# Dimensions – 36th Edition

## Rulings under GST era:

| 1. Jotun India Pvt Ltd - Maharashtra[1] | |
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| **Issue for Consideration** | Whether recovery of 50% of parental health insurance premium (premium) from the employees amounts to supply under the GST law? |
| **Discussion & Ruling** | **Discussion:**<br>• The Applicant is engaged in the manufacture and supply of paints and powder coatings. The Applicant had introduced optional scheme of health insurance for the employee's parents. Under the scheme, the premium is paid by the Applicant against issuance of a premium receipt in the name of the Applicant.<br>• Out of the total premium paid, 50% of the premium is borne by the Applicant and the remaining 50% is recovered from the employees in instalments from their salary.<br>• The Applicant has approached the Authority to contend that no GST is payable on such recovery on the basis of the following grounds:<br>- As per section 7 of the CGST Act, in order to constitute supply, the activity must be made in the 'course of business' or 'furtherance of business';<br>- It is not mandatory for the Applicant to provide parental medical insurance under any law and providing / non-providing of such service would not affect business of the Applicant in any way;<br>- The Applicant's business is manufacturing paint, not providing insurance services. The insurance service is provided by the insurance company and the Applicant is only paying the premium and recovering 50% from the employees; |

[1] Ruling no. GST-ARA-19/2019/B-108 dated October 04, 2019

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| | - Accordingly, the recovery of the premium cannot be treated as an activity in the 'course of business' or 'furtherance of business', and thereby, cannot be treated as a supply of service;<br>- Reliance was also placed upon the ruling of *M/s POSCO India Pune Processing Center Pvt. Ltd.* [Ruling no. GST-ARA-36/2018-19/B-110 dated September 7, 2018]<br>**Ruling:**<br>The Authority agreed with the contentions of the Applicant and held that the recovery of the premium does not amount to supply of service under GST. |
| **Dhruva Comments / Observation** | • The Ruling lays down the correct interpretation of law. Also, recovery of such type of insurance premium is a common phenomenon in the present times. It may be noted that no input tax credit is eligible on such service in terms of section 17(5) of the CGST Act.<br>• It is also observed that in many instances companies do cross charge and recover cost of insurance policies taken for the entire group. Sometimes as a practice, tax is paid on output and credit is taken. Considering the analysis made in the present ruling, it can be argued strongly that there is "no supply". There is a risk of credits getting disputed by the department alleging issue of invoice without underlying supply. Companies may alternatively also consider not to charge GST basis the concept of 'Pure Agent'. In such a case maintenance of documentation trail becomes important. |

| **2. M/s Vijay Baburao Shirke - Maharashtra[2]** | |
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| **Issues for Consideration** | Would receipt of prize money from horse race conducting entities, in the event horse owned by the applicant wins the race, amount to *supply* under section 7 of the CGST Act, 2017 or not, and consequently, is it liable to GST or not? |
| **Discussion & Ruling** | **Discussion:**<br>• The Applicant owns horses that participate in the race organised by various clubs / organisers. Upon winning such horse races, the Applicant is awarded prize money in respect of horses that win the race.<br>• The Applicant had paid service tax on receipt of the prize money in the pre-GST regime and continued to pay GST on the same under bonafide belief that the transaction qualifies as a supply of service. The Applicant also utilised input tax credit for discharging the GST liability.<br>• The Applicant contended that GST is payable on the prize money and requested a ruling since the other competitors were not paying GST on such prize money.<br>• The Applicant stated that the said activity / transaction amounts to supply as per section 7 of CGST Act, since:<br>- The Applicant is service provider and the club is a recipient;<br>- If the horse wins, a consideration is paid to the Applicant for participating and winning the race; |

[2] Ruling no. GST-ARA-12/2019-20/B-106 dated October 04, 2019

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| | - By supplying horses for participation in the race, it enables the organiser to arrange an event that the public may attend, media may broadcast, which may be of interest to advertisers and sponsors. Since the horses supplied for the races possess specialised skills, it adds greater commercial value to the event. Therefore, the race organiser and the horse owner are in receipt of a direct and individual benefit from the event.<br>• The Authority observed the following:<br>- The horses are registered into the Stud book of the appropriate authority, only after confirming their eligibility and criteria. Only thereafter, they are allowed to participate in the races. The owner has to maintain specific records of the horses and inform the concerned authorities. Thus, the activity of the Applicant is providing the services of specialised and trained horses for race. Both the race organiser and the horse owner receive a direct and individual benefit from this activity;<br>- Prize money is nothing, but the consideration received by the Applicant;<br>- The activity being undertaken by the Applicant is covered under the definition of *business* under section 2(17)(a) of CGST Act, since the Applicant is undertaking rearing, training, providing the horses, that are specialised for participating in the race;<br>- The Applicant never passes the ownership of horses to the race organiser;<br>- All the requirements to constitute a supply are present in the transaction.<br>**Ruling:**<br>• The receipt of the prize money should amount to supply under section 7 of CGST ACT, 2017.<br>• The transaction is covered under SI. No. 35 of Notification no. 11/2017 – Central Tax (Rate) dated June 28, 2017 i.e. other taxable services and thus, liable to tax at the rate of 18%. |
| **Dhruva Comments / Observations** | • Can an award of price money be equated as consideration towards rendition of any service?<br>• In the instant case, the Authority has construed participation by horse owners in the race as a "supply of service" to the race organizer against prize money as "consideration" so as to attract GST at the rate of 18%. It needs to be deliberated as to whether the said prize money could be construed as an actionable claim and thus excluded from the purview of GST since the said act of participation in a race and winning cannot be construed as betting and gambling. Interestingly, there is no discussion on this aspect in the ruling.<br>• It may be noted that admission to entertainment events / amusement facilities including race club and gambling on horse races attracts GST at the rate of 28%. |

## Circulars:

The Government has issued various circulars on various types of transactions and clarified the applicability of GST on the same. The same are summarized below

| 1. Goods imported under lease[3] | |
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| **Clarification** | • SI. no. 547A, 557A and 557B of the Notification no. 50/2017 - Customs dated June 30, 2017 provides exemption from IGST, subject to fulfilment of certain conditions. The said serial numbers have been amended w.e.f. October 01, 2019 to provide that the respective goods imported, should be covered under 1(b) or 5(f) of Schedule II of the CGST Act.<br>• The wordings i.e. 'taken on lease / imported under lease' as existed under the respective serial numbers prior to the amendment, would cover imports under an arrangement so as to supply services covered by item 1(b) or 5(f) of Schedule II of the CGST Act to avoid double taxation and this clarification would apply also for the past period.<br>• Further, the amendment has been made to align the same with the conditions specified in the exemption notification. |

| 2. Scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both regarding goods imported under lease[4] | |
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| **Clarification** | • The Government had introduced a new entry under SI. no. 23 under heading 9983 w.e.f. October 01, 2019 vide Notification no. 20/2019 Central Tax (Rate) dated September 30, 2019, i.e.<br>"*(ia) Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both*"<br>• The said amendment was made so to distinguish certain services particularly technical and consulting services with the support services relating to exploration, mining, drilling of petroleum crude / natural gas or both. |
| **Dhruva Comments / Observations** | The support services pertaining to mining, exploration or drilling of petroleum crude or natural or both were being levied to tax at the rate of 12% whereas the professional, technical services relating to the same were being taxed at the rate of 18%. Accordingly, a new entry was introduced so as to levy tax on the professional services also at the rate of 12%. |

[3] Circular no. 113/32/2019 - GST dated October 11, 2019
[4] Circular no. 114/33/2019 - GST dated October 11, 2019

| 3. Airport levies i.e. Passenger Service Fee (PSF) and User Development Fee (UDF)[5] | |
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| **Clarification** | • PSF and UDF are charged by the airport operators for providing the services to the passengers. In order to avoid any inconvenience to passengers and for smooth functioning of the airport operations these charges are collected by the airlines from the passengers and remitted to the airport operator.<br>• These charges are collected by the airlines as an agent of the airport operator and is not a consideration for any service provided by the airlines. The airlines are not responsible for payment of GST on PSF / UDF if it satisfies the conditions of pure agent under rule 33 of the CGST Rules.<br>• Airline should **separately indicate** the actual amount of PSF / UDF and GST payable, on the invoice issued to the passengers.<br>• The collection charges paid by the airport operator to the airlines for such collection, are a consideration for the services provided by the airlines to airport operator and shall be liable to GST under forward charge. |
| **Dhruva Comments / Observations** | • The issue of whether tax can be levied on PSF / UDF in the hands of the Airlines has been subject matter of dispute under the Service tax regime. The matter is currently pending before the Supreme Court [*Commissioner* v. *Lufthansa German Airlines* - 2018 (17) G.S.T.L. J47 (S.C.)], *Commissioner* v. *Air Astana* - 2018 (10) G.S.T.L. J20 (S.C.), *Commissioner* v. *Austrian Airlines* - 2017 (6) G.S.T.L. J103 (S.C.), etc.]<br>• Interestingly, the CESTAT in *M/s GMR Hyderabad International Airport* v. *Commissioner of Customs, Central Excise & Service Tax, Hyderabad – II* [ Appeal No. - ST/270/2010] has referred the matter for determination to the Larger Bench on whether Service tax can be levied on UDF **in the hands of the Airport operator**.<br>• The issue as regards levy of Service tax on collection charges under the taxing entry of Business Auxiliary service is pending for determination before the Supreme Court. [*Jet Airways (India) Ltd.* v. *Commissioner* 2014 (36) S.T.R. J231 (S.C.)]. The Airlines had started paying Service tax on such charges under business support services w.e.f. May 01, 2006. |

| 4. Display of the name of the donor in the premises of the donee[6] | |
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| **Clarification** | • Individual donors provide financial help or support in the form of donation / gift to institutions like schools, temples, charitable organisation, etc. who in turn as an acknowledgement display the name of the donor in their premises.<br>• There should not be any levy of GST when the name of the individual donors are displayed in recipient's premises as an expression of gratitude and public recognition without an aim to give publicity in the manner of advertising or promotion of his business, as there is no supply of service for a consideration (in the form of donation). |

[5] Circular no. 115/34/2019 - GST dated October 11, 2019
[6] Circular no. 116/35/2019 - GST dated October 11, 2019

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| | • There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything, then no GST liability should arise on such consideration.<br>• GST should not be leviable where all the following three conditions are satisfied:<br>- Gift / donation is made to a charitable organization,<br>- Payment has the character of gift / donation, and<br>• The purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement. |
| **Dhruva Comments / Observations** | • The Education guide issued under the Service tax regime had clarified that donations to a charitable organization are not consideration unless charity is obligated to provide something in return e.g. display or advertise the name of the donor in a specified manner or such that it gives a desired advantage to the donor. There is no such clarification under the GST regime.<br>• The GST Law is not very clear about receipts of money by way of donations and the issue for consideration is whether such amounts received are per se in the course or furtherance of any business (the term is defined very widely to include any trade, commerce etc., **whether or not it is for a pecuniary benefit**).<br>• It may be relevant to note that Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017 provides for exemption for services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of 'charitable activities'. The term 'charitable activities' is defined in a very restrictive manner to include certain specified activities like care or counselling of terminally ill persons or persons with severe physical or mental disability, public awareness of preventive health, family planning, advancement of religion, spirituality or yoga etc. The said definition is not aligned to the Income tax definition of 'charitable purpose' which is very wide.<br>• The issue that remains unanswered is whether the aforesaid exemption mean that other than the above, donations received are liable to GST? If no, then, why is there a need for exemption per se? |

| **5. Determination of place of supply for software / design services in ESDM industry[7]** | |
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| **Clarification** | • Many companies located in India are engaged in the process of developing software and designing integrated circuits for customers located outside India, whereby,<br>- such customers electronically provide design requirements and Intellectual Property blocks ("IP blocks", reusable units of software logic and design layouts that can be combined to form newer designs);<br>- on some occasions, samples of such prototype hardware are then provided back to the Indian companies to test and validate the software and design; |

[7] Circular no. 118/37/2019 - GST dated October 11, 2019

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| | - the Indian companies communicate the designs electronically to the customers or a manufacturing facility for manufacture of hardware based on such designs on behalf of customer.<br>• The trade requested for clarification on whether provision of hardware prototypes and samples and testing lends such services the character of performance-based services.<br>• The circular explained that in contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.<br>• Accordingly, the circular clarified that the place of supply in such cases, where such testing is an ancillary supply, would be the location of the service recipient as per section 13(2) of the IGST Act.<br>• It further clarified that the principle of place of supply for performance-based services as per section 13(3)(a) of the IGST Act do not apply separately to ancillary supply. |
| **Dhruva Comments / Observations** | • The Circular suggests a correct interpretation of law by treating such transactions as a composite supply and consequently no separate tax treatment should be offered to such ancillary services.<br>• There was an apprehension of services being classified as performance-based services in situations where proto-types were provided to the supplier by the recipient for merely testing / research purposes. The dominant nature of the activity in such cases was always providing software development / research services, however, in certain cases samples / prototypes were provided to carry out the testing / research. It is important that the contractual arrangement between parties clearly bring out the dominant nature of the contract and the fact of provision of goods as an ancillary or incidental activity very clearly so as to avoid any disputes. |

| **6. Supply of securities under Securities Lending Scheme,1997 (Scheme)[8]** | |
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| **Clarification** | • Under the Scheme the lender temporarily lends the securities held by him to a borrower through an approved intermediary and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the securities after stipulated period of time.<br>• Securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 are not covered in the definition of goods / services under the |

[8] Circular no. 119/38/2019 - GST dated October 11, 2019

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| | CGST Act. Therefore, a transaction in securities which involves disposal of securities is not a supply under the GST and hence not taxable.<br>• The explanation added to the definition of services w.e.f. February 01, 2019 i.e. "includes facilitating or arranging transactions in securities" is only clarificatory in nature and does not have any bearing on the taxability of the services under discussion (lending of securities) in past since July 01, 2017 but relates to facilitating or arranging transactions in securities.<br>• The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities and therefore, is not excluded from the definition of services.<br>• The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since July 01, 2017;<br>• Apart from above, the activities of the approved intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately;<br>• For the past period i.e. from July 01, 2017 to September 30, 2019, GST is payable under forward charge by the lender. The nature of tax payable shall be IGST. However, if the lender has paid CGST / SGST / UTGST then IGST is not required to be paid again.<br>• Further, w.e.f. October 01, 2019, the said service is taxable under reverse charge mechanism and the nature of GST to be paid is IGST. |
| **Dhruva Comments / Observations** | • The Securities Lending Scheme issued by SEBI which allows lenders to enter into an agreement with an approved intermediary for depositing the securities for the purpose of lending through the approved intermediary. In such case, the lender is entitled to charges for lending the securities.<br>• A view was being taken that such charges are not liable to GST as the same constitute 'transaction in securities'.<br>• However, the circular has interpreted the term 'transaction in securities' to only mean disposal in securities. It may be noted that under the erstwhile Service tax regime, the language used for 'trading in securities', which has now got replaced by 'transaction in securities' under the GST regime. Vide Notification No. 22/2019-Central Tax (Rate) dated September 30, 2019, borrowers will now have to pay GST under the reverse charge mechanism.<br>• A further issue that needs determination is as regards availability of credit to the borrower considering the provisions of section 17 of the CGST Act. |

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