

<b>GST ADVANCE RULING</b> <b>CA. C. B. Thakar, CA. Jinal Maru</b>	
--	--

## 1. Case: M/s HEALERSARK RESOURCES PVT LTD [2022-TIOL-25-AAAR-GST] (TAMILNADU AAAR)

### Facts of the Case:

1. The appellant are into the business of hospitality providing boarding, lodging facilities and such other services to M/s. Apollo Med Skills Limited (AMSL).
2. AMSL is into training youth in various Healthcare related vocational programs by providing up-skilling courses for Doctors, Nursing Professionals and skilling courses for Paramedical and Hospital Support Staff.
3. AMSL has established training centers across the country for Training and Skilling of health care professionals as part of implementation of its Projects under Deen Dayal Upadhyay Grameen Kaushalya Yojana (DDU-GKY) and other similar programs under various schemes.
4. As part of the project, AMSL is required to provide Boarding and Lodging facilities to the candidates enrolling for the courses under the Projects. After successful completion of the course, AMSL provides certificate to the candidates in collaboration with Healthcare Skills Sector Council (HSSC).
5. The appellant has entered into an agreement with AMSL for providing boarding, lodging and other services to the trainees at all places in Tamil Nadu, which is in line with the SOP given by the Government of India for the implementation and furtherance of its projects under DDU-GKY.
6. The appellant sought ruling in regards to following questions:
  - a. What is the applicable GST SAC code and the GST rate for the supplies made by them to M/s AMSL
  - b. Is it a composite supply or a mixed supply?
  - c. Whether the service is exempted vide Notification No. 12/2017- CT (Rate) dated 28.06.2017
7. The Tamil Nadu AAR in respect of the questions raised by appellant held as under :
  - a. The member SGST held that the appellant is not providing accommodation and other services to AMSL, but only supporting in implementation of project under DDUGKY. The service rendered by appellant is only a business support services classifiable under SAC Code 998599 other support services which is taxable @ 9% CGST and 9% SGST.
  - b. The member CGST differed and held that the appellant has entered into an agreement supply the 'Hospitality' services of providing the Boarding, Lodging and other services as required under the scope of the said agreement. Under GST, each supply is unique and the taxability is determined based on the facts of the supply made. that the classification opined by the learned SGST Member under 'SAC 998599-Other Support Services n.e.c.' is a residual entry to be adopted in cases where the supply cannot be suitably classified under the relevant category. In my view, "The supply envisaged in the agreement entered with AMSL is a composite supply of hospitality services in which provision of accommodation, food and other amenities are naturally bundled in the course of business and supplied in conjunction. The provision of accommodation is the principal supply, being provided to all the candidates (headcount wise) and the applicable SAC is 9963 and per day equivalent tariff being less than Rs. 1000, the exemption provided under SI.No. 14 of Notification no. 12/2017 –CTR is applicable".
8. In view of difference of opinion, present appeal has been filed.

### Questions before AAAR:

1. Whether Advance Ruling cannot be issued on the questions raised as per the SGST Member?

2. Whether the supply is a composite supply with provision of accommodation is the principal supply thereby the exemption provided under Sl.No. 14 of Notification No. 12/2017- CTR is applicable ?

**Decision of AAAR**

1. The appellant were asked whether they are providing these hospitality services only to M/s AMSL for which the appellant stated that as of now they are providing only to AMSL on a Principal to Principal basis either through their own locations or by renting locations.
2. It is seen that the applicant has entered into a 'Service Provider Agreement' with AMSL, wherein they have agreed to provide the boarding, lodging facilities and such other services as per Annexure -1 to the agreement. They have represented themselves as 'into Hospitality Industry and is engaged in providing services to various institutions, entities and Organizations, in the ordinary course of its business
3. They are providing such hospitality services only to AMSL on a Principal to Principal basis. Thus, it is evident AMSL extends training for up-skilling rural youth under the DDU-GKY project, wherein the programs are residential. In order to provide the 'Hospitality services' required to be provided to the students enrolled, AMSL has entered into agreement with the applicant for supply of 'Hospitality services', which includes provision of Lodging separately for boys & girls and boarding facilities
4. The State Member has not brought out as to how the supply is classifiable under SAC 998599. From the said service code, it is seen that the 'business services of intermediaries' and that of 'other business support services not elsewhere specified' are the two categories of the above, which may encompass the subject supply of the applicant.
5. It is evident from the said agreement between the applicant and AMSL that the supply is made by them in the capacity of an 'independent contractor' and therefore the supply is not a 'business service of intermediaries'.
6. Various activities may be required for effective supply by a person and he may engage different independent persons to supply the individual activities required by him in the course of provision of the said supply. If we are to agree with the opinion of the State Member, then all such independent activities /every such individual activity of a supply may take the shade of extending support service to the main business and the individual nature of supply by such independent persons would be lost.
7. In the case at hand, the applicant has entered into lease agreements with third party service providers and in one such agreement entered into with AMET University( Academy of Maritime Education and Training) available on record, it is seen that the applicant has entered into the contract for lease of the property owned by AMET for the purpose of 'running Hostels and providing accommodation for the students/Candidates, and/or general office purposes and lawful uses ancillary to any of the foregoing principle uses'. Thus, it is clear that the applicant, enters into agreement with third parties, in their own capacity, to enable themselves to provide the 'Hospitality service', which establishes that the activities of the applicant are independent in nature.
8. As per the 'Statement of Work' (SOW) which includes provision of separate accommodation for girls and boys along with provision of food and other services for a fixed consideration towards accommodation (fixed rent per candidate) and variable consideration towards food and other facilities (based on the headcount/actuals). As stated in para supra, the scope, language and the terms of the agreement establishes that the applicant is to extend the bouquet of services required from them as 'Hospitality Services' together and in conjunction with each other and therefore is a naturally bundled 'composite supply' of service, with 'Provision of accommodation' as the principal service and we agree with the findings of the Central Member in this regard.
9. The per day equivalent consideration for the composite supply of Hospitality services when extended in Chennai Region is Rs. 300/- and for regions out of Chennai, the per day equivalent consideration is Rs. 250/-

which are below one thousand rupees stipulated for per day. Therefore, the applicant is eligible for the exemption entry 14 of Notification 12/2017-CTR.

## **2. Case: M/s RAHUL RAMCHANDRAN (INSPIRE ACADEMY) [2022-TIOL-60-AAR-GST] (MAHARASHTRA AAR)**

### **Facts of the Case:**

1. The applicant is registered Trade Name "Inspire Academy w.e.f. 28/05/2020", under which it is in the business is of selling stationery, educational books etc. mainly to school students.
2. The applicant is starting new business, under the Trade name "Nashik Cambridge Pre-school & intend to supply the following to its students, faculty and staff :
  - a. Pre-School education service to its students against fee.
  - b. Necessary goods such as books, stationery, drawing material, sports goods, foods items, milk, beverages etc. to its students without any considerations, as the cost thereof will be covered in the fee charged
  - c. Some of the aforesaid goods to its students for some consideration
  - d. Transportation service to its Pre-school students without or with some consideration
  - e. Canteen service to its faculty and staff for some consideration

### **Questions before AAR:**

1. Whether "Nashik Cambridge Pre-School" is covered under Notification No. 12/2017-CTR, SI No. 66, under the Heading 9992 under GST Act?
2. Whether it is entitled for Nil rate of tax on the supply of following :
  - a. Pre-school education service to its students against fee?
  - b. wSome goods to its Pre-school students, without or with any consideration?
  - c. Transportation service to its Pre-school students without or with any consideration
  - d. Transportation service to its faculty and staff for some consideration?
  - e. Canteen service to its faculty and staff for some consideration?

### **Arguments by Applicant:**

1. The term "Education Institution" defined by para 2(y) of Notification No. 12/2017-CTR is not subject to any condition such as, certification by any Government Authority and any Act, that is "Education Institution". Therefore, applicant qualifies for payment of tax at NIL rate in respect of services supplies to its Pre-school students, faculties and staff.
2. Further, supply of goods to pre-school students they are entitled for payment of tax at NIL rate under the entry at serial No. 66 of the said Notification because they are providing "Composite supply".

### **Decision of AAR**

1. It is noticed that the Maharashtra Pre-school Centres (Regulation of Admission) Act, 1996 (MaH XXIX of 1997) at pages 11215-11220 is repealed by the Maharashtra Pre-school Centres (Regulation of Admission) Act, 2000 (MAH XXXI of 2001) Section 2. Thus at present there is no law to certify the pre-schools.
2. In the subject case, the applicant provides services by way of Pre-School education and as per 2(y) (i) defining term "education institution", the applicant i.e. Nashik Cambridge Pre-School can be considered as an "Educational Institution".
3. Therefore, services provided by them to its students, faculty and staff attracts NIL rate of GST in view of Sr. No. 66 mentioned above. They are entitled for Nil rate of tax as per Serial No. 66 of the Notification no. 12/2017-CTR on the supply of

- a. School education service to its students against fee;
  - b. On the supply of transportation service to its Pre-school students without any consideration or for some consideration;
  - c. On the supply of transportation service to its faculty and staff for some consideration and on the supply of canteen service to its faculty and staff for some consideration
4. Further, it is seen that, the cost of necessary books, stationery, drawing material, sports goods, foods items, milk, beverages goods, are included in the education fees charged by the applicant which would imply that the applicant will be supplying the said goods as part of a composite supply comprising of principal supply in the form of educational services. Since, they are supplied to its students as a part of such composite supply wherein the principal supply of service is exempted as above, the applicant is entitled for said exemption on the supply of the mentioned goods to its Pre-school students, without any consideration.
  5. As regards the sale of goods for some consideration by the applicant, it would imply that the said sale of goods are not a part of any composite supply. Therefore, as a standalone supply of goods the impugned activity cannot be covered under Serial No. 66 of the Notification No. 12/2017CTR, which is applicable only in respect of supply of service.

### **3. Case: M/s K.P.H DREAM CRICKET PVT LTD [2022-7- TMI-700] (PUNJAB AAAR)**

#### **Facts of the Case:**

1. Appellant has entered into a Franchise Agreement in the month of April, 2008 with BCCI for the purpose of establishing and operating a cricket team in the Indian Premier League ('IPL') under the title of 'Punjab Kings'.
2. They intend to distribute match tickets to local Governmental authorities/officials, consultants, etc. free of cost as a goodwill gesture for promotion of business. These tickets are to be distributed without any consideration flowing from the receivers to the Appellant.
3. Consequently, they approached AAR with the intention of seeking clarity on the treatment and possible GST liability on the supply of complimentary tickets on account of courtesy/ public relationship/ promotion of business.
4. The Ld. Authority held that activity of providing complimentary tickets without any consideration would be considered as supply of services and the Appellant would be eligible for ITC in respect of complimentary tickets. The appellant is displaying an act of forbearance by tolerating persons who are receiving the services provided by the Appellant without paying any money, which other persons not receiving such complimentary tickets would have to pay for.
5. The Appellant, aggrieved with the decision, has filed an appeal with the Appellate Authority.

#### **Questions before AAAR:**

1. Whether the activity of providing "complimentary tickets" by the appellant falls within the definition of supply under the Punjab GST Act, 2017 /CGST Act, 2017 and whether the appellant would be required to pay tax on such complimentary tickets?

#### **Arguments by Appellant:**

1. The Ld. AAR has vaguely applied the definition of consideration as defined under Section 2(31) of the CGST Act. The definition provides that any consideration, whether money or otherwise should have flown from the buyer to the supplier and accrue for the benefit of the latter. So, the understanding that 'act of forbearance' is being carried out by the Appellant may be correct but the consideration cannot flow from the Appellant to itself. Therefore, the components of consideration do not get fulfilled.
2. That as the Government officials/ consultants do not fall within the definition of 'related persons' and the supply of tickets is only made as a goodwill gesture. It was also submitted that there is no expressed or

implied consideration promised by the Government Officials or Consultants to the Appellant at the time of receipt of the tickets or in the future.

3. That the complimentary distribution of tickets to Governmental Officials or Consultants is of the nature of 'non-taxable supply' and therefore fails to be categorized as a 'supply' under the CGST Act.
4. The Ld. AAR has also concluded that the supply of complimentary tickets shall be within the ambit of Section 7(1)(d) of the CGST Act. However, perusal of the amendment in said section indicates that the intent of Schedule II of the CGST Act was only to classify certain transactions as either goods or services. It was never meant to include these transactions in the scope of supply even when there is no consideration.
5. That CBIC has periodically released FAQs clarifying that no tax is payable on clearance of physician samples distributed free of cost as the value of supply is zero and no credit has been availed. Similarly, for the banking sector, it was clarified that in case of services provided at a concessional / differential rate to a recipient other than 'related party' / 'distinct person', there is no requirement for enhancing the value of services by invoking the CGST Rules, 2017.
6. As regards availment of ITC, they submit that Section 17(2) lays down that the requirement of reversal of the ITC arises in the situations where the inputs and input services have been used partly for effecting taxable supplies and partly for effecting exempt supplies, which includes non-taxable supplies. This provision is also not applicable in the present case as the distribution of tickets does not qualify as 'supply' under any of the provisions of CGST Act.
7. Further, upon perusal of the relevant legal provisions even u/s 17(5)(h), it may be inferred that there is no expressed provision for reversal of ITC under the GST law when the services are provided free of cost without any consideration. That the eligibility of ITC is only denied for goods that are supplied as free samples and does not talk anything about services. Hence, the ITC on the complimentary tickets in the instant case is applicable.
8. The act of giving free supplies is similar to the promotional and advertising activities taken by every business and the same is inevitable. Thus, as the free distribution of tickets are not specifically excluded, they should be considered as 'in the course or furtherance of business'. Therefore, the ITC should be allowed.

#### **Decision of AAAR**

1. The two key elements that are required to be present for any activity or transaction to fall within the ambit of supply are "consideration" as well as "furtherance of business". The argument by the appellant that the earlier clause (d) of sub-section (1) of section 7 of the Act has been deleted retrospectively from 01st of July, 2017 by the amendment of the said Act has force and is found agreeable. The deduction from the said argument is that even if any activity or transaction has been mentioned in schedule II of the Act the same has to still fulfill the two key parameters i.e. presence of "consideration" as well as "furtherance of business" for it to be treated as supply under the Act.
2. The key elements of "consideration" that emerge from the said definition are detailed hereunder :
  - a. Consideration includes both the payment made as well as payment to be made.
  - b. That the consideration is not merely defined by the payment received in money but also includes the payment received in kind, which is other than money;
  - c. Consideration to flow from the supply of goods or services or both i.e. it can be in respect of, in response to, or for the inducement of, the supply of goods or services or both. The important aspect here is that the consideration has to be linked with the supply of goods or services or both and that linkage can be in varied forms.
  - d. Consideration can flow from the recipient or any other person but shall not include any subsidy given by the Central Government or a State Government. Any consideration that is flowing from any other person

but can be linked to the supply of goods or services in the manner defined in para (c) above shall bring it within the fold of consideration;

- e. The ambit of consideration has been widened by including the monetary value of any act or forbearance provided the same has the linkage with the supply as detailed in in para (c) above.
3. Now, after identifying the key elements of consideration under the Act, the question that begets answer is whether the activity of complimentary tickets being provided by the appellant has the flavour of consideration present in it to bring it within the scope of supply under the Act.
4. Although the concept of payment in kind has not been elucidated under the Act but the same has been thoroughly studied in various other forms under the Indian Contract Act, 1872. Even the provisions of the erstwhile Finance Act, 1994 which governed the service tax regime had defined the non-monetary consideration.
5. The Australian Taxation Office (ATO) in its GST Public Ruling on non-monetary consideration has clarified that where there is monetary consideration for a supply, it does not necessarily follow that there is no other consideration for that supply. The ATO states that merely ascribing a monetary amount or value to a thing will not cause it to be 'expressed as an amount of money'. In order to identify non-monetary consideration, there should be sufficient nexus between the supply and the non-monetary payment as consideration.
6. Consideration for a supply may include acts, rights or obligations provided in connection with, in response to, or for the inducement of a supply. For a thing to be treated as a payment for a supply, it must have economic value and independent identity as compensation for the making of the supply.
7. While clarifying the concept of 'activity for a consideration' the Education Guide issued under service tax regime, emphasised that the same involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration.
8. In the case of Apple & Pear Development Council (APDC), (ECJ (1988) STC 221; (1988)2 CMLR 394), the Council is a statutory body formed to promote the sale of apples and pears. Commercial growers were required to register with the council and pay an annual levy. The industry as a whole received the benefit of its promotional activities. The point at question was whether the levy was consideration for the promotional activities. The European Court held that there was no direct link between the supply made and the "payment" received, that is benefit, was not directly related to payments made, and individual growers were obliged to pay the levy, regardless of whether they benefited.
9. The CBIC vide its Circular No. 92/11/2019-GST dated 7th March, 2019 has clarified that, "goods or services or both which are supplied free of cost (without any consideration) shall not be treated as supply under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as supply under GST, except where the activity falls within the ambit of Schedule I of the said Act."
10. However, it is important to note here that as per section 7 of the Act read with Schedule I any activity or transaction between the related person including employee shall be treated as supply even if the aspect of consideration is not there. So, where such complimentary tickets are being provided by the appellant to related person as defined in section 15 of the Act or to distinct person as defined in section 25 of the Act the same would fall within the ambit of supply even if there is no consideration.
11. As regards the ITC, it can be deduced that the availment of ITC directly flows with the taxability of the outward supply. Where the output supply is either not taxable that is exempt or has been used or deployed for non-business purpose the Act does not provide for availment of ITC in relation to such supply. Since the appellant itself has argued that the activity does fall within the domain of supply it consequently follows that it shall be treated as a non-taxable supply under the Act.

12. The expression "exempt supply" as defined under the Act includes non-taxable supply. So, the activity of providing complimentary tickets is an exempt supply, and therefore there shall be no availment of ITC in relation to same in accordance with sub-section (2) of section 17 of the Act.