Dhruva Alert for GST ADVANCE RULINGS – 12th Edition

1. Merit Hospitality Services Private Limited – Maharashtra	
Issues for Consideration	• Whether the services provided by the Applicant would be regarded as canteen services and what is the rate of GST applicable on supply of food in the following scenarios: – Supplied and / or distributed to employees of a Company? – Supplied to "Employee Co-operative Society"? – Supplied to employees of a Company located in SEZ?
Discussion & Ruling	**Discussion:** • In the instant case, the Applicant prepares food in its own kitchen and distributes the same to various Companies at different locations. • In order to determine whether the services provided by the Applicant would be regarded as canteen services, the Authorities have discussed the features of an industrial canteen and some of the main features are listed as below: – Industrial canteen is located inside the premises of the establishment; – Canteen building have cooking facilities inside and mostly facilities are provided by the Company; – Most of the food, snacks or tea and coffee are generally cooked or prepared in the canteen itself; – Items are sold to employees at an agreed subsidized price which is collected by contractor themselves. However, prepaid meal vouchers may also be given to employees by the company which are to be accepted by such contractor. • Basis the above features, to ascertain whether the services qualify as "canteen services", one needs to evaluate the location where the food is prepared by the contractor and the

	conditions which are attached to such preparation and distribution of food to employee of the Company. • Further, the Authority also referred to the definition of "caterer" and "outdoor caterer" as defined under erstwhile Service tax regime, where "**caterer**" means "any person who supplies any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion" and "**outdoor caterer**" means "a caterer engaged in providing services in connection with catering at a place other than his own but including a place provided by way of tenancy or otherwise by the person receiving such services". • Also, in the present case, the Applicant is registered with the Authorities as an "outdoor caterer". The food is prepared at Applicant's own kitchen which is not inside the premises of the Company. Further, for other Companies also, Applicant carries and distributes food at their locations where the respective company staff distributes the food to employees. • Basis the above discussions, it was concluded that as food is not prepared in the Company's kitchen and Applicant is merely supplying food, such supply of food would be classified as "outdoor catering services". **Ruling:** • Food not prepared in the Company kitchen but merely supplied, would be classified as "outdoor catering services" liable to GST @ 18%. • In addition to supply of food even if the Applicant undertakes services of distributing food to the Company's employee, such services together with supply of food would be liable to GST @ 18%. • The food supplied to Employees Cooperative Society (formed by Company employees) running the canteen themselves would not impact the catering transaction. Therefore, food supplied to "Employee Co-operative Society" would be liable to GST @ 18%. • From above submissions, as Applicant cannot claim to run a canteen or a restaurant, the supply of foods to employees of the Company located in SEZ would be classified as outdoor catering liable to GST @ 18%. Further, the benefit of zero rated supply would not be eligible to the Applicant as it cannot be ascertained that the recipient of service is SEZ unit and the said services are used for authorised operations.
Dhruva Comments / Observations	• Recently, the schedule entry in relation to composite supply for goods and services has been amended post the recommendations of the GST council in their 28th meeting held on July 21, 2018. The GST council had clarified that scope of outdoor catering (GST levied @ 18%) should be restricted only to the supplies in case of outdoor / indoor functions that are event based and occasional in nature. This is a welcome amendment as it clarifies certain issues regarding the scope of outdoor catering service. • However, in the amended schedule entry also the benefit of reduced rate of GST @5% would be available only if the food is supplied by a restaurant, eating joint, mess, canteen and such supply is based on the contractual arrangement and not event based or occasional in nature.

	• The definition of the term canteen is not prescribed under the law. However, the Authorities have held that the services provided would qualify as canteen services **only when** the food is prepared by the contractor in the Company's premise and other conditions are satisfied. Thus, if the food is prepared by the contractor in its own kitchen and supplied to Company's premises, then, whether the benefit of reduced GST rate would be available post amendment remains open for deliberations.

2. United Breweries Limited – Karnataka	
Issues for Consideration	• Whether sale of beer by Contract Brewing Units ('CBU') to various parties under its invoice would be considered as supply of services, if the CBU manufactures such beer using the brand owned by United Breweries Ltd. ('UBL') and the raw materials, packaging materials and other input materials procured by CBU, and whether GST would be payable by the CBUs on the profit earned out of such manufacturing activity? • Whether GST is payable by the brand owner on the 'Surplus Profit' transferred by the CBU to the brand owner out of such manufacturing activity?
Discussion & Ruling	**Discussion:** • UBL is engaged in manufacture and supply of beer under various brand names. UBL has also entered into contract manufacturing arrangements with CBUs, who manufacture beer using technical know-how and the beer brand owned by UBL. Such CBUs procure raw materials/packaging materials and incur overheads and other manufacturing costs etc. on their own to manufacture the beer. The manufactured beer is directly sold to the customers under CBU's invoice upon payment of statutory levies and taxes. After retention of manufacturing costs and a certain amount of profit, CBUs transfer the balance sale proceeds to UBL as brand fee. • The Authority stated that GST Law provides for levy of GST on supplies except on the supply of alcoholic liquor for human consumption. Thus, the end product i.e. beer is not exigible to GST. • In reference to the definition of 'job work' and para 3 to Schedule II of the CGST Act, the Authority noted that a person should undertake treatment or process on another person's goods so as to consider such treatment or process as a supply of service. Since, CBUs were procuring all the raw materials and other input materials themselves to manufacture and sell beer, the Authority held that CBUs are not engaged in supply of services to UBL and therefore, no liability to pay GST arises on the profit retained by them. • With respect to the second question, the Applicant referred to various judicial decisions and a Circular dated October 30, 2009, wherein it was held that the business profit retained by the principal on the manufacturing activity undertaken by a job worker is not liable to Service tax under Intellectual Property Right Service category. • The Authority did not concur with the Applicant's view that the act of permitting CBUs to affix the brand names on the beer does not amount to supply of service. The Authority observed that the nomenclature of the amount received as brand fee or business surplus or business profit does not alter the fact that it is a consideration for an activity that flows

	to the Applicant. It was also observed that the definition of 'supply' is very wide and starts with the expression 'supply includes', and hence, the scope of supply of service is not restricted to the entries mentioned in Schedule II of the CGST Act. In this respect, the Authority held that GST is payable by UBL on the amount received from CBU under Tariff 999799 i.e. 'other services nowhere else specified'. **Ruling:** • Since, the raw materials and other input materials to manufacture beer are procured by CBUs on their own, CBUs are not making any supply of service to UBL and hence, no GST is applicable on the amount retained by the CBUs as their profit. • GST is payable by the brand owner i.e. UBL on the amount received from CBUs under Tariff 999799 i.e. 'other services nowhere else specified'.
Dhruva Comments / Observations	• Interestingly, in the Applicant's own case[1], the Karnataka High Court held that mere usage of brand name by CBUs without any right to sell product would not amount to transfer of right to use / right to exploit the brand name by UBL to the CBUs. On this premise, it was held that the transaction was a pure service transaction and was not subjected to VAT. Given this, rightly so, in a reverse scenario where the CBUs actually have the license to sell the final goods in their own name, the retention by CBUs of the profits could be against the sale of alcohol and thus, not be liable to GST. Separately, the right to use brand name accorded by UBL to the CBUs could amount to supply of services liable to GST.

3. Paras Motor Industries – Haryana

Issues for Consideration	• Whether activity of fabrication and fitting and mounting of bus bodies on the chassis supplied by the other party is a job work or contract of sale of bus body? • If it is held to be a job work, what rate of tax is required to be charged and paid?
Discussion & Ruling	**Discussion:** • The Applicant is engaged in the business of fabrication and fitting out bus bodies on the chassis supplied by its customers. As per the contract between the parties the bus bodies are to be constructed and fitted out as per the specifications provided by the customers. • The Authority referred to CBEC Circular No. 34/8/2018 dated 03.03.2018:

S. No.	Issue	Clarification
1.	Whether activity of bus body building, is a supply of goods or services?	In the case of bus body building there is supply of goods and services. Thus, classification of this composite supply, as goods and services would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case.

[1] TS-602-HC-2015(KAR)-VAT

	• The Authority noted that all inputs/ materials required for fabrication of bus body, has to be used by the Applicant from its own account. The Authority further held that, it is the bus body which is being fabricated and also being mounted on the chassis provided by the customer. Therefore, it is not merely job-work, rather, it is supply of bus body and an activity of fitting/ mounting of bus body on chassis is an ancillary activity to the principal activity of supply of bus body. Hence, the impugned activity is a composite supply, with principal supply being supply of bus body. **Ruling:** • The activity of fabrication and fitting and mounting of bus bodies on the chassis supplied by the other party is a composite supply with supply of goods, i.e. bus bodies, being principal supply (HSN code 8707).
Dhruva Comments / Observations	• The Circular relied upon by the Authority states that the nature of supply in case of bus body building is to be determined basis facts and circumstances of each case. The Authority in present case has reviewed the agreement clauses and observed that the supply of goods is the principal supply. • Reference in this regard, can be made to Supreme court ruling in case of Prestige Engineering Ltd., wherein it was held that when job worker contributes his own raw material (not being minor raw materials), then the activity does not amount to job work. A similar analogy was drawn in AAR in case of M/s JSW Energy Limited. • Given the above, the current ruling appears to be in line with the judicial rulings pronounced earlier.

4. M/s Loyalty Solutions and research Private Limited – Haryana	
Issues for Consideration	• Whether non-redemption of points by customers would amount to consideration for 'Actionable Claim' qua the Applicant and hence would not be liable to GST under Schedule III of the CGST Act? • If not 'Actionable claim', whether it is a 'Supply' liable to GST?
Discussion & Ruling	**Discussion:** • The Applicant is engaged in the business of running loyalty management programs for its customers. The Applicant charges management fee and service charge on which GST is discharged. In the process of running the loyalty program for its customers, the Applicant receives money at a specified rate for each reward point awarded to retail customer for a specified validity period. If the retail customer uses the reward points the Applicant transfers the money at the specified rate to the concerned store and if the retail customer doesn't avail the benefit of the reward point during the validity period, the amount is retained by the Applicant. In light of this, the Applicant sought ruling on the aforementioned queries. • The Department submitted that the retained amount is not an Actionable Claim as defined under the Act, as it fails to fulfil the criteria of the Applicant having a claim in a debt or beneficial interest in moveable property vis-à-vis the amount retained.

	• The Authority has placed reliance on the contract clause which specifically provides that it is actually the 'Issuance Fee', that is retained by the Applicant in the event of non-redemption of reward points by the customer. • Based on Section 15(2)(c) of the CGST Act it is implied that it is an amount charged by the supplier of service and therefore, it should be included in the value on which GST is applicable. **Ruling:** • Basis the above the Authorities have held that the amount retained is not consideration for 'Actionable claim' as the payment / reward points after the expiry of their validity period would no longer be covered under the definition of 'actionable claims'. The retained amount in fact is a part of management fee recovered by the Applicant from the partners as per section 15 (2)(c) of the CGST Act and accordingly, liable to GST.
Dhruva Comments / Observations	• The above ruling is very specific to the contract in this case. At large it doesn't clarify the position in law. The ruling has been advanced on the basis that the amounts forfeited are in connection with the main supply for which a management fee is recovered by the Applicant from the partners and that the forfeited amount is nothing but an addition to this fee. Various international jurisprudence have held that for forfeited deposits / amounts to be taxed, one needs to prove an underlying supply and that the term in itself indicates the lack of supply as it marks the non-fulfilment of contractual obligations by the customer / buyer, necessitating the non-performance by the supplier. However, this position then again opens up the battle ground on whether the said recoveries would lead to the rendition of declared services under sr.no. 5(e), of Schedule II to the CGST Act.

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