

INDIRECT TAX WEEKLY DIGEST

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GOODS & SERVICES TAX

JUDICIAL UPDATES WRIT PETITION

PROCEEDINGS BY THE ISSUANCE OF SHOW CAUSE NOTICE FOR CANCELLATION OF REGISTRATION IN FORM GST REG-31 INSTEAD OF REG-17 ARE INVALID

Facts of the case

- M/s Pankaj Cottage (Taxpayer) is registered under GST law and has delayed filing returns & making payment of tax.
- The registration of the Taxpayer was cancelled after issuing a Show Cause Notice (SCN) electronically in Form REG-31. The Taxpayer has a case that the SCN never came to his attention.
- On coming to know of the order cancelling the registration, the Taxpayer applied for revocation of cancellation.
- The application was rejected as the revocation was beyond time prescribed under Section 30 of the CGST Act, 2017.
- The Taxpayer has therefore filed an appeal under Section 107 of the CGST Act, 2017.

Contention by the Taxpayer

- The taxpayer contended that the entire procedure adopted by the Tax authority in cancelling of registration is absolutely illegal and unsustainable. The SCN issued prior to cancellation of registration itself is not in the manner prescribed by the rules.
- SCN is issued in Form GST REG-31 instead of Form GST REG-17 which is in contravention of Rule 21 of CGST Rules, 2017.

- It is also submitted that the Tax authority issued SCN in a Form containing vague details of the cancellation of registration.

Contention of the Tax authority

- Referring to Sections 29 and 30 of the CGST Act, 2017 and the provisions of Rule 22(1) & 21A of CGST Rules, 2017, it was argued that the scheme of cancellation of registration is inbuilt into the provisions of Section 29 and 30.
- It was submitted that the CGST Act, 2017 being fiscal legislation, the provisions must be interpreted strictly in favour of the Tax authority and the provisions in Section 29 are incorporated for the purposes of ensuring strict compliance with tax laws and the failure of the Taxpayer to file returns (which fact is not disputed) led to the cancellation.
- It was also submitted that the SCNs issued are ones generated by the system and convey with sufficient clarity the reason for taking steps for cancellation.

Observations & ruling by the High Court

- It is clear that Form GST REG-31 is one relatable to proceedings for suspension of registration and cannot be treated as an SCN under Rule 21 of the CGST Rules, 2017 which requires the issuance of a notice in Form GST REG-17.

- Tax authority issued the SCN in form GST REG-31 by omitting specific details from the form and by treating it as a notice for cancellation. It is a principle at the heart of administrative law that where the law requires a thing to be done in a particular manner, it must be done in that manner alone.
- Therefore, Hon'ble HC observed that the action taken by the Tax authority by initiating proceedings in Form GST REG-31 of the CGST Rules and completing the proceedings for cancellation of registration is clearly without jurisdiction and opined that the Tax authority must issue a notice as specified in Rule 21 of the CGST Rules in form GST REG-17 and not in form GST REG-31.
- The Honorable HC has held in favour of the Taxpayer & quashed the SCN issued and directed the Taxpayer to file all defaulted returns together with tax, late fee, interest, penalty, etc. within a period of two weeks from the date on which the registration of the Taxpayer is restored in compliance with this judgment.

[High Court of Kerala - M/s Pankaj Cottage Vs. The Goods and Service Tax officer Central Tax and Central Excise dated 22 December 2023]

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

THE MERGER OF TWO DISTINCT PERSONS AS A GOING CONCERN IS A SUPPLY OF SERVICE EXEMPTED FROM GST LEVY

Facts of the case

- M/s. Vasant Jewellers (Jayesh Popat or Taxpayer) is engaged in the business of dealing in jewellery.
- The taxpayer intended to merge their proprietorship business with its partnership firm on a going concern basis (both having two separate registration), with all assets and liabilities be transferred to their partnership firm and such transfer of business shall take place without any consideration.

Questions before the AAR

- Whether the transaction of transfer of business by way of merger of two registration/distinct person would constitute supply under GST Law
- Whether the transaction would amount as the supply of goods or supply of services
- Whether the transaction would be covered under entry no:2 of notification no:12/2017-CT(R) dated 28 June 2017

Contention by the Taxpayer

- A Memorandum of Understanding (MOU) between the two parties viz. its proprietorship business and partnership firm was executed for the purpose of transfer of all the assets and liabilities including all the rights and claims, to its partnership firm.

- Partnership firm would continue to carry on business of the proprietorship concern after the proposed merger.
- Transaction of transfer of business by way of merger qualifies as supply under GST since there is a permanent transfer of the proprietorship concern to the partnership firm along with all the assets and liabilities.
- Transfer of business does not constitute the sale of goods, but it is more of an event in pursuance to a business agreement. Hence, the transfer of business is a supply of service.
- The proprietorship firm shall cease to exist, and all its assets and liabilities shall be taken over by the partnership firm, post-merger.
- Such transfer of business amounts to services by way of transfer as going concern, as a whole or an independent part thereof & thus exempted vide entry no:2 of the exemption notification no:12/2017-CT(R) dated 28 June 2017.

Observations and Ruling by AAR

- Transfer of business cannot be treated as a supply of goods, since a business cannot be said to be a movable property so as to qualify as 'goods'.
- Since the taxpayer intended to transfer his entire proprietorship business including its assets and liabilities not on a standalone basis, the said transfer can be considered as a supply of services.
- To qualify as a 'going concern', the transferred business must not have the intention or necessity of liquidation or of curtailing materially the scale of the operations for the foreseeable future.
- There are no comments from the auditor in respect of the 'entity's ability to continue in operation for the foreseeable future' in the tax audit report that was furnished by the taxpayer.
- Therefore, the transaction would be covered under entry no:2 of notification no:12/2017-CT(R) dated 28 June 2017 subject to fulfilment of the conditions to qualify as a going concern.

[AAR-West Bengal, M/s. Vasant Jewellers (Jayesh Popat), Ruling No: 16/WBAAR/2022-23 dated 22 December 2022]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

ADMINISTERING OF COVID-19 VACCINATION BY HOSPITALS IS A COMPOSITE SUPPLY, WHEREIN THE PRINCIPAL SUPPLY IS THE 'SALE OF VACCINE'

Facts of the case

- M/s. Krishna Institute of Medical Sciences Limited (Taxpayer) is a multi-specialty hospital, rendering healthcare services and claiming exemption on the said service vide notification no:12/2017-CT(R).

- Apart from healthcare services, the Taxpayer also makes pharmacy supplies based on doctor's prescriptions to outpatients, which is taxable and accordingly the Taxpayer remits taxes on the same. The Taxpayer has been permitted to administer the COVID-19 vaccine.
- The Taxpayer sought clarification with regard to the activity of administering of COVID-19 vaccination by hospitals and approached the AAR on the below-mentioned questions.
- The AAR held as follows:
 - Administering of COVID-19 vaccination by hospitals is a composite supply, wherein the principal supply is the 'sale of vaccine' and the auxiliary supply is the service of 'administering the vaccine' and the total transaction is taxable at the rate of principal supply i.e. 5%.
 - Administering of COVID-19 vaccine by clinical establishments (Hospitals) is not qualified under 'Health care services' as per notification no:12/2017-CT(R) dated 28 June 2017 and is not eligible for exemption.
- Aggrieved by the impugned order, the Taxpayer has approached the AAAR.

Questions before the AAAR

- Whether administering of COVID-19 vaccination by hospitals is a supply of goods or a supply of service
- Whether administering of COVID-19 vaccine by clinical establishments (Hospitals) qualify as 'Health care services' as per notification no:12/2017 CT(R) dated 28 June 2017
- Whether administering of COVID-19 vaccination by a clinical establishment is exempt under GST Act

Contention by the Taxpayer

- The Taxpayer submitted that the AAR erred in interpreting the basic fact of the case that the recipient is visiting the hospital not to purchase (buy) the vaccine but to get served through vaccination.
- There is no transfer of goods as such during the process, the vaccine vial consists of multiple doses and one such dose is injected into the body of the recipient.

- The recipient is called to be served rather than being called as the owner of a vaccine. The true essence of the supply is service, wherein the recipient's desire to get immune will be fulfilled.
- Before administering the vaccine, the title of the vaccine does not pass, after administration of the vaccine, there remains nothing to become subject of the title.

Observations and Ruling by AAAR

- There is no doubt that the Taxpayer qualifies to be a clinical establishment but, the supply is predominantly of sale of goods and not the service component of healthcare.
- The dominant intention of the recipient is the receipt of the vaccine followed by its administration and hence the principal supply is the supply of vaccine and not the process of vaccination.
- The Taxpayer himself acknowledges that the vaccine vial consists of multiple doses and one such dose is injected to the body of the recipient, as a part of the vaccination process. On the other hand, he claims that there is no transfer of goods as such, which is a contradiction.
- Once the individual is vaccinated, there is the transfer of goods undoubtedly, as the recipient receives the stipulated amount of dosage of medicine.
- Vaccination produces protection against disease and it is administered before the advent of disease. The service of administering a vaccine does not fit into the definition of 'Health care services' as per notification no:12/2017 CT(R) 28 June 2017.
- The exemption cannot be allowed in the instant case against the claim of the Taxpayer. Taxability of the supply comes under 'composite supply', wherein the principal supply is the 'sale of vaccine' and the auxiliary supply is the service of 'administering the vaccine' and the total transaction is taxable at the rate of principal supply i.e. 5%.

[AAAR-Andhra Pradesh, M/s. Krishna Institute of Medical Sciences Limited, Ruling no: /AAAR/AP/07(GST)/2022, dated 19 December 2022]

CUSTOMS

NOTIFICATION

THE SECOND TRANCHE OF TARIFF CONCESSIONS UNDER THE INDIA-AUSTRALIA ECONOMIC COOPERATION AND TRADE AGREEMENT (IND-AUS ECTA)

CBIC has issued a second tranche of concessions under IND-AUS ECTA. Notification is effective from 01 January 2023.

[Notification no:64/2022-Customs dated 29 December 2022]

EXTENSION ON THE VALIDITY OF CONCESSIONAL RATE OF DUTY NOTIFICATIONS

CBIC has extended the validity of notifications prescribing concessional rate of Basic Customs Duty (BCD) & Agriculture Infrastructure and Development Cess (AIDC) on crude & refined soya, sunflower and palm oils till 31 March 2023.

[Notification no:65/2022-Customs dated 29 December 2022]

SEA CARGO MANIFEST AND TRANSHIPMENT (SECOND AMENDMENT) REGULATIONS, 2022

The CBIC has notified the Sea Cargo Manifest and Transhipment (Second Amendment) Regulations, 2022, which amends Regulation 15 of the Sea Cargo Manifest and Transhipment Regulations, 2018 to extend the compliance regarding transitional provisions with respect to cargo declarations of the said regulations from 31 December 2022 till 30 December 2023.

[Notification no:114/2022-Customs (N.T.) dated 30 December 2022]

AGARTALA AIRPORT IS LISTED AS A CUSTOMS AIRPORT FOR THE PURPOSE OF UNLOADING OF BAGGAGE AND LOADING OF BAGGAGE

Agartala Airport of Tripura has been notified as a Customs airport for the purpose of Unloading of baggage and loading of baggage.

[Notification no:01/2023-Customs (N.T.) dated 04 January 2023]

FOREIGN TRADE POLICY (FTP)

POLICY CIRCULAR

AMENDMENTS TO PARA 2.56 OF HANDBOOK OF PROCEDURE AND ADDITION OF AGENCIES TO APPENDIX 2G (LIST OF INSPECTION AND CERTIFICATION AGENCIES WITH AREA/REGION OF OPERATION)

- Para 2.56 has been amended to highlight the mandatory physical presence of inspectors at a place of inspection.
- Format of PSIC has been amended to underline that PSIC shall be issued by an inspector from country of inspection only.
- 15 agencies are notified as PSIA, additional instruments have been added for 1 existing PSIA and additional areas of operation have been added for 07 existing PSIA's.

[Public Notice no:48/2015-2020 dated 05 January 2023]

NEWS FLASH

“Treated Water Obtained From CETP Attracts 18% GST: Gujarat AAR”

<https://www.livelaw.in/news-updates/treated-water-obtained-cetp-attracts-gst-aar-218345>

[Source: Live Law, 07 January 2023]

“Mismatch in ITC Claimed in GSTR-3B and GSTR-2A: CBIC releases CA/CMA Certificate Format required to Prove Genuineness of Supply”

<https://www.taxscan.in/mismatch-in-itc-claimed-in-gstr-3b-and-gstr-2a-cbic-releases-ca-cma-certificate-format-required-to-prove-genuineness-of-supply/243888/>

[Source: Taxscan, 08 January 2023]

“18% GST applicable on Manpower Services given to Government Departments: AAR”

<https://www.taxscan.in/18-gst-applicable-on-manpower-services-given-to-government-departments-aar/244056/>

[Source: Taxscan, 08 January 2023]

“Subsuming electricity into GST”

https://www.business-standard.com/article/economy-policy/subsuming-electricity-into-gst-123010300936_1.html

[Source: Business Standard, 09 January 2023]

“GST buoyancy: On GST revenues in December”

<https://www.thehindu.com/opinion/editorial/gst-buoyancy/article66331268.ece>

[Source: The Hindu, 03 January 2023]

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