



## Dimensions – 48<sup>th</sup> Edition

### Rulings under the GST regime:

#### 1. Sanghvi Movers Limited – Appellate Authority, Tamil Nadu<sup>1</sup>

<b>Issues for Consideration</b>	Whether the branch can claim full Input Tax Credit (ITC) on the services received from the Head Office (HO) when the payments to be made in respect of the same are netted off?
<b>Discussion &amp; Ruling</b>	<p><b>Discussion:</b></p> <ul style="list-style-type: none"> <li>• The Appellant is engaged in providing cranes on a lease/rent/hire basis to its clients. The HO of the Appellant is located in Pune, Maharashtra and has branch offices across India. The title and ownership of the cranes is with the HO.</li> <li>• As per the agreement between the HO and the Appellant, the flow of transactions is as follows:             <ul style="list-style-type: none"> <li>- When the Appellant receives a final work order from a customer, it raises an internal work order on the HO. The HO then transports the crane to the Appellant or the customer's location;</li> <li>- The Appellant raises the invoice on the customer and the HO raises the invoice on the Appellant for the supply of the crane which is appx. 95% of the value charged to the customer;</li> <li>- The customer can make the payment either directly into the bank account of HO or the cheque/ draft can be given in the name of the Company i.e. Sanghvi Movers Limited;</li> <li>- HO discharges IGST on the value charged to the Appellant and the Appellant avails the said ITC;</li> <li>- Book adjustments are made by netting off the amount payable / receivable between the HO and the Appellant.</li> </ul> </li> </ul>

<sup>1</sup> Order in Appeal no. AAAR/08/2019 (AR) dated November 13, 2019



- The Authority for Advance Ruling, Tamil Nadu (Authority) rejected the ITC claimed by the Appellant in terms of second proviso to section 16(2) of the CGST Act, since the payment was not made by the Appellant to the HO and the exemption available in proviso to Rule 37 of the CGST Rules would not be available, since there is a consideration specified in the invoice raised.
- The Appellant, accordingly, filed an appeal before the Appellate Authority and argued that they were eligible for full ITC on the basis of the following grounds:
  - The consideration has been agreed only for the purpose of compliance of valuation provisions under the GST law and does not have commercial substance. The present transaction falls within clause 2 of Schedule I of the CGST Act, since there is no consideration charged. Inter-branch transactions are never to be considered as revenue generating transactions;
  - If the interpretation of the Authority is adopted, then every branch office would be required to open separate bank accounts and make payments to distinct persons (other branches / HO) in order to avail the ITC, thereby defeating the purpose of proviso to Rule 37 of CGST Rules;
  - The conditions specified in section 16(2) of the CGST Act for the availment of ITC have been fulfilled and accordingly, the ITC should be eligible;
  - As per the accounting principle, the receivable and payable have to be considered at entity level and not at GST registration level. Reliance was also placed upon Ind AS 32 in this regard;
  - The term 'otherwise', used in the definition of 'consideration' under section 2(31) of the CGST Act, is very wide and would include all modes of payment including barter, netting off, exchange, etc.;
  - Proviso to section 16(2) of CGST Act read with proviso to Rule 37 of the CGST Rules applies only on failure to make payment of value and tax and not where the value payable to the supplier is reduced as a result of mutual settlement between them. Thus, the provisos cannot be invoked;
  - Reliance was also placed upon the Advance Rulings in the cases of *Senco Gold Limited* and *MRF Limited*.
- After considering the various provisions of the GST law, the Appellate Authority observed as follows:
  - The transaction is between distinct persons and is covered under Schedule I of the CGST Act;
  - The customer is making the payment in the bank account of HO or in name of the Company and the receipts are accounted for at an entity level. Rule 37 of the CGST Rules provides for deemed payment of value in such transactions;
  - Even if it is considered that the proviso to Rule 37 does not apply, the ITC cannot be restricted since the 'consideration' is paid to the HO by the customer of the Appellant



	<p>or by setting off against the payables of the Appellant to the HO which is in accordance with the established accounting principles.</p> <p><b>Ruling:</b></p> <p>Full ITC is eligible to the Appellant subject to the fulfilment of other conditions of section 16 of the CGST Act.</p>
<b>Dhruva Comments / Observation</b>	<p>This is a welcome ruling providing clarity on taxability, valuation and credit provisions when transactions are between distinct persons. A suitable clarification from the Government on concept of netting off as an accepted mode of payment could be useful to avoid such litigations.</p>

## 2. Specsmaakers Opticians Private – Appellate Authority, Tamil Nadu<sup>2</sup>

<b>Issue for Consideration</b>	<p>Where the transaction is between distinct persons and the Open Market Value (OMV) is available in terms of Rule 28(a) of CGST Rules, whether the valuation can be done in accordance with second proviso to Rule 28 of CGST Rules?</p>
<b>Discussion &amp; Ruling</b>	<p><b>Discussion:</b></p> <ul style="list-style-type: none"><li>• The Appellant is engaged in the business of spectacle frames, sun glasses, etc. The items are imported and also procured locally. The Appellant has their main office in Tamil Nadu and various branches other states in India.</li><li>• The goods procured are transferred to various branches for supply to customers. Since the branches were eligible for full ITC, the Appellant was of the view that the said goods can be valued as per the second proviso to Rule 28 of the CGST Rules i.e. value declared on the invoice would be deemed as OMV. It had approached the Authority for Advance Ruling, Tamil Nadu (Authority) in order to determine the value to be adopted in such cases.</li><li>• The Authority observed that since the open market value (OMV) of the goods was available, the goods should be valued as per Rule 28(a) of the CGST Rules and rejected the valuation method preferred by the Appellant.</li><li>• The Appellant appealed before the Appellate Authority and contended as follows:<ul style="list-style-type: none"><li>- The two provisos under Rule 28 deal with specific situations. There is no requirement that the provisos should be applied sequentially;</li><li>- The allegation that the Appellant may adopt a higher OMV, thereby, leading to a higher ITC accumulation at the hands of the recipient is not correct since the provider would also be required to pay higher tax;</li><li>- The intention of the legislature was to only avoid blocking of capital / funds by introducing the second proviso;</li><li>- Reliance was also placed upon the West Bengal Appellate Authority ruling in the case of <i>GKB Lens Pvt. Ltd.</i><sup>3</sup></li></ul></li></ul>

<sup>2</sup> Order in Appeal no. AAAR/09/2019 (AR) dated November 13, 2019

<sup>3</sup> 2018 (17) GSTL 698 (App. AAR-GST)



	<ul style="list-style-type: none"><li>• After considering the various provisions of GST law, the Appellate Authority observed as follows:<ul style="list-style-type: none"><li>- There is no specific regulation in CGST Rules, that the rules are to be applied seriatim;</li><li>- The first proviso to Rule 28 also does not mandate, and it is at the option of the supplier, to take the value as 90% of the sale value of goods of like kind and quality. The second proviso is an alternative, whereby the invoice value can be taken as OMV;</li><li>- The second proviso to Rule 28 is not subordinate to the first proviso. It independently deals with a situation where the recipient is eligible for full ITC.</li></ul></li></ul> <p><b>Ruling:</b> The Appellant can adopt the value as per the second proviso to Rule 28 of CGST Rules.</p>
<b>Dhruva Comments / Observation</b>	The said ruling gives a correct interpretation of law since the second proviso to Rule 28 of the CGST Rules would otherwise become redundant where the OMV is available.



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