner to operate the Bank accounts for limited purposes mentioned in the said order. The Revenue then issued Intimation Notice under Section 74(5) of the CGST Act, calling upon GTPL to deposit a sum of Rs. 2,09,89,31,31,501/- along with interest and penalty.

- Revenue contended that assessee allows players of online rummy to place stakes and bet on the outcome of such games of rummy. In addition to this, the assessee is making profits and gains from such games of rummy played on its platform and rummy is nothing but game of chance and not skills. Thus, it would amount to gambling. Revenue further added that assessee is involved in 'betting/gambling' and supplying 'actionable claims' and assessee is guilty of evasion of tax by misclassifying their supply as services under SAC 998439 instead of actionable claims which are goods and mis-declaring their taxable value.
- The assessee contended that SCN is wholly illegal, arbitrary, and untenable as "Games of skill" are always a distinct class (never 'gambling' or "betting & gambling") and always have been judicially differentiated from games of chance. Over the years, for distinguishing between skill and chance, the Courts have applied 'predominance' test, which is the watershed test. Statutes which save games of "mere skill" mean that the skill element is more than chance – never 100% skill. Rummy is always a game of skill and not game of chance.
- The court went into the details of the case and culled out the dichotomy between games of skill and games of chance (viz. rummy etc.). The court focused on the words "gambling", "game of chance", "game of skill" and noted that while "gambling" or "game of chance" have been held to involve chance as a predominant element, on the other hand "game of skill" has an exercise of skill which can control the chance.
- The court observed that interpreting Betting and Gambling in GST context featuring in Entry 6 of Schedule III of the CGST Act gives same interpretation as Entry 34 of List II of the Seventh Schedule to the Constitution and the Public Gambling Act, 1867 and held that the terms "betting" and "gambling" appearing in Entry 6 of Schedule III of the CGST Act does not and cannot include games of skill within its ambit.
- HC further added that the element of chance cannot be completely overruled in any case but what is to be seen is the predominant element. In a game of rummy, certain amount of skill is required because the fall of the cards has to be memorised and the building up of rummy requires considerable skill in holding and discarding cards.
- Thus, court held that Rummy is substantially and preponderantly **a game of skill and not of chance and whether played with stakes or without stakes is not gambling.** There is no difference between offline/physical Rummy and Online/Electronic/Digital Rummy and both are substantially and preponderantly games of skill and not of chance.



Full Judgement: [Gameskraft Technology Pvt Ltd.](#)

SNR's Take

High Court has made a clear distinction between game of skill and game of chance. Every game always has some element of chance, thus even games of skills will have chance factor in it, however, one needs to check whether it is predominately game of chances or skills. As ruled by the court, game of skill cannot be categorised as betting or gambling and thus shall be out of the purview of definition of supply under GST Act.

3. ITC cannot be claimed on construction of warehouse using pre-fabricated structures:

Case of : Sanghi Enterprises

Decision by : Telangana AAR

Date of Judgement : 12-04-2023

- The applicant was constructing a warehouse shed on leasehold land using Pre-Fabricated Structure (PFS). The overlying structure along with the land on which it is erected constitutes a warehouse which is meant for storage activity.
- PFS is fixed by anchor bolts to a low Reinforced Cement Concrete (RCC) platform embedded to the ground. The remaining part of the structure such as columns, beams, rafters, wall sheets, roof shed, etc. is joined to one another by nuts and bolts. Shed is an assembly of the PFS and pre-engineered components, fixed together in a modular form without welding.
- Assessee applied for the Advance Ruling to determine whether it would be entitled to claim ITC on procurement of goods/ services used in the construction of shed using pre-fabricated technology.
- Assessee contended that Land is on lease and the lessor has constructed a basement on which the Applicant intends to construct a shed using prefabricated technology. The shed is be attached to low-rising RCC platform which is permanently embedded to the ground, however, the utility of the RCC platform on which the shed system was fixed is limited to allowing the shed to set up. Thus, allowing the shed system to be beneficially enjoyed and not the RCC structure.



- Assessee contended that Prefabricated structure is erected on the basement by using nuts & bolts and that it can be disassembled as and when required. If the nature of annexation is such that an item so annexed can be removed without any damage and future enjoyment of that item in a similar capacity is not affected, such an item will not be treated as immovable property.
- AAR went through the application and applicant's contentions and observed that under the GST law, the terms 'movable property' and 'immovable property' have not been defined. Accordingly, it made references to the following provisions:

Section 3(26) of the General Clauses Act, 1897 (GC Act) – Definition of 'immovable property' which inter alia includes 'things attached to the earth, or permanently fastened to anything attached to the earth'; and

Section 3 of the Transfer of Property Act, 1882 – Definition of 'attached to the earth' which inter alia includes 'anything imbedded to the earth ... or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached'.

- It was observed that in present case PFS is attached to the RCC platform with an intention to perform the course of business permanently below it i.e., on the RCC platform. PFS is meant to enable beneficial enjoyment by way of conducting business on the RCC platform. And, if not for the purpose of beneficial enjoyment by way of conducting business on the RCC platform, PFS has no separate existence.
- In view of the above, the AAR held that Input Tax Credit (ITC) is inadmissible on construction of Pre-fabricated shed ('PFS') intended to be used as a permanent structure for the purpose of conducting business as per the section 17(5) of the CGST Act.

Full Judgement: [Sanghi Enterprise](#)

SNR's Take

AAR reaffirmed the general understanding of 'immovable property' and provided clarity regarding the ineligibility of input on pre-fabricated structures.

4. Tax Rate on 'Bonus' received for distribution to employees over & above agreed consideration in lieu of canteen services will be of main supply:

Case of: Foodsutra Art of Spices Pvt Ltd

Decision by: AAR, Telangana

Date of Judgement: 12-04-2023



- The Applicant provides canteen services to ITC Ltd and in addition to the consideration for providing canteen services, it also receives a lumpsum payment under the nomenclature 'bonus' from ITC Ltd. For its onward payment to the applicant's employees.
- ITC claimed that Applicant has to charge 5% GST by considering the reimbursement of expenses as part of Canteen Service whereas Applicant's point of view was that they are taking this consideration for paying their employees, by acting as an 'Intermediary'.
- Hence, applicant filed application seeking advance ruling on rate for reimbursement of bonus received from ITC as a lump sum amount for paying Applicant's employees.

- ITC Ltd contended that payment of bonus is not towards a separate service. Instead, the same is to be considered as a part of canteen services and hence, leviable to GST @ 5%. However, the applicant is of the opinion that a bonus is received by it for making payments to the employees and hence, such activity ought to be classified as an 'intermediary service'. Consequently, the Taxpayer would be liable to discharge GST @ 18%.
- AAR observed that Applicant is providing only canteen services to their recipient and no other ancillary or incidental services are being provided and on perusal of Section 15 read with Section 2(31) of the CGST Act, it can be construed that all payments made in respect of a supply are included in the value of supply on which applicable GST must be discharged. Therefore, such amounts are in relation to the supply of canteen service only and the same is required to be included in the value of supply on which GST @ 5% would be payable.
- Thus, the AAR held that amount paid by ITC Ltd. towards payment of bonus to employees of the Canteen Service Provider would be taxable at the same rate as supply of canteen service i.e. 5%.

Full Judgement: [Foodsutra India Pvt Ltd](#)

SNR's Take

AAR has deliberated upon a very pertinent issue. The ruling by the AAR holding that the bonus received shall form part of consideration for main supply of service instead of being a consideration for a separate supply of 'intermediary services' shall help in resolving disputes between the parties for classification under similar circumstances.

5. GST to be charged on the whole invoice issued by Motor-Vehicle Hire Service provider including Fuel reimbursement:

Case of : Uttarakhand Public Financial Strengthening Project

Decision by : AAR, Uttarakhand

Date of Judgement : 27-03-2023

- Uttarakhand Public Financial Strengthening Project received services by way of motor vehicle hire and applied for advance ruling to seek clarifications for determining the tax leviable on such services.
- AAR observed that the liability to arrange fuel on mileage basis and maintenance of vehicle lies with the service provider and the fuel cost and other expenses are reimbursed by the Applicant as per the contract between the Applicant and Service provider.
- As per the provisions of section 15 of CGST Act dealing with “valuation of the supply” particularly to the expression ‘supplier is liable to pay in relation to such supply’, the AAR observed that this leaves no room for doubt that value of supply includes “any amount that the supplier is liable to pay” but has been incurred by the recipient and “not included in the price actually paid or payable for the goods or services or both”.
- Similarly, Karnataka AAR in Goodwill Auto’s Hubbali case, has ruled that cost of diesel for running a rental DG set is an additional consideration for supply u/s 15 and thus would attract GST on the total value.



- Thus, the AAR ruled that service provider of motor vehicle hire services has to charge GST on amount including monthly rental plus night charges plus fuel on mileage basis, and not just monthly rental. AAR also added, “*all the consideration including reimbursement of any kind shall form part of value of supply in view of Section 15 of CGST Act*”.



Full Judgement: [Uttarakhand Public Financial Strengthening Project](#)

SNR's Take

The ruling is in line with Karnataka AAR's ruling in Goodwill Auto's case wherein it was held that cost of diesel for running a rental DG set is an additional consideration for supply u/s 15 of CGST Act, 2017.

6. Services provided to Parent company outside India under an agreement does not amount to intermediary services instead shall be treated as exports:

Case of : McDonald's India Pvt. Ltd Vs. Addl. Commissioner, CGST(A)

Decision by : Delhi High Court

Date of Judgement : 18-05-2023

- The Assessee is engaged in the business of restaurant/ food chains and entered into a service agreement with McDonald's USA to render certain services like Consumer research, inventory control, marketing and advertising strategy, Restaurant opening strategy, conduct interviews of potential joint venture partners, book-keeping and accounting, etc.
- Assessee claimed that these services were exported without payment of IGST and hence, refund of ITC accrued to assessee. Further, assessee claimed that the Revenue got confused between the obligation of assessee towards McDonald's USA under Master License Agreement which granted assessee the non-exclusive rights to certain intellectual property on payment of royalty.
- The Revenue rejected the refund claim on the basis that assessee only provided 'intermediary services' whose place of location was in India. Thereafter, the Commissioner (A) while confirming the rejection, concluded that as per Sections 13(3) (b), 13(5) and 13(8)(b) of the IGST Act, place of supply of services was in the taxable territory (India) and did not qualify as export of services under Section 2(6).



- On appeal, the High court observed that petitioner had entered into two agreements with its holding company, one Master License Agreement and another Service agreement. Further, McDonald's USA is obliged to perform certain services to third parties and the petitioner is facilitating or arranging such services from third-party suppliers. The services performed by the petitioner may fall within the scope of intermediary services. The department has held that the assessee was acting as a mediator between prospective joint ventures and franchisees, where the main supplies were made by McDonald's USA and ancillary supplies were provided by the assessee.
- Revenue further added that the place of services supplied by the petitioner is in India under Sections 13(3)(b) and 13(5) of the IGST Act. In respect of this, the court placed on record that the Show Cause Notice dated 14.08.2020 issued by Department did not specifically set out any reason in detail for denial of refund of ITC as claimed by the assessee. The Show Cause Notice merely stated that "Place of provision appears to be in India. ITC availed appears to be not admissible as per CGST Act". Therefore, the court noted that this was not the subject matter of controversy that had travelled to the revenue Authority as there was no such allegation in the Show Cause Notice.
- However, the Court found merit in the contention that no such additional grounds for rejecting the petitioner's claim for refund could be raised suo motu by the Appellate Authority, in an appeal preferred by the petitioner. The impugned order is liable to be set aside on this ground alone.
- The court further deliberated upon Section 13(3)(b) of the IGST Act which is applicable in respect of services where the physical presence of the service recipient or its representative in India is necessary. Section 13(5) of the IGST Act contemplates the supply of services by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational, entertainment or celebration event, conference, fair, exhibition or similar events. Conducting interviews, making reference checks or performing any screening services in connection with potential joint venture partners, franchisees or employees has no connection with the services as contemplated under Section 13(5) of the IGST Act. Thus, this section cannot determine POS in current case.
- Thus, HC sets-aside order denying refund to Assessee, operating as franchise of McDonald's USA w.r.t. services rendered to its US counterpart under a service agreement and held, "*Rendering service on behalf of another person does not render the service provider an intermediary*".



Full Judgement: [McDonald's India Private Limited](#)

SNR's Take

Delhi High Court decision is in line with other judgements in case of M/s Ernst and Young Limited and M/s Ohmi Industries Asia Private Limited. Rendering service on behalf of another person does not render the service provider an intermediary.

7. Inspection done by Vigilance Department in matters involving tax is valid as per law:

Case of : Sudhakar Traders Vs. The State of Andhra Pradesh

Decision by : Andhra Pradesh High Court

Date of Judgement : 24-04-2023

- M/s. Sudhakar Traders was a registered dealer and was engaged in trading iron and steel products. Its business premises were inspected by the Vigilance & Enforcement Department of the Home Ministry (VED) wherein stock variation and sales without proper invoices or bills were observed. Consequently, VED obtained a statement from the Taxpayer and forwarded an alert note to the Tax Authorities, urging them to take necessary action against tax evasion/ suppression of turnover.
- Subsequently, the Tax Authorities issued notices in Form GST ASMT-10 highlighting discrepancies in the periodical GST returns and sought reasons for such differences. Aggrieved by the notice, the Taxpayer filed a Writ Petition before the Hon'ble Andhra Pradesh High Court.
- Assessee contended that Vigilance & Enforcement Department of Home Department has no statutory right under GST law to conduct inspection in its premises and forward the alert note to the Deputy Commissioner (ST) and the later cannot act upon such information. Further, the notices also lack authorisation by the proper officer to conduct inspection or issue such notices as required under Section 67 of the APGST Act and hence, are unsustainable.



- Tax authority contended that as per Government Order, the role of the VED includes preventing revenue leakage for the Government. Accordingly, VED conducted an inspection of the Assessee's premises and discovered variations in sales and stock and forwarded an alert note to the Tax Authorities, urging them to take necessary action against tax evasion. Thus, the VED's actions are legally justified.
- The High court made the following observations:
 - The enforcement functions of the V&E Department include safeguarding revenues due to the Government and in that context it is permeable in all the departments including the Tax department.
 - The matter of protection of revenue due to the Government in the form of taxes, the officials of the V&E Department, if need be, can make inspection in the premises of taxable traders.
 - During course of such inspection if the officials of the V&E Department found the attempts of such traders in evasion of tax, they can pass on the information to the concerned tax department.
 - In the present case, the Tax Authorities have issued the Impugned Notices based on the alert issued by VED and provided an option to either pay differential tax or provide objections where the differential tax was not acceptable.
 - The notices were issued by the Deputy Commissioner and not the Chief Commissioner. However, the Tax Authorities would require authorisation of the Chief Commissioner to issue the Impugned Notices as per Rule 99 of the APGST Rules read with Section 61 of the APGST Act, which has not been done in the present case. As a result, the Impugned Notices lack necessary authorisation from the Chief Commissioner and hence deserve to be set aside.
 - The Writ Petition is partly allowed while allowing the Tax Authorities to issue fresh notices with proper authorisation.

Full Judgement: [M/s Sudhakar Traders](#)

SNR's Take

High Court clarified the power of Vigilance and Enforcement Department and validated data exchange between Tax department and VE Department. Notice was set aside due to lack of proper authorisation and not because notice was issued post receiving alert note from V&E department.

CIRCULARS/NOTIFICATIONS:

1. CBIC issues guidelines for Special All-India Drive to weed out fake billers:

In the National Coordination Meeting held on 24th April 2023, it was agreed that a nationwide effort in the form of a Special Drive should be launched to detect suspicious/fake registrations.

Period of Special Drive: 16th May 2023 to 15th July 2023.

Power of officer:

- a) Initiate action for suspension and cancellation of the registration.
- b) blocking of ITC in Electronic Credit Ledger.
- c) the details of the recipients to whom the ITC has been passed.

Steps to be taken by Registered persons:

- a) Display Registration Certificate and Number at place of business.
- b) Make sure all additional places of business are registered with GST.
- c) Keep KYC documents ready for verification.

The documents required: Aadhaar Card, PAN Card, Rent Agreement, Latest Electricity Bill, Cancelled cheque of Current Bank Account

Additional points

- Make sure proper demarcation if multiple businesses on same premises.
- Although the special drive focuses on the verification of the existence of registered persons and business place, however, the taxpayers should also make sure that relevant books of account and inventory information are available.

Read Notification: [01/2023-GST](#)

2. Threshold for E-invoicing from 10 crores to 5 crores:

CBIC has reduced E-invoicing threshold limit from existing ₹ 10 Crores to ₹ 5 Crores with effect from 01st August 2023.

Read Circular: [10/2023](#)

3. Maharashtra Government issues advisory regarding generation and quoting of RFN

Maharashtra SGST department has issued trade circular regarding generation and quoting of Document Reference Number (RFN) in all the official communication with the taxpayer to increase transparency and accountability.

Read Notification: [10T/2023](#)



COMPLIANCE CALENDER:

DATE	PARTICULARS
10-06-2023	The due date for filing GSTR 7 for the month of May 2023.
10-06-2023	The due date for furnishing GSTR 8 for the month of May 2023 for registered e-commerce taxpayers in India.
11-06-2023	The last date to file the GSTR-1 for taxpayers having an annual aggregate turnover of more than INR 1.5 crore or the ones who have opted for the monthly return filing.
13-06-2023	The due date for filing GSTR-6 for Input Service Distributor (ISD) of May 2023
20-06-2023	Due date for Form GSTR-3B for the month of May 2023.

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