



Dimensions – 111th Edition

Rulings under GST era

Guitar Head Publishing LLP – Authority for Advance Ruling, Karnataka¹

Issues for Consideration

- Can GST be levied on supply of books, the content of which is provided to a printing house located outside India and the books are also supplied outside India, without such books entering India?
- Can GST be levied under reverse charge mechanism (“RCM”) on the shipping charges, printing charges and warehousing charges incurred for the supply of books?
- Can input tax credit (“ITC”) be availed in relation to the supply of books?

Discussion

- The Applicant is engaged in the business of selling guitar training **books** through its own website.
- The books are sold to the customers located in USA, UK and Canada who place their order on the website and make the payment in foreign currency. The business model is as follows:
 - The Applicant places bulk order for printing the books with a printer located outside India;

- The books after printing are then stored in a warehouse outside India;
 - Thereafter, the books are shipped to the customer by the warehouse, based on the details shared by the Applicant;
 - The Applicant pays printing, warehousing and shipping charges to the respective service providers;
 - The Applicant collects the price of the books along with the shipping charges.
- The Applicant approached the Authority for Advance Ruling (“the Authority”) seeking clarity on the various issues. The Authority, after going through the facts of the case, observed as follows:

Levy of GST on supply of books

- In the present case, the books are supplied from a warehouse located in USA which is outside India (i.e. non-taxable territory) to customers located in USA / UK / Canada which are outside India (i.e. non-taxable territory).
- Supply of books from warehouse located in a non-taxable territory to customers located in non-taxable territory without such books entering into India does not amount to supply

¹ 2021-VIL-217-AAR



under GST as per para 7² of Schedule III of the CGST Act, 2017.

Levy of GST on shipping charges

- The shipping charges collected by the Applicant from the customers are not exigible to GST.
- The Applicant is not shipping the books but is arranging the shipping through their agent outside India and there is no submission of any contractual agreement with the warehousing agent, to state that they are acting as a pure agent of the Applicant to incur expenditure towards shipping of books. Hence, the Applicant is in receipt of service of shipping of books from the warehousing agent outside India.
- Accordingly, as the supplier providing the shipping service is outside India and the Applicant is within India, the place of supply is within India as per section 13 of the IGST Act, 2017. Therefore, the service amounts to import of service in terms of section 2(11) of the IGST Act, 2017 and is liable to GST under RCM.

Levy of GST on printing charges

- In the present case, as per para 4 of circular no. 11/11/2017-GST dated October 20, 2017, the supply of printing (of the content supplied by the Applicant) is the principal supply. Accordingly, as the supplier is located outside India, the Applicant (i.e. recipient) is in India and the place of supply is in India in terms of section 13 of the IGST Act, 2017. Therefore the printing service qualifies as an import of service as per section 2(11) of the IGST Act, 2017 and is liable to GST under RCM.

Levy of GST on warehousing charges

- The supplier of the said service is located outside India and the recipient i.e. Applicant, is in India. The place of supply of the said service being outside India as per section 13 of the IGST Act, 2017, the said service does not qualify as import of service as per section 2(11)

of the IGST Act, 2017. Accordingly, no GST is payable on the said service under RCM.

Eligibility of ITC

- As the transaction of providing the books does not amount to supply, the Applicant is not entitled to avail ITC in relation to the said transaction.

Ruling

- No GST is leviable on the supply of books.
- GST is payable on the printing and shipping charges under RCM. Furthermore, no GST is payable on the warehousing charges under RCM.
- No ITC can be claimed in relation to the sale of books.

Dhruva Comments:

The ruling confirms no GST is applicable on supply of books being an out-and-out sales transaction. However, with respect to transportation and printing services, the ruling has concluded them to be taxable on a reverse charge basis without discussing the principle of place of supply applicable to the subject services. Also, it needs to be debated as to whether ITC can be availed on such services pertaining to no supply transactions in the absence of any express debar.

Chennai Metro Rail Ltd. – Appellate Authority for Advance Ruling, Tamil Nadu³

Issue for Consideration

Whether leasing of common pathway of a land, by the buyer to the seller of land, is leviable to GST?

Discussion

- The Appellant (or “CMRL”) is registered under GST and had acquired a portion of the property (including the land) for public purpose from a landowner on payment of adequate compensation.

² Clause 7 of Schedule III of CGST Act, 2017- Schedule III- Activities or transactions which shall be treated neither as a supply of goods nor supply of services, Clause 7- Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

³ 2021-VIL-26-AAAR



As per the agreement, the landowner is granted right to shared access for 35 years to the common pathway for movement in and out of her residential house against a consideration to be paid to the Appellant.

- The Appellant had approached the Authority for Advance Ruling (“the Authority”) to contend that no GST was payable on such compensation received by them since it was a covenant running with the land and a part of the sale price of the land.
- The Authority vide its order⁴ held that the leasing of the pathway by way of shared access is taxable under GST.
- Aggrieved by the order, the Appellant filed an appeal before the Appellate Authority for Advance Ruling (“the Appellate Authority”) and contended as follows:
 - The grant of access to the pathway to connect with the outside world was a covenant running with the land and inseparable from the sale and purchase of the land, which was an exempted supply.
 - The consideration for such access to pathway was deducted from the price of the land as it is integral to the sale of land. Therefore, such access was an integral and inseparable part and parcel of the purchase of land and not leviable to GST.
 - Furthermore, the agreement for sale of land did not have any provision for toleration of an act and the provision of access to pathway cannot be construed as toleration of an act.
 - A supply of easement would be taxable only if it is independent of the sale and purchase of land. A grant of easement which is incidental or integral to the sale and purchase of the land cannot be subject to GST.
 - In the present case, the easement is only to grant of access to reach the road and there is admittedly no grant of right of occupation /

possession unlike lease, tenancy or right to occupy so as to be covered under para 2(a)⁵ of the Schedule II to the CGST Act, 2017.

- The entire transaction is a composite supply with 'supply of land' being 'principal supply' and grant of pathway access as an 'ancillary supply'.
- The Appellate Authority, after considering the facts of the case and the submissions made by the Appellant, observed as follows:
 - As per the definition of ‘easement’ under section 4⁶ of Indian Easement Act, 1882, ‘easement’ is a right a person holds on the land which is not his but a necessity for enjoyment of his property and is not granted but acquired. In the present case, the Appellant agreed to grant the right to the landlord for a monetary consideration i.e. lease rentals. Therefore, the shared access granted against lease rentals is not ‘easement’ acquired / held by the landowner on account of sale of land.
 - In the present case, there is no transfer of right to enjoy the property freely as the pathway is used both by the landowner and by the appellant and therefore, the activity is not a ‘lease’ as per section 105 of the Transfer of Property Act, 1882.
 - The shared access granted against lease rentals is not an easement acquired on sale of land by the landowner, but a right granted by the Appellant by way of agreement on payment of rentals. In the absence of such right, the usage of the pathway by the landowner is not legal and therefore, the activity is squarely covered under the term 'License' as defined under section 52 of the Indian Easement Act, 1882.
 - The land once acquired for business purpose becomes a non-residential property.
 - The contention of the Appellant that para 2(a) of the Schedule II to the CGST Act, 2017 covers

⁴ 2020-VIL-289-AAR

⁵ Para 2(a) reads as any lease, tenancy, easement, licence to occupy land is a supply of services;

⁶ An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of certain other land not his own



only those transactions where the transfer of space is occupied by the easement taker and since in the present case only access is granted therefore the amount received is not covered under the said para, is not correct. The term 'to occupy' does not necessarily mean to possess. If the intention of the statute is to cover the activity wherein there is transfer of space by possession, then the wordings of the statute will clearly bring out such intention. Transfer of right to use the space without the transfer of space *per se* also conveys the right to occupy.

- Furthermore, in the present case, land is supplied by the landowner to the Appellant and the access to the pathway is granted by the Appellant to the landowner. The recipient and the supplier are not the same in these supplies and therefore the transaction is not a 'composite supply'.
- In the present case, the activity is not of leasing but only of grant of right to pathway by the Appellant for shared access. This activity of agreeing to grant rights is an 'act of agreeing to tolerate an act' and classifiable under HSN 999794 under 'other miscellaneous services' and taxable at 18%.

Ruling

The grant of shared access to pathway is liable to GST.

Dhruva Comments:

In the present times, there are considerable land acquisitions taking place for various infrastructure projects but whether a grant of access to a pathway to owner's land / house for an amount under an express covenant could be construed as an independent supply liable to GST needs to be evaluated. Furthermore, whether such transaction is in the course of a business needs to be deliberated upon.

Page Industries Limited – Appellate Authority for Advance Ruling, Karnataka⁷

Issue for Consideration

Whether Input Tax Credit ("ITC") can be claimed of GST paid on promotional / marketing products used for promoting the brand and marketing its products?

Discussion

- Appellant is a manufacturer of branded goods such as knitted and woven garments, swim wear and swimming equipment. The goods manufactured are sold through their own outlets as well as through distributors and retail dealers.
- Appellant procures various display items such as stands, posters, hoardings, staff uniforms etc. which are distributed to their showrooms, distributors and retailers for display and advertising of the products. Appellant also procures certain give-away items such as calendars, diaries, pens, carry bags etc. with their brand name embossed on it and these are distributed to showrooms and retailers, then finally given to customers (free of cost) who purchase their products.
- The Appellant had approached the Authority for Advance Ruling ("the Authority") for ITC on the aforesaid promotional items. The Authority vide its order⁸ held as follows:
 - The promotional / marketing items sent to the showrooms should be treated as 'capital goods' and not 'inputs' and thus, eligible for ITC. However, after usage, the said items are either disposed of or written off by the Appellant. Therefore, ITC which was claimed earlier needs to be reversed as per rule 43 of CGST Rules, 2017.
 - In relation to give-away items distributed to distributors / franchisees, the Authority held that the same amounts to 'supply' as the transaction is with related parties and thus, eligible for ITC. However, for give-away items given to retailers, the same has to be considered as 'gifts' and ITC

⁷ 2021-VIL-21-AAAR

⁸ 2020-VIL-332-AAR



is ineligible under section 17(5) of the CGST Act, 2017.

- Aggrieved by the order, the Appellant filed an appeal before the Appellate Authority for Advance Ruling (“the Appellate Authority”) and submitted as follows:
 - The promotional / marketing items sent to the franchisees / distributors are not capitalized in books of accounts but treated as revenue expenditure. The Authority has erroneously treated them as ‘capital goods’ and not ‘inputs’.
 - All the promotional items are procured on payment of GST and used for brand promotion which is in furtherance of business. The phrase ‘used in the course or furtherance of business’ has a very wide meaning and includes any goods/services used in the furtherance of business. In this regard, reliance was placed by the Appellant on various judicial precedents.
 - Promotional / marketing items used at their showrooms or at distributors / dealer’s showroom are intended to promote their brands and make known the products manufactured by them. They are distributing the same with the obligation to promote their brand and market their product. Hence, the same cannot be construed as gifts.
 - In the case of a gift, there is no further obligation on the person who accepts the gift, but in the case of promotional items sent by the Appellant, there is an obligation to use the same in promotion of their brand.
 - Appellant has accounted the same as revenue expenditure and the same are not treated as assets in the books of accounts and no depreciation is claimed on the same. The observation of the Authority that the same are treated as capital goods is factually incorrect.
 - The Authority has traversed beyond the ruling sought and held that the Appellant and their franchisees / distributors are related persons. The franchisees / distributors are independent entities carrying only representational rights with an obligation to promote and market the

brands of the business and are not related to each other.

- The Appellate Authority observed as follows:
 - There is a contractual obligation on the part of the Appellant to provide promotional / marketing items to the franchisees / distributors in order to enhance the sale of their products. The purpose of these items is to enhance the sales of their products and they are used in the course of furtherance of Appellant’s business.
 - Furthermore, as per normal accounting practices, promotional expenses are accounted as revenue expenditure and not considered as ‘capital goods’ in the books of accounts. Hence, the finding of the lower authority in treating the promotional items as ‘capital goods’ is incorrect.
 - Distribution of promotional materials free of charge by the Appellant to the franchisees and distributors is neither covered within the scope of a taxable supply as defined in section 7 of the CGST Act, 2017 nor it is a supply covered under the ambit of Schedule I to the said Act. Thus, the activity of providing promotional items can be termed as ‘non-taxable supply’ as defined in section 2(78) of the CGST Act, 2017.
 - Promotional items are indeed used in the course or furtherance of the Appellant’s business. However, the said goods are provided without any consideration and the transaction is a non-taxable supply. Therefore, the Appellant is not eligible to avail the ITC as per section 17(2) of the CGST Act, 2017.
 - For promotional items such as carry bags, diaries, pens etc. which contain the brand name of the Appellant and are given to customers, there is no contractual obligation to provide these items. The same are supplied voluntarily and free of cost. Therefore, the same should be construed as gifts and are not eligible for ITC.
 - The reliance placed by the Appellant on the advance ruling pronounced by Maharashtra Advance Ruling Authority in the case of *Sanofi India Ltd.* does not hold good as the members



differed in the decision on the points in appeal and no advance ruling was pronounced in the said ruling.

Ruling

The Appellant is not entitled to claim ITC on promotional / marketing products used for promoting their brand and marketing the products.

Dhruva Comments:

Circular no. 92/11/2019 dated March 7, 2019 clarifies that ITC should not be available on inputs, input services or capital goods distributed as gifts / free samples without any consideration as the transaction does not qualify as 'supply'. If it qualifies as supply, ITC should be eligible.

Similar advance rulings were issued in the past in relation to ITC on promotional items in the case of *Surfa Coats (India) Pvt. Ltd.*⁹ and *Moksh Agarbatti Co.*¹⁰ wherein the Authority had denied the ITC on incentives given by the Applicant under various schemes in order to enhance the sales.

ITC on promotional expenses has been a contentious issue under GST. Goods given are for promoting sales which is related to business and cost of such items is already factored into sales value on which GST is paid. Shouldn't ITC be eligible on the promotional items? Also, can the same can be construed as gifts when they are meant for sales promotion?

details of outward supplies in GSTR 1 or using invoice furnishing facility (IFF) and GSTR 3B returns using the facility of electronic verification code (EVC). [As per rule 26, such person is required to furnish the returns through digital signature certificate (DSC).]

Dhruva Comments:

The said amendment is a welcome move considering the present pandemic and lockdown situation in various parts of the country. Equally, the said facility should also be extended for other filings like ISD returns, refund applications, etc.

Notification

Amendment in CGST Rules, 2017 for the manner of authentication of returns

The CBIC has issued notification no. 07/2021-Central Tax dated April 27, 2021 whereby a new proviso has been added to rule 26 of the CGST Rules, 2017 to state that during the period April 27, 2021 to May 31, 2021 a person registered under the provisions of the Companies Act, 2013 shall be allowed to furnish their

⁹ Advance Ruling no. KAR ADRG 28/2019 September 12, 2019

¹⁰ Advance Ruling no. GUJ/GAAR/R/14/2019 dated August 23, 2019





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