



GST BULLETIN

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JUDICIAL UPDATES

1. Renting warehouse to store agri-produce for trading purpose taxable at 18%

Case of : Samco Logistics LLP

Decision by: AAR, Tamil Nadu

- The applicant was engaged in the business of renting of the warehouse for storage of agri-produce for trading purposes. To claim exemption from GST the applicant applied before the authority based on the contents of Notification No. 11/2017 C.T (Rate) dated 28.06.2017 providing the meaning of the term “agricultural produce”. Further, the applicant relied on Entry No 54(e) under the Notification No. 12/2017 C.T (Rate) dated 28.06.2017, to claim an exemption for the Services by way of Renting the Warehouse to store Fruits & Vegetables that attract “NIL” rate of GST.
- The AAR on perusal of Entry No. 16 (iii) of Notification No.11/2017 dated June 28, 2017, r/w heading No. 9972 of Classification Scheme for Services under GST, determined that as per Entry No. 16 (iii) of Notification No.11/2017 dated June 28, 2017 rental or leasing services involving own or leased non-residential property is classifiable under SAC 997212.
- In addition, AAR noticed that the invoice issued by the Applicant to the Lessee also bears the service description of ‘rental or leasing services involving own or leased non-residential property’ without the mention of its SAC and opined that, leasing of immovable property by Applicant is an input service for the trading activity of Lessee.



- Further, AAR stated that the activity of renting of the warehouse is covered within the meaning of supply u/s 7 as it fulfills all the requirements to constitute supply, and activity of the Applicant is not classifiable as loading, unloading, packing, storage, or warehousing of agriculture produce, with 'Nil rate' as specified under entries 24(e) of Notification No. 11/2017 and 54(e) of Notification No. 12/2017 dated June 28, 2017;
- Thus, AAR ruled that Renting of Warehouse to store agricultural produce for trading purposes amounts to a supply of service u/s 7 of CGST Act and shall be classifiable under entry 'renting or leasing services involving own or leased non-residential property of SAC 997212, taxable at 18%.



Full Judgement: [Samco Logistics LLP](#)

SNR's Take

AAR has delivered a reasonable ruling in conformity with SC order in the matter of Agriculture Produce Marketing Committee, in which renting of shops for trading and storage of flowers etc by traders has classified as 'renting or leasing services involving own or leased non-residential property'.

2. GST charged on auto-rickshaw/non-AC buses availed through E-commerce Operators is 'not discriminatory'

Case of: Uber India Systems Pvt. Ltd. & Ors. vs. UOI & Anr.

Decision by: Delhi High Court



- Applicant is a large e-commerce platform, engaged in the business of providing cab, auto rickshaw and non-air-conditioned stage carriages services through their E-commerce platform and in return charge commission from drivers.
- Applicant argued that Notification No. 17/2021 Central Tax (Rate) levying GST on the service of transportation by mode of auto rickshaw and non-air-conditioned stage carriages when availed through E-commerce Operators (ECOs) create an unreasonable classification on the basis of the 'mode of booking' availed by the consumers and also challenges the constitutional validity of the Notifications on finding that "the Respondents are empowered to issue the impugned Notifications under Section 9(5) and 11 of the Act of 2017".
- Delhi HC observed that the service provided by the individual supplier is only one facet of the bundle of services assured by the ECOs to the consumer booking through it, so Notifications levying GST on the service of transportation by mode of auto rickshaw and non-air- conditioned stage carriages when availed through E-commerce Operators (ECOs) like Uber or Make-My-Trip w.e.f. Jan 2022 does not create an unreasonable classification on the basis of the 'mode of booking' availed by the consumers

- The court observed that ECOs are a distinct category, a class of service providers, which are separate and distinct from the individual supplier. The court revealed how ECOs seeking parity with the individual auto-rickshaw drivers and bus operators, are in turn seeking equality among unequal, pointing out a distinguishing fact that ECOs charge a commission to registered driver partners and bus operators for providing a digital platform to connect with the potential consumers which is in addition to convenience charge they collect from the consumer. Therefore, Notifications are not ultra vires to Sections 9(5) of the Act of 2017.
- Court highlighted the distinction between benefits available to the registered driver partners of ECO from the non-registered auto-rickshaw driver who opts out of the registration with ECOs, opining that “The exemption from GST available to a street hailed auto rickshaw driver therefore provides the individual auto rickshaw driver the capacity to economically compete with the services provided by the ECO and have the option to operate independently” and the effect of the impugned Notifications in withdrawing the exemption from the ECOs and making the levy of GST, on the fare of non-air-conditioned stage carriage ticket booked through the the electronic platform is identical and not discriminatory

Full Judgement: [Uber India Systems Pvt. Ltd. & Ors.](#)

SNR's Take

Court's view regarding the creation of a distinction between auto-rickshaw and stage carriage services provided by individual and E-commerce platforms is reasonable and fair. E-Commerce platform provides a bundle of services and not just transportation and therefore, have been made taxable under GST.

3. Reimbursement of salary cost in case of transfer of going concern shall be deemed as supply of Manpower and taxable at 18%

Case of: Airports Authority of India

Decision by: Rajasthan AAR

- Applicant is a public entity engaged in managing and developing airports across India. Applicant invited bids for undertaking operations, management and development of certain airports of the AAI on a public private partnership basis to Adani Jaipur International Airport Ltd. (Adani) and sought advance ruling on whether transfer of business is to be treated as supply of going concern or not.
- The applicant took a view that the transaction (viz. transfer of business by Applicant to Adani) amounts to services by way of transfer of a going concern, as a whole or an independent part thereof which is covered in entry 2 of the exemption notification no. 12/2017- Central Tax (Rate) dated June 28, 2017.
- AAR noted that the transfer of assets during the transfer of business is included in the definition of business observing that *“the activity of transfer of business is in the natural supply and falls under the Sec 7 (1) of CGST Act, 2017”* as also *“business is not Goods for it is not a movable property and thereby Transfer of Business cannot be a supply of goods.”*



- AAR held that, consideration for services by way of transfer of a going concern as per the terms and conditions of the Contract and there is no restriction on the consideration being upfront/one-time/in installments, and monthly/annual concession fees charged by the Applicant is also part of the consideration for services by way of transfer of a going concern and exempted from GST.
- On the issue relating to the invoice raised for reimbursement of the salary/staff cost by the applicant on Adani, going through the agreement, conditions, and arrangements made for AAI's employees, at the outset, AAR holds that reimbursement of salary/staff cost will attract GST as it does not form any part of services by transfer of outgoing concern and states that it falls under the ambit of manpower service and hence taxable @ 18 till the time they are absorbed in and by the recipient Adani because their absorption in the new entity is conditional to acceptance of offers of employment by the employees of Applicant.
- Thus, AAR ruled that 'transfer of going concern service' i.e. running of whole airport operations by Applicant [Airport Authority of India (AAI)] to Adani Jaipur International Airport Ltd. supplies wherein concession fee is part of the consideration and exempt in terms of entry 2 of Exemption Notification No.12/2017-CTR; However, holds that reimbursement of salary/staff cost is chargeable to GST at 18% but reimbursement of municipal tax, property tax, water charges is exempt.

Full Judgement: [Airports Authority of India](#)

SNR's Take

AAR reaffirmed the general understanding of 'going concern service' and provided clarity regarding payment of consideration. However, it held that reimbursement for salary paid by applicant to its employee working for recipient shall be deemed as manpower supply until they are absorbed by the recipient.

4. GST not leviable on the amount recovered by Employer from Employee towards Canteen and Transportation Facilities

Case of : Brandix Apparel India Pvt Ltd

Decision by: Andhra Pradesh AAR



- The applicant is engaged in the business of manufacturing of apparel and export of the same outside India and has hired a third-party contractor for providing canteen services and transportation services to the employees. Applicant seeks Advance Ruling on the applicability of GST on charges recovered from the employee for these services.
- AAR stated that as per Section 7 of the CGST Act, a supply includes all forms of supply of goods or services for consideration by the person in the course or furtherance of business and the applicant is involved in the supply of apparel and not in the activity of provision of canteen service. Therefore, it is not supplied as it is not in the course of furtherance of business as the Applicant is merely collecting a part of canteen expenses from the employees.

- AAR also observed that it is mandatory for the applicant to provide a canteen facility as per the Factories Act, 1948 to its employees, and canteen services are provided by a third-party to the applicant and not by the applicant to its employees. In addition, as per circular 172/04/2022 dated July 06, 2022, it is been clarified that any perquisites provided to employees by the employer are in lieu of the services provided in relation to the employment. Therefore, the perquisites provided by the employer to the employees will not be subjected to GST.
- Similarly, recoveries from employees for transportation services provided by third party to the employees of Applicant shall not be subject to GST as the main business of Applicant is the supply of apparel and not transportation, therefore it is not supplied u/s 7 of CGST Act.
- Thus, AAR held that GST is not applicable to the amount recovered by the Employer (Applicant) from employees for the canteen facility as well as for the transportation facilities provided to them, as such services do not constitute supply u/s 7 of the CGST Act

Full Judgement: [Brandix Apparel India Pvt Ltd](#)

SNR's Take

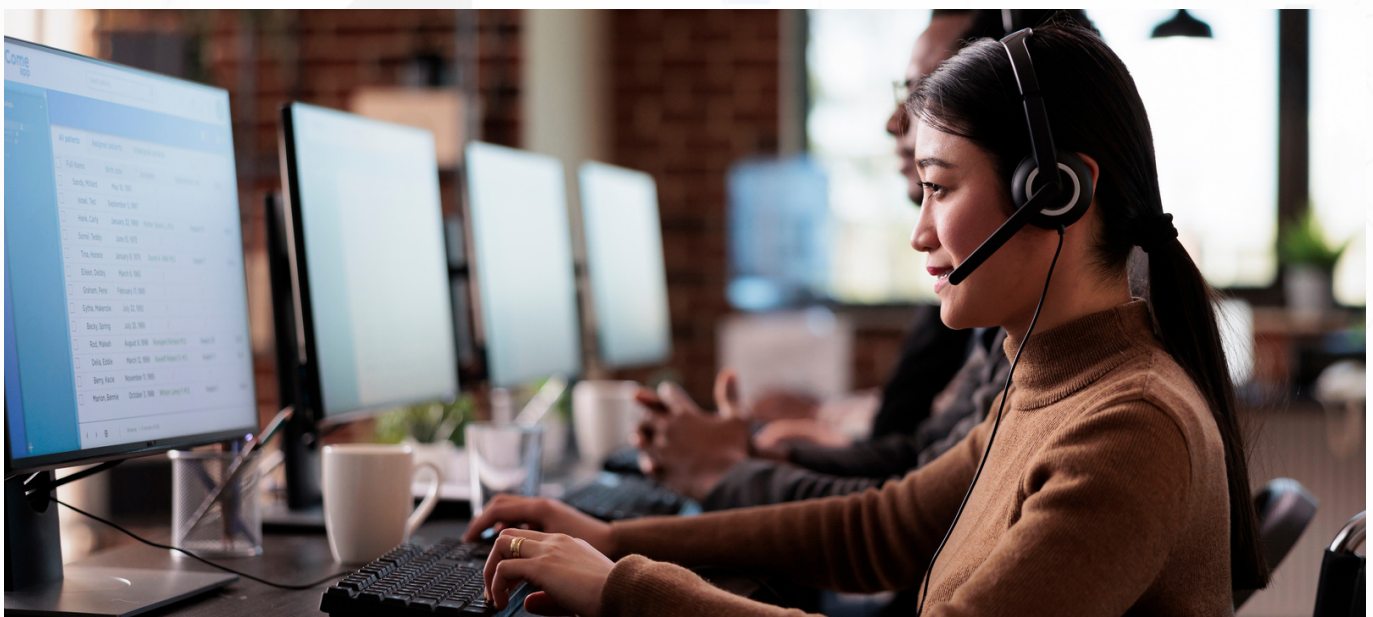
AAR ruling aligns with other rulings issued by various AARs. Gujarat AAR in the case of Cadila Pharmaceuticals Ltd held that subsidized deduction made by Applicant from employees who are availing food would not be considered as 'supply'. Maharashtra AAR had held that Transportation facility charges recovered by employer from employees does not qualify as supply under GST Act pursuant to the 'employer-employee relationship'.

5. Market Research services provided to an affiliated entity outside India then Assessee not 'intermediary' for provision of services.

Case of: Ohmi Industries Asia Pvt. Ltd.

Decision by: Delhi High Court

- Assessee is a company incorporated in India and provides services to its affiliated entity in Japan and had entered into two separate agreements with the affiliated entity, one for rendering Business Support Services and the other for providing Market Research Services.
- Assessee had filed an application seeking a refund of integrated tax on zero-rated supply. The application pertained to a refund of integrated tax paid on two invoices, against which Assessee had paid the integrated tax and therefore, sought a refund. Revenue rejected Assessee's refund stating Assessee was rendering intermediary services. Thus, the services provided by the Assessee were not zero-rated supply and therefore, rejected the refund application.
- The applicant challenged the order issued by Revenue regarding the denial of a refund of integrated tax paid on account of Market research services provided to the Japanese affiliate.
- Court explained the term 'Intermediary' as defined u/s 2(13) of the IGST Act, is one that arranges or facilitates the supply of goods and services, and in the present case, there is no dispute that the Assessee has rendered Market Research Services on its own, and adds that there was no evidence that it had arranged a supply of such services from a third party



- In addition, Court rejected Revenue's contention that the Assessee had facilitated the supply of services between the Japanese affiliate and its customers in India and relied on Circular No.159/15/2021-GST dated September 20, 2021, which clarified that the concept of intermediary services contemplates minimum of three parties.
- Thus, Delhi HC held that Assessee is not an 'intermediary' in respect of providing Market Research Services to its affiliated entity in Japan, allowing refund of integrated tax along with interest, and quashing the impugned order denying refund.



SNR's Take

Revenue's contention that services provided to foreign affiliates is intermediary services was wrong as services are provided to the affiliated entity and not to any third party or services was not taken by any third party. Therefore, such supply shall be covered under zero-rated supply.

COMPLIANCE CALENDER:

DATE	PARTICULARS
10-05-2023	The due date for filing GSTR 7 for the month of April 2023
10-05-2023	The due date for furnishing GSTR 8 for the month of April 2023 for registered e-commerce taxpayers in India.
11-05-2023	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.
13-05-2023	The due date for filing GSTR-6 for Input Service Distributor (ISD) of April 2023.
20-05-2023	Due date for Form GSTR-3B for the month of April 2023.

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