

GST ADVANCE RULING
CA. C. B. Thakar, CA. Jinal Maru

The Maharashtra Goods and Services Tax Act, 2017

Circulars

The Commissioner of Goods and Services Tax, Maharashtra State, has issued Internal Circulars as below:-

- (i) Circular no.1A of 2022 dt.17.1.2022 by which the guidelines with respect to scrutiny parameters and systems or data related issues faced during returns scrutiny under GST are clarified.
- (ii) Circular no.2A of 2022 dt.25.2.2022 by which guidelines with respect of legal issues pertaining to returns scrutiny for tax periods 2017-18 & 2018-19 are clarified.
- (iii) Circular no.3A of 2022 dt.25.2.2022 by which the position about assessments orders under GST in case of non-existent / non-genuine tax payers is clarified.
- (iv) Circular no.4A of 2022 dt.2.3.2022 by which the guidelines for issuance of Form GST-DRC-07 in case of Vehicles detained for violation of E-way bill rules are given.

Profession Tax Act

The Government of Maharashtra has issued Notification dated 25.2.2022 under section 6(3) of the P.T. Act to waive late fees in case of delay in filing of returns up to Dec, 2021 under PT due to Covid-19 pandemic

Case: M/s SPANSULES FORMULATIONS [2022-TIOL-32-AAR-GST] (TELANGANA AAR)

Facts of the Case:

1. The Applicant is engaged in the business of manufacturing and sale of pharmaceutical pellets and granules for treatment of various ailments.
2. The above products are at a pre stage, ready to be filled into capsules or compressed into tablets. They are not in measured doses which can be sold in retail markets.
3. That they have been paying GST @18% on these goods under CGST & SGST. However, on reviewing the classification laid down in Notification No. 1/2017- CT(Rate) dated 28th June, 2017 they are of the opinion that tax on its products should be levied @12%.

Questions before AAR:

- (a) Whether the pharmaceutical pellets and granules manufactured and sold by the Applicant attract lower rate of GST @12% as mentioned in Notification 1/2017- CT (Rate), classified as Medicaments under Sr.No.62 of said notification?

Arguments by Applicant:

1. That they are manufacturing 15 products and also their constituents. These are pharmaceutical products with necessarily one active ingredient and more than one excipient.
2. That these (15) products have more than one constituents and are not readily usable for retail sale and therefore they are eligible to be classified under the entry in Serial No. 62 of the 2nd Schedule to the Notification No. 01/2017 dated 28.06.2017 which reads as follows –
3003 –‘Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale, including Ayurvedic, Unani, Siddha, homoeopathic or Bio-chemic systems medicaments.’
3. The following conditions to fall under above entry of Notification 1/2017 have been fulfilled by applicant :
 - It shall be a medicament falling under customs tariff head 30.02, 30.05 or 30.06.
 - Such medicament should consist of two or more constituents.

- Such constituents should be mixed together for therapeutic or prophylactic uses.
- Such medicament should not be put in measured doses or in forms or packages for retail sale.

Decision of AAR

1. As seen from the table provided by the applicant, each of the products has a therapeutic or prophylactic uses such as treatment of fungal infection, muscle relaxing for prostate, treatment of nausea, Parkinson, depression, gastro esophageal reflux disease, hay fever, pain and fever, strokes, joint stiffness, inflammation, headache and high blood sugar. However, for one product by name Orlistat, the use is given as weight loss and not treatment of any disease.
2. It was noted that meaning of words "therapeutic or prophylactic" has been enumerated by the Hon'ble SC in the case of CCE Vs Wockhardt Life Sciences Ltd 2012-TIOL-24-SC-CX the words "therapeutic or prophylactic", would apply to substances used. "To prevent, to guard against it, before, in medicine, preventive protecting against disease."; "Guarding against disease, a preventive of disease; a condom; preventive treatment against disease." And; "Serving to cure or heal, Curative concerned in discovering and applying remedies for disease."
3. That 'Obesity is not a disease and hence reduction of weight cannot be seen as a treatment against a disease.'
4. The AAR however noted that for one product named "Orlistat", which is prescribed for the purpose of weight loss and not treatment of any disease. Therefore except the product Orlistat which does not fit into the above definition, others fall under medicaments used in therapeutic or prophylactic applications.
5. It was thus held that the commodities dealt by the applicant except "Orlistat" qualify to fall under Serial No. 62 of the 2nd Schedule to the Notification No. 01/2017 dated 28th June, 2017 and therefore are liable to be taxed at the rate of 12%.

2. Case: M/s TEMPLE PACKAGING PVT LTD [2022-TIOL-06-AAAR-GST] (DAMAN AAAR)

Facts of the Case:

1. The Appellant is engaged in the activity of printing leaflets. The said product is manufactured out of the inputs namely paper/ink owned by them and content supplied by the clients mainly located in the pharmaceutical sector. These leaflets are sold to the clients on agreed consideration which is entirely based on the manufacturing expenses incurred by the appellants by using its own inputs.
2. Under Central Excise regime they cleared their products as excisable goods under CHS No. 4901 as exempted being chargeable to NIL rate. Post migration to GST regime same goods were supplied on payment of 5% GST levied at Sr. 201 of Schedule-I of Notification No. 1/2017-CT(Rate) dated 28th June, 2017.
3. The Appellant is a member of the Delegation of the federation of Master Printers, which had sought clarifications on GST rates applicable to various printed products. It was clarified that when the printed products are made by using content supplied by the customer, then it will have to be classified under the category of service and will fall under the SAC 9988. Accordingly, they started treating their products as i.e supply of services falling under SAC no. 9989 and levied tax on it @18%.
4. Subsequently, CBIC vide Circular No. 11/11/2017-GST dated 20th October, 2017, Para No. 3 clarified that the classification has to be decided on the basis of principal supply as defined under Section 2(90) of the CGST Act 2017. However, para-No. 5 further clarified that the supply can be treated as goods only when printed with design, logo etc., supplied by recipient of the goods. According to the appellant, the said clarification did not specifically deal with the issue when the client (other than publisher) is merely providing content to manufacture leaflet.
5. The CBEC vide circular no. 27/01/2018-GST dated 04-01-2018 at Para no. 6 clarified mainly with regard to printing and publication of books and did not directly deal with the issue on hand. The ambiguity thus, continued and the divergent practice was prevailing in the industry
6. The appellants were also engaged in supplying printed leaflets to customers located in SEZ and also in physical export/deemed export against EPCG/advance license. While affecting zero rated supply to SEZ units or against own EPCG license the appellants were facing difficulty to account for against its obligation as they needed to fulfil the export obligation by delivering as goods under CHS No. 4901.
7. The Appellant thus sought an advance ruling in said matter wherein the AAR Daman decided that the activity of Appellant i.e. that of printing of Pamphlet/leaflet fall under the category of supply of service – SAC 9989 and thus is leviable to tax @ 18%

8. Aggrieved by this decision of AAR, the present appeal is filed.

Questions before AAAR:

1. Whether the printed leaflet supplied by them falls under the category of supply of goods falling under CHS No. 4901 and or as a supply of service falling under SAC No. 9899 ?

Arguments by Applicant:

1. The Appellant contends that their product i.e. Leaflets are manufactured on the basis of contract given by their client which is not a printing contract but for supply of printed leaflets (for supply of goods) on agreed consideration. Chapter note no. 2 of Chapter no. 49 specifically covers the terms printed items and 49011120 covers printed leaflet whether or not in a single sheet. Therefore, printed leaflets fall under chapter 49. Further, GST rate of goods is specified under Notification No. 1/2017-CT (Rate) dated 28th June, 2017 and Schedule-I(Sr, No. 201) specifically provides GST to be levied on same @5%.
2. Also, Chapter note no. 5 of Chapter 49 specifically excludes publishing matter from 4901 and SAC 9989 mainly covers publishing matter only. SAC 9989 covers two sub-heading namely 998911 and 998912. SAC 998911 covers publishing matter on a fee or contract basis and SAC 998912 covers printing and reproduction service of recorded media on a fee or contract basis.
3. The printed leaflet manufactured by the Appellant on behalf of clients mainly in pharmaceutical sector cannot be termed as publishing matter and therefore should be covered under 4901.
4. Supply of printed leaflet has to be treated as supply of goods only in accordance with Section 8(a) of CGST Act, 2017 as per which in case of a composite supply comprising of two or more supply, in this case the entire value of the supply is representing supply of goods only and mere content of the leaflet is supplied by the clients. Accordingly, the principal supply is supply of goods only.
5. Reliance placed on the decision of the Hon'ble SC in case of Tata Consultancy Service v. State of Andhra Pradesh (2004-TIOL-87-SC-CT-LB) wherein it was held that the term "goods" as used in Article 366(12) of the constitution and as defined under the Act is wide and include all types of movable properties whether those properties, be tangible or intangible. In the instant case, the printed leaflet is capable of abstraction, being possessed, stored and transferred and have specific industrial use as inputs and forming part of the finished goods supplied by the clients.
6. That for the purpose of GST, custom tariff is applicable. It is not possible to treat the imported printed leaflet manufactured by overseas entity out of content supplied by Indian entity as supply of service and Indian importer has to invariably pay custom duty under the category of import of goods. It is not legally permissible to give the different treatment of Customs Tariff.
 - a. The applicant is making supply to EOU units. As per section 147 of the act, supply of goods is only treated as deemed exports and therefore it is not possible to claim deemed export refund by either of the party under Section 54 of CGST Act, 2017. In many cases EOU having heavy accumulation of credit refuses to avail the credit and resulting into loss of business
 - b. The applicants are supplying printed leaflets to SEZ units where SEZ portal does not accept the supply of service for warehousing purpose. To overcome this, applicants are constrained to reflect corresponding HSN of goods in tax invoice and e-way bill.

Decision of AAAR

1. The basic transaction between the appellant (supplier) and the clients (recipient) is that the client (mostly from the pharmaceutical sector) approaches the appellant (supplier) with the content/instructions that is required to be printed in the form of leaflet. The paper and the ink used in printing is owned by the appellant.
2. The transaction is considered to be completed only when the desired content/instructions is printed in the desired format by the appellant (supplier) and handed over to the customer. Thus, in this transaction there is an element of supply of goods as well as supply of service.
3. It was noted that for a supply to qualify as a Composite Supply, following conditions are to be met - i) the supply must consist of two or more taxable supplies of goods or services or both and ii) such supplies should be naturally bundled and supplied in conjunction with each other in the ordinary course of business.
4. There is no doubt that the supply made by the Appellant consists of both supply of services as well as goods. The term "naturally bundled" has not been defined in the act; however, if various elements of supply are naturally bundled in the ordinary course of business, then it is to be considered as being naturally bundled. The appellant has himself claimed that this is a normal practice in

the printing industry, hence the supply of leaflet i.e., goods and printing i.e. service qualifies as being naturally bundled in the ordinary course of business. Another condition is that the supplies should be made in conjunction. In the instant case, the supply of goods as well as the service happens at the same time hence the supply can be considered to be in conjunction. Thus, the supply made by the Appellant is a composite supply.

5. By going through the facts of the case it was noted that the client had not approached the Appellant merely for procuring leaflet. The intention was to get the content/instruction printed on a piece of paper. The printing was done as per the instruction of the client and hence it cannot be construed that the appellant was providing service of printing to himself. The printing was done as per the direction and demand of the client on the leaflet owned by the appellant. Hence the contentions of the Appellant that it has been providing service to itself was not found convincing.
6. It is imperative to analyze the CBEC Circular 11/11/2017-GST dated 20th October,2017 With as the contention of the appellant is mainly based on the argument that Para no. 4 deals with the items books, pamphlets, brochures, annual reports whereas their product is a leaflet, which is different from these items. They have further argued that their case is covered by Para No. 5 of the circular which is for products of Chapter no. 48 and 49, other than publishing matters. Relevant extract of said Circular is reproduced herein below –
 4. In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.
 5. In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of under Chapter 48 or 49 of the Customs Tariff
7. From the careful reading of the circular, it is observed that Para no. 4 covers those items or goods which in itself may not be of any use to the client in absence of the content/instruction printed on it. The client approaches the supplier (the appellant) not for the purchase of a piece of paper i.e., a leaflet. but for getting the content/instruction printed on the paper or a leaflet, the utility of the leaflet for the client is that of a medium for conveying the message and instruction which is mandatory in the pharmaceutical sector, the leaflet is not used in the pharmaceutical industry as a goods or inputs but only as a medium of instruction. It is also the fact that the content/instruction is the property of the client and therefore would obviously be holding the right over it. Hence the dominance in this case is of the contend/instruction and not of the paper (leaflet).
8. Further, it is very evident that the items mentioned in Para no. 5 of the circular are those who have their own utility whether or not a design or a log is printed on it. With or without the logo or design, these items will still retain their identity or utility, the logo or design is generally printed either for a cosmetic purpose or canvassing/propagating the name of a person or a company. In these cases, the dominance is of the supply of the goods and printing of logo or design is ancillary to the supply of goods. The appellant is printing the content / instruction on leaflet: it is by no stretch of imagination, a logo or a design. In the instant case the dominance is not of the leaflet but of the printing.
9. The appellant, as a part of their Defence, has also put forth their practical difficulties while discharging their legal obligation under EPCG/Advance License Scheme or under supplies to SEZ, they have also shown their inability to claim refund under the category of deemed export. Without going into the merits of the practical difficulties presented by them we observe that such arguments should not have any bearing of the outcome of the legally explained order. The classification of goods or services cannot be made merely on the ground that classifying their supply in a particular manner will deprive them from other benefits. Hence, we refrain from making any comments on the practical difficulties presented by them
10. We do not find any reason to interfere with the order of the Advance Ruling Authority. This appeal is disposed off accordingly.