# Dhruva Alert for GST ADVANCE RULINGS – 5th Edition

| 1. M/s IAC Electricals Pvt. Ltd – West Bengal | |
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| **Issue for Consideration** | **Issue:**<br>• Whether the service of transportation of goods, along with in-transit insurance provided by the Applicant under a separate contract, is exempt from GST? |
| **Discussion & Ruling** | **Discussion:**<br>• There are two separate contracts entered into by the Applicant being the contract for supply of goods (under the First Contract) and the supply of transportation services along with in-transit insurance (under the Second Contract).<br>• The Authority observed that the Applicant was not providing any transportation services but hired the services of a goods transport agency to enable the transportation of goods that were to be supplied under the first contract. Thus, since the transportation services are not provided by the Applicant, they would not be eligible for the benefit of exemption enshrined under Entry 18 of Notification No 12/2017 – Central Tax (Rate) dated 28.06.2017.<br>• Additionally, both the contracts, even though they were awarded separately, had a '*cross fall breach of contract*' clause, whereby any breach under the first contract would be deemed to be a breach under the second contract. Therefore, the supply under the first contract could not be undertaken without the supply of services under the second contract and thus both supplies are provided in conjunction with each other and are naturally bundled.<br>• The Authority also placed reliance on the illustration provided in the definition of 'composite supply' in terms of Section 2(30) of the Central Goods and Services Tax Act, 2017 in order to understand whether or not the services at hand were supplied in conjunction with the supply of goods (under the first contract). |

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| | **Ruling**<br>• Both the contracts being indivisible composite contracts, the entire transaction qualifies as a composite supply of goods with principal supply being the supply of goods and services such as transportation, in-transit insurance, etc. are ancillary / incidental to the principal supply. |
| **Dhruva Comments / Observations** | • This ruling is on similar lines to the recent ruling in the case of **EMC Ltd**[1] by the same Authority.<br>• In both the rulings, the Authorities have consistently placed reliance on the contract clauses in entirety to arrive at the conclusion of interlinked contracts, where one contract was considered part of another and the supplies under both contracts were indivisible in nature and supplied in conjunction with each other so as to qualify as a composite supply.<br>• The authorities have stated that since the Applicant has obtained services of transportation / insurance from transport agency / insurance service provider, such services are not rendered by the Applicant. Obtaining services from third party service providers under sub-contracting arrangement should not be considered as non-provision of such services by the main service provider. |

| **2. M/s Rashmi Hospitality Services Private Limited – Gujarat** | |
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| **Issue for Consideration** | **Issue:**<br>• At what rate should GST apply on catering services rendered by caterer at factory canteens? |
| **Discussion & Ruling** | **Discussion:**<br>• The applicant is a caterer providing catering services at various places of their customers who have inhouse canteens at their factories.<br>• The question before the Advance Ruling Authority is to determine whether activity undertaken by applicant would be classified as service provided by restaurant, eating joint including mess, canteen which is liable to GST at 5% (without ITC) or shall be classified as outdoor catering, liable to GST at 18%.<br>• The applicant had relied on Circular No. 28/02/2018-GST dated 08.01.2018 ('the Circular') which clarified that educational institutions having mess facility for supply of food or drink, whether such facility is run by the institution/ student themselves or outsourced to third person, will attract GST at 5% (without ITC). However, the Ruling negated this Circular on the premise that the applicant is providing service to the Company and not directly to workers /employees of the recipient. Therefore, the services are not in the nature of service provided by a restaurant, eating joint including mess, canteen. |

[1] 04/WBAAR/2018-19

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| | • Further, the authority relied on the judgment of Allahabad High Court in case of **Indian Coffee Workers' Co-Op. Society Ltd. V CCE & ST**[2] and the definition of 'caterer' and 'outdoor caterer' under the erstwhile Service tax regime which stated that a caterer is an "outdoor caterer" because services in connection with catering are provided at a place other than his own.<br>• It was further held that catering service is provided to the recipient i.e. the factory/ the company and that the meal, snacks, tea etc. consumed by the workers / employees of the recipient would not alter the nature of service provided by the applicant. The taxability does not depend on whether and to what extent the person engaging the service consumes the edibles and beverages supplied.<br><br>**Ruling**<br>• In absence of the definition of the term 'outdoor catering' in GST law, reliance was squarely placed on the provisions of the erstwhile Service tax regime, to state that the services provided was in nature of outdoor catering liable to GST at 18%, under Sr. 7(v) of Notification No. 11/2017 – Central tax (Rate) dated 28 June 2017. |
| **Dhruva Comments / Observations** | • The AAR distinguishing the Circular (supra) has held that services of third party contractor when rendered at the factory premises (i.e. canteen) could be regarded as outdoor catering service attracting GST at the rate of 18 percent. Further, the Circular has clarified that the rate of GST shall be 5 percent for students / staff whether or not the same is operated by the institution / students / outside contractor. However, the said Circular does not comment on the applicable rate of GST to be charged by such contractor.<br>• Considering the above developments, Corporates would have to relook at their arrangements with contractors / employees so that the incidence of GST is adequately factored. |

| **3. M/s GKB Lens Pvt. Ltd. – West Bengal** | |
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| **Issue for Consideration** | **Issue:**<br>• Whether the valuation of the supply of goods from the head office (HO) to branches can be done based on the cost price using the 'deemed market value' provision under second proviso of Rule 28 of CGST/WBGST Rules, 2017, instead of 90 per cent of the sale price as provided in the first proviso of the said rule?<br>• Also, since HO also supplies non-trading stock to the branches at zero value, whether the condition under the second proviso that the recipient should be eligible for full input tax credit (ITC) debars the applicant from using the said valuation method? |
| **Discussion & Ruling** | **Discussion:**<br>• The Applicant is in the business of importing and selling of sunglasses, frames, lenses etc. The Applicant supplies such goods and other non-trading stock viz. printing and |

[2] 2014 (34) S.T.R. 546 (AH.)

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| | stationery, office equipment from the HO in West Bengal to branches located in other states.<br>• The AAR observes that the first proviso to Rule 28 can be applied when the goods received by the recipient are to be further sold to an unrelated customer and the supply shall be valued at 90 per cent of the sale price. However, the valuation under the first proviso is optional and can be availed by the supplier at his discretion.<br>• Further, commenting on the second proviso, the AAR states that this proviso which deems the declared invoice value to be the 'market value' is applicable to both scenarios i.e., (1) goods further supplied to an unrelated customer and (2) goods which are used in the course of business.<br>• Examining the scope of the expression *'where the recipient is eligible for full input tax credit'* under the second proviso, AAR observes that the same shall be considered in the light of Section 17(1) of the GST Act which states that the amount of credit shall be restricted to the amount of input tax credit as is attributable to the purpose of business. The availability of ITC is also subject to the invoice or document of like nature under Section 16(2)(a) of the GST Act.<br><br>**Ruling**<br>• The Applicant, at his discretion, can opt not to value the supply of goods under the first proviso and value the goods by application of the second proviso under which the value declared on the invoice is deemed to be the market value of the goods.<br>• In the Applicant's case, the documents of goods whether for further sale or for use in business, are valid documents under Section 16(2)(a) of the GST Act for availing ITC. |
| **Dhruva Comments / Observations** | • Rule 28 of CGST / WBGST Rules, 2017 states that valuation applies only in the two cases – (1) supply between distinct persons i.e., where a person with same PAN has taken separate registration in different states and (2) supply between related persons. The applicability of second proviso of Rule 28 is not dependent on the first proviso and the same can be applied at the discretion of the supplier, subject to the fulfilment of conditions mentioned therein.<br>• The applicant is seeking to value the trading stock at cost price applying the second proviso under Rule 28, however, it is valuing the non-trading stock at zero value. The AAR states that the credit of all goods whether for further retail sale or for use in the business (i.e., non-trading stock) is available but remains silent on the aspect of valuation of non-trading stock at Nil value being made by the applicant.<br>• With respect to the phrase 'where the recipient is eligible for full input tax credit' used in the second proviso, AAR states that the condition is to be checked for respective invoices which puts rest to uncertainty surrounding how to determine eligibility to 'full input tax credit'. |

| 4. M/s Photo Products Company Pvt. Ltd. – West Bengal | |
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| **Issue for Consideration** | **Issue:**<br>• Whether printing of content supplied by customers on digital / electronic media will be treated as a supply of goods (HSN 4911) or supply of services (HSN 9989)? |
| **Discussion & Ruling** | **Discussion:**<br>• Supply of printed matter, including printed pictures and photographs, and similar items, reproduced with the aid of computer or another device, are classifiable under the HSN 4911 of the First Schedule of the Custom Tariff Act, 1975 which is aligned to the GST Act for the purpose of classification. However, based on the description of heading 4911, this classification is concerned with pre-printed materials only.<br>• Where the content of the printed matter is not being supplied but it is only being printed, and where the content of the printed matter is specific to the customer, there is no transfer of ownership of the content being printed and therefore there is no transfer of title. Under "Transfer of title in goods is a supply of goods" [Paragraph no. 1(a) of Schedule II to the GST Act], the transfer of ownership is an essential condition for a supply to be treated as supply of goods.<br>• It is further stated that the printed content supplied to the customers is not marketable in the open market as they do not have any value to persons other than the specific customer who provides the input content. Therefore, such a supply cannot be said to be a supply of goods classifiable under HSN 4911.<br>• It was also observed that the activity of 'printing' does not come under the meaning of 'works contract' u/s 2(119) of the CGST Act.<br><br>**Ruling**<br>• Relying upon the judgement of **Rainbow Colour Lab**[3] wherein the Apex Court held that the dominant intention of the photo lab is provisioning service of printing where the supply of paper and chemicals are purely incidental, it has been held that the printing of content from media constitutes a supply of service which is classifiable under HSN 9989 and is liable to GST at the rate of 12% per Serial No. 27(i) of Notification No. 11/2017 – Central Tax (Rate). |
| **Dhruva Comments / Observations** | • The ruling has held that merely printing of content that had been provided by the customer on a media is not supply of goods but a service transaction. Reference is also invited to CBIC's Circular no.11/11/2017-GST dated 20.10.2017, wherein it has been clarified that these transactions are composite supply and supply of printing of content is the principal supply classifiable under heading 9989. |

[3] (2000) 2 SCC 385

| 5. VPSSR Facilities – Delhi | |
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| **Issue for Consideration** | **Issue:**<br>• Whether services of cleaning of railway stations, sheds, trains, etc. rendered to Northern Railways would be exempt from GST as per under Sr.No.3 of the Notification No.9/2017-Integrated Tax (Rate) dated 28.06.2017, by treating:<br>- the aforesaid to be pure services;<br>- provided to Central Government;<br>- in relation to any function entrusted to a Municipality |
| **Discussion & Ruling** | **Discussion:**<br>• In an earlier Writ Petition filed in applicant's own case, the Delhi High Court held that the applicant's cleaning contracts are pure service contracts as the soaps, detergents, chemicals and solvent used purely for cleaning (which is consumed in the cleaning process) cannot be said to be goods in which property could pass to the Railways. Accordingly, considering the use of such consumables to be in a minimal quantity and of a very nominal value, it is held that the cleaning contracts of the applicant in the present case are 'pure service' contracts.<br>• As per Section 3(8) of the General Clauses Act, 1897, the 'Central Government' means the President of India. The said contracts by Northern Railways have been awarded in the name of the President. Hence, it was held that Northern Railways is covered in the said notification as 'Central Government'.<br>• While examining the third aspect, the advance ruling authority observed that the Railways cannot be called a Municipality under Articles 243P and 243Q of the Constitution of India. The cleaning services provided to Railways by the applicant cannot be said to be covered in clause (6) of Schedule XII of the Constitution which covers 'public health, sanitation conservancy and solid waste management' as functions of the Municipalities. The Municipalities are constitutionally entrusted with such functions in relation to urban areas and not in relation to Railway properties.<br><br>**Ruling**<br>• The applicant's cleaning services are not exempted under Sr.No.3 of the Notification No.9/2017-Integrated Tax (Rate) dated 28.06.2017. |
| **Dhruva Comments / Observations** | • The advance ruling authority has made a specific observation that the Municipalities are constitutionally entrusted to carry out certain functions in relation to urban areas, but not in relation to Railway properties.<br>• It would be critical at the tender / bidding stage to assess whether the subject contract merits coverage under exemption notification considering the functions entrusted upon Municipality. |

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