



Dhruva Alert for GST ADVANCE RULINGS – 11th Edition

1. IL & FS Education and Technology Services Ltd. – Odisha

Issue for Consideration

- Whether supplies made by the Applicant to the Government and Government aided higher secondary schools under the ICT project are exempted from GST in terms of Entry No. 72 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017 i.e. *Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration?*

Discussion & Ruling

Discussion:

- Odisha Madhyamik Shiksha Mission (OMSM), Government of Odisha, had mandated the Odisha Knowledge Corporation Limited (OKCL) to implement Information & Computer Technology ('ICT') project in 4000 government and government aided higher secondary schools across the State of Odisha.
- The Applicant was awarded a contract by OKCL for Supply, Installation, Maintenance and Commissioning of Projection system, Interactive White Board, Computer Hardware, Connected Accessories, Installation of Software and other allied accessories, site preparation (i.e. vinyl flooring, furniture and fixtures, electrical fittings, LAN, etc.), maintenance of equipment and provision of computer training services for 5 years in 4000 schools on the BOOT Model basis.
- The Applicant submitted that its activities are exempted in terms of Notification supra primarily on following grounds:
 - All activities performed under ICT project are naturally bundled;
 - OKCL would be merely an implementing agency and would carry out the implementation work as per the guidelines/instructions of OMSM;



	<ul style="list-style-type: none"> - The ownership of the entire hardware, software, other equipment, etc. will be transferred at zero value at the end of the contract period and therefore, they are not engaged in the supply of goods; - Entire infrastructure is being developed to impart computer training and there is single supply of computer training services to OMSM through OKCL. The Applicant also submitted that the supply of goods is ancillary to the principal supply of computer training service. • The AAR observed that OKCL is a body corporate and a separate distinct entity and cannot be regarded as Government. The Government of Odisha is the ultimate service beneficiary, but Entry at SI No.72 of Notification supra is very specific and it cannot be stretched or construed otherwise. Thus, the commercial Supply by the Applicant is not to Government of Odisha but to OKCL, a separate distinct entity. This is also substantiated by the fact that the payment for the works undertaken is done by OKCL. • The AAR also concurred with the contention of the state authorities that the contract is not confined to rendering of service under any training programme, but to create infrastructure for implementation of ICT projects. • Further, AAR observed that the supply is rather a composite supply of goods and services, not naturally but artificially bundled having distinctly separate components with distinct value attributable to each of the components. The Applicant has provided computer training service as part of the contract, but the said service is not pre-dominant or principal supply, but in fact is a small component. <p>Ruling:</p> <ul style="list-style-type: none"> • Since the services are not rendered to the Government of Odisha, nor the payment is being made by the Government of Odisha, the activities of the Applicant by way of supply, of goods and services under the ICT project are not exempt from GST under the said Notification [supra].
<p>Dhruva Comments / Observations</p>	<ul style="list-style-type: none"> • The conclusion by AAR whilst that OKCL is the recipient of service, OKCL does not qualify as Central Government / State Government, as it is a separate and distinct entity constituted under the Companies Act, is in line with the Sectoral FAQ issued by CBIC on 'Government services'.

<p>2. M/s VNR Seeds Pvt. Ltd. - Chhattisgarh</p>	
<p>Issue for Consideration</p>	<ul style="list-style-type: none"> • Whether Input Tax Credit (ITC) of the tax paid on purchase of packing material transferred to the other branches as taxable supply can be availed by the Applicant?
<p>Discussion & Ruling</p>	<p>Discussion:</p> <ul style="list-style-type: none"> • The Applicant is primarily engaged in the business of supplying seeds, which are exempted from the levy of GST. The Applicant purchases packing material for packaging of these seeds which is taxable. The Applicant transfers both seeds (exempt), packing materials & other consumables (taxable) to its own branches situated in other states.



	<ul style="list-style-type: none">• Although the Applicant is engaged in the business of supplying seeds, supply of packing material is also a taxable supply for the Applicant.• The scope of the term “Supply” under Section 7 of the Central Goods & Services Tax Act, 2017 is very wide & it covers all forms of supplies of goods & services which include sale, transfer, barter, exchange, etc. made for a consideration by a person in the course or furtherance of business. The transfer of packing materials by the Applicant to its branches squarely gets covered within the scope of supply.• Also, Section 17(2) of the Chhattisgarh Goods & Service Tax Act, (“CGGST Act”) 2017, allows availment of ITC proportionate to taxable supplies including zero-rated supplies.• Accordingly, the Applicant submitted that to the extent of packing material procured on payment of tax and supplied onward to branches with tax, the Applicant should be entitled to avail ITC. <p>Ruling:</p> <ul style="list-style-type: none">• Basis the above provisions of law, it was held that the Applicant is entitled to avail ITC attributable to tax paid on inputs which are exclusively used for effecting the taxable outward supplies.
Dhruva Comments / Observations	<ul style="list-style-type: none">• The ruling concludes that the Applicant, effectively, being a trader/ supplier of both seeds and packing material, can avail credit attributable to the taxable supplies of packaging material to its branches.

3. M/s. Habufa Meubelen B.V. – Rajasthan

Issue for Consideration	<ul style="list-style-type: none">• Whether the reimbursement of expenses and salary by a foreign Head office (HO) to a liaison office (LO) in India are liable to GST as supply of service if the LO is not rendering any service to the HO?
Discussion & Ruling	<p>Discussion:</p> <ul style="list-style-type: none">• The Applicant is established as a liaison Indian office of a Netherlands based company with prior permission of RBI. The LO acts as a channel of communication between the HO and its suppliers in India with regard to quality of goods. The LO cannot undertake any activity of trading, commercial or industrial nature and it cannot enter into any business contracts in its own name.• The HO, Netherlands reimburses operational expenses of the LO such as salary of the employees, rent, security, electricity, travelling etc. The Applicant does not charge any fees / commission or any other remuneration for the liaison activities undertaken by it.• The Authority has held that since the Applicant does not have any source of income and it is solely dependent on the HO for all the expenses incurred by it, the Applicant and its HO cannot be treated as separate persons. It further held that the reimbursement claimed by the Applicant is falling out of the purview of supply of service as no consideration is being charged by the Applicant.



	<p>Ruling:</p> <ul style="list-style-type: none">• LO does not render any consultancy or other service in India, the reimbursement of expenses from HO does not have any GST implication and consequently, the Applicant is not liable to obtain registration under GST in India.
<p>Dhruva Comments / Observations</p>	<ul style="list-style-type: none">• The AAR has accepted the Applicant's contention that the words 'for consideration' as appearing in the last portion of the definition of 'service' qualifies the entire definition. Basis the same, the Authority has held that as the reimbursement cannot be said to be consideration, there is no supply of service by the Applicant to the HO.• The ruling has not mentioned the provisions of the Act which it relies upon. Further, the Ruling has not examined the effect of Explanation 1 to Section 8 of the IGST Act which states that where a person has an establishment in India and any other establishment outside India then such establishments will be treated as distinct persons. Further, as per Explanation 2 to Section 8, person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.• The question now arises is whether an Indian company can take similar position in respect of its branch offices opened across India which operate on the same fact pattern.

4. M/s Rara Udhog – Rajasthan	
<p>Issue for Consideration</p>	<ul style="list-style-type: none">• Whether the activity of cleaning various agricultural commodities, undertaken by the Applicant would fall under Entry 24 of the Notification No 11/2017 – Central Tax (Rate) dated 28.06.2017 ('First Notification')?• Whether the benefit of Entry 54 or 55 under Notification No 12/2017 – Central Tax (Rate) dated 28.06.2017 ('Second Notification') is available to the Applicant?
<p>Discussion & Ruling</p>	<p>Discussion:</p> <ul style="list-style-type: none">• The Applicant is engaged in the activity of cleaning various agricultural produce such as Saunf (fennel), Dhaniya (coriander) and Jeera (cumin seeds) at its specialized cleaning plants and has submitted that this cleaning activity does not alter the essential character of the agricultural produce and therefore, they are eligible for the benefit of the First Notification and Second Notification.• The Jurisdictional Officer submitted that the cleaning activity is not carried out at an agricultural farm but in a specialised cleaning plant installed away from an agricultural farm and hence the benefit of the exemption would not be available to the Applicant. As per the Entry No 24(i)(i) of the First Notification and Entry 54 of the Second Notification – the exemption to support services to agriculture is available only to those processes which are carried out at an agricultural farm and which do not change the essential characteristic of the agricultural produce but only make the same marketable for the primary market.• As far as Entry No 24 (i)(iii) of the First Notification and Entry No 55 of the Second Notification, dealing with intermediate production process is concerned, the Bench



observed that the activity of mechanised cleaning did not fall under intermediate production process as job work in relation to cultivation which usually relates directly to the production of any agricultural produce, such as cultivation, harvesting, threshing and so on.

- Thus, the activity of mechanised cleaning is not covered under any of the abovementioned entries either under the First Notification or the Second Notification.

Ruling

- Thus, on the basis of the above discussions, the Bench held that the activity of the Applicant was not covered under Entry 24 of the First Notification or Entries 54 or 55 of the Second Notification and therefore did not attract NIL rate of tax.

Dhruva Comments / Observations

- The exemption entry under GST is pari materia to the negative list entry for such processes under the erstwhile regime. In a similar context the Service Tax Education Guide at para 4.4.6, had clarified as under:

“4.4.6. Would operations like shelling of paddy or cleaning of wheat carried out outside the farm be covered in the negative list entry relating to agriculture as sub clause (iii) of clause (d) of section 66D relating to services by way of processes carried out an agricultural farm?”

The said sub-clause (iii) also includes ‘such like operations which do not alter the essential characteristics of the ‘agricultural produce’. Therefore, activities like processes carried out in agricultural farm would also be covered if the same are performed outside the agricultural farm provided such processes do not alter the essential characteristics of agricultural produce but only make it marketable in the primary market. Therefore, cleaning of wheat would be covered in the negative list entry even if the same is done outside the farm.....”

- Thus, clearly the processes carried out by the Applicant by virtue of the above clarification, would have been entitled to the exemption. However, the AAR has taken a narrow interpretation of the exemption entry. Additionally, in January 2018, the Government had released an amendment to the Second Notification whereby the services of fumigation in a warehouse was separately inserted showing that even if fumigation did not take place at an agricultural farm, but in a warehouse, the same would be exempt (Notification No 2/2018 – Central Tax (Rate) dated 25.01.2018). A possible view would be that since there has been no specific amendment with respect to cleaning services, the said services, even if provided in relation to agricultural produce (except where provided on an agricultural farm) will not be exempt.



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