

LATEST ADVANCE RULINGS

Supply of service by a foreign company to local branch is not import of service (IZ-Kartex named after P G Korobkov Ltd)

Appeal Number 04/WBAAR/2020-21

Date of Judgement 29.06.2020

- ▶ **Facts of the Case:** The applicant is the local branch of a Russian business entity in the same name (hereinafter 'Foreign Company'), which entered into a Maintenance and Repair Contract (hereinafter called "MARC") with Bharat Coking Coal Ltd (hereinafter "BCCL") with respect to the supplied machinery and equipment.
- ▶ **Questions on which Advance Ruling is sought:**
 - ▶ 1. Whether the MARC makes the supplier liable to pay GST.
 - ▶ 2. Whether the recipient is not liable to pay tax on reverse charge basis in terms of Notification No. 10/2017- integrated Tax (Rate) dated 28/06/2017
- ▶ **Contention of Applicant:** The applicant submits that the supply of service by the Foreign Company in terms of the MARC is import of service within the meaning of section 2 (11) of the IGST Act, 2017. The supplier is located outside India and the recipient BCCL is located in Dhanbad, India. According to section 13 (3) (a) of the IGST Act, the place of supply of the service provided in terms of the MARC is the location where the machinery and equipment are used in India. All the conditions of import of service within the meaning of section 2 (11) of the IGST Act are, therefore, satisfied. Being import of service, the tax is payable by the recipient on reverse charge basis in terms of Notification No. 10/2017 - integrated Tax (Rate) dated 28/06/2017. The Foreign Company is, therefore, not liable to pay tax on the supply of service in terms of the MARC.

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► . Reply of Respondent:

The concerned officer submits the return status of the applicant. In both GSTR 3B and GSTR 1 the applicant has no liability. The applicant has accumulated huge ITC in GSTR 2A from November 2018 to March 2020. Though it was not claimed by the applicant in GSTR 3B. Moreover, in December 2019 an import of goods was shown in return.

► Observations:

► The MARC is between the MARC Holder and BCCL. MARC Holder maintains suitable structures in terms of human and technical resources at the sites of BCCL. It ensures supervision of the equipment, supply of spares and consumable and overheads for 5000 annual working hours for seventeen years, indicating sufficient degree of permanence to the human and technical resources employed at the sites. The MARC Holder, therefore, supplies the service at the sites from fixed establishments as defined under section 2 (7) of the IGST Act. The location of the supplier should, therefore, be in India in terms of section 2 (15) of the IGST Act. Supply of the MARC Holder to BCCL is not, therefore import of service within the meaning of section 2 (11) of the IGST Act. The MARC Holder should be treated as a supplier located in India and made liable to pay GST, the place of supply being determined in terms of section 12 (2) (a) of the IGST Act. The applicant, being the registered branch of the Foreign Company, should be treated as the domestic MARC Holder and be liable to pay tax accordingly.

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- ▶ **Judgement:** Supply of service to BCCL in terms of the MARC is not import of service. The recipient is not, therefore, liable to pay GST on reverse charge basis in terms of Notification No. 10/2017-Integrated Tax (Rate) dated 28/06/2017. The applicant, being the domestic MARC Holder, is liable to pay tax as applicable in terms of clause of the MARC

No ITC on medicines used in supply of health care services to inpatients (M/s Ambara)

Advance ruling No : KARADRG 51/2020

Date of Order :08-10-2020

- ▶ The Karnataka Authority of Advance Ruling (AAR) ruled that the Input Tax Credit is restricted on medicines used in the supply of health care services provided to patients.
- ▶ The two-member bench held that the input tax credit is required to be restricted on medicines used in the supply of health care services provided to patients. The AAR further ruled that the input tax credit is required to be restricted on medicines used in the supply of health care services provided to outpatients.
- ▶ Further in case medicines are supplied independent of health care services, then the applicant is eligible to claim input tax credit subject to payment of taxes on such independent supply of medicines. “The input tax credit is not required to be restricted on medicines supplied to others i.e. customers, who are neither inpatients nor outpatients, as there is no health care services provided and is liable to pay tax on such outward supply of medicines,” AAR said.

GST on residential affordable housing project (Primarc Projects Pvt Ltd)

- ▶ Advance ruling No :09/WBAAR/2020-21
28/09/2020 Date of order
- ▶ The works contract service for the construction of those dwelling units in the project
- ▶ named 'Akriti' (WBHIRA Registration No. HIRA/P/PUR/2018/000003) that are
- ▶ affordable residential apartments in terms of clause 4(xvi) of Notification 11/2017
- ▶ Central Tax (Rate) dated 28/06/2017, as amended time to time, are taxable under
- ▶ Entry No. 3(v)(da) of the said notification, provided the applicant does not opt for
- ▶ paying tax at the rate specified in Entry No. 3(ie) or 3(if). i.e 6%

ITC Limited- Pasteurised milk with Haldi, fortified with vitamins A and D, with turmeric and black peeper

- ▶ **Advance ruling No :11/WBAAR/2020-21** **Date of order 12/10/2020**
- ▶ **Facts of the case**
- ▶ The applicant intends to supply a variant of ready to consume pouch milk fortified with vitamins A and D and small quantities of turmeric (Haldi) and black pepper extracts. It wants to know whether the product can be classified under HSN 0401 and exempt under Serial No. 25 of Notification No. 2/2017- Central Tax (Rate) dated 28/06/2017 (hereinafter Exemption Notification).
- ▶ The product as pasteurised milk with Haldi, fortified with vitamins A and D. Ingredients of the product are toned milk, turmeric and black pepper extract powders, vitamins A and D. It is to be sold under the brand name „Aashirvaad svasti“. The applicant also submits an Analysis Report, prepared by ITC Life Sciences & Technology Centre, of a 100 gm sample of the product, stating that total curcuminoids present in the sample are 0.0161%. Vitamin A and D added are 45.50 mcg and 0.96 mcg, respectively. Fat content is 3.60%. The applicant argues that the product is, therefore, classifiable under HSN 0401 and exempt under Entry No. 25 of the Exemption Notification .

ITC Limited- Pasteurised milk with Haldi, fortified with vitamins A and D, with turmeric and black peeper

RULING

- ▶ The applicant's product, as described above is classifiable under HSN 0401 and is **exempt** under Serial No. 25 of Notification No. 2/2017- Central Tax (Rate) dated 28/06/2017 (1126-FT dated 28/06/2017 of the State Notification), as amended from time to time.

Yulu Bikes Pvt. Ltd.

- ▶ . The Applicant is engaged in renting of vehicles like e-bikes (Miracle), bicycles (Move) in Bengaluru, Karnataka through a technology driven mobility platform. They enter into contract/agreement with the customers with regard to usage / renting of the e-bikes (Miracle), bicycles (Move) and charge based on the time of usage of such vehicles. Representative sample agreements/terms are enclosed along with the application for perusal and records.
- ▶ The applicant currently is charging GST @ 18% in respect of the following services

Yulu Bikes Pvt. Ltd

Sl. No.	Name of Scheme	Description of the Service	Rate of GST discharged
1	Miracle	In this scheme the mobility is provided through a smart dockless electrical vehicle powered by state-of-the-art IoT technology. The vehicle is Light Weight, lighter than a scooter, faster than a bicycle.	18% under HSN 9966
2	Move	In this scheme the mobility is provided through a smart lock enabled bicycle Powered by GPS, GPRS and Bluetooth technologies.	18% under HSN 9966

Yulu Bikes Pvt. Ltd

- ▶ The Heading 9966 reads as Rental Services of transport vehicles with or without operators. Heading 9973 reads as Leasing or rental services with or without operator and includes rental or operational leasing of machinery and equipment, personal and household goods, but does not include leasing services of machinery and equipment of personal and household goods on a purely financial service basis. Further sub headings of 9973 pertain to other goods, IPR, etc with no mention of transport goods/vehicle. Thus the applicant's services are squarely covered under SAC 9966. The specific description is preferred to general one as per the Explanatory Notes and hence we conclude that applicant's activity is classifiable under Heading 9966.

▶ RULING

- ▶ Renting of e-bikes/bicycles without operator cannot be classified under SAC 9973 – Leasing or rental services without operator and Sl.no. 17(viia) of Notification no. 11/2017 CT(R) dated 28th June 2017 as amended is not applicable to the instant case. Hence Taxable @18%.

K.M. translogistics Private limited

- ▶ Advance Ruling no: **RAJ/AAR/2019-20/19** Date of order: 29-08-2019
- ▶ The applicant who is the service provider is having the registered office at Jaipur Rajasthan and providing transport services to various manufacturers of motor vehicles for carrying their vehicles from the factory to the various cities in India where the authorised dealers are located.
- ▶ The applicant has entered into an agreement with various parties and will be providing transportation services with own vehicles but without having LR/GR. And therefore the service will be non GST Supply. Hence no levy of GST from the service user and there is no question of payment of GST over the Services.
- ▶ Since there will be no GST over services in particular cases where there issuance of LR/GR the question will arise about mode of availment of common Input Credit as explained below:-
- ▶ That the vehicles used by the applicant will be commonly used for GST and Non GST supply. In addition to it there will be common use of Input services by the applicant.
- ▶ The Rule 42 of the CGST Rules 2017 defines the mechanism of manner of availing Input Tax Credit in cases where input or input services are being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies.

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- ▶ The term 'exempt supply' is defined at Section 2(47) of the CGST Act 2017 "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply"
- ▶ In the light of the definition of the exempt supply which also includes non-taxable supply Rule 42 provisions will also apply in the applicant case where there is consumption of common input and input services and there is a supply of GST and Non GST supplies. Hence credit will be availed proportionately as per the provisions of Rule 42 ibid.

K.M. translogistics Private limited

- ▶ **QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:-**
- ▶ Does Transportation by own vehicles on the basis of Invoice(s) and E-way Bill without issuing the LR/GR by the Applicant Transporter will covered under exempted supply/non GST supply.
- ▶ Does Rule 42 of the CGST Rules 2017 will also apply in case where there is GST and Non GST Supplies and there is a common consumption of input and input services?

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RULING

- ▶ The applicant is a registered GTA Service provider under GST and is not exempted from paying GST.
- ▶ Where the goods or services or both used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies as per provisions and procedure prescribed under Section 17(2) of GST Act read with Rule 42 of GST Rules, 2017.
- ▶ **Crux: Proportionate ITC**

Parmod kumar Singala

▶ **Advance Ruling No :RAJ/AAR/2019-20/18**

Date of order : 22-08-2019

▶ Facts of the Case:

- ▶ M/s. Parmod Kumar Singala (“**the Applicant**”) is engaged in the business of manufacturing and production of Loose Cotton, Cotton Seeds, Cotton Seed Oil and by-product Cotton seed oil cake from raw cotton (NARMA) in Rajasthan. The Raw Cotton (NARMA), Loose Cotton, Cotton Seeds, Cotton Seed Oil is taxable at the rate of 5% under GST and Cotton seed oil cake is taxable at the rate of 0% under GST.
- ▶ The Applicant has been granted a license for manufacture and production of Loose Cotton, Cotton Seeds, Cotton Seed Oil and by-product Cotton seed oil cake from raw cotton (NARMA) in Rajasthan by the state Government

S. No.	Issue	Ruling
1	What will be the treatment of claiming ITC under Section 16 of the CGST Act/ RGST Act in regard to by-product Cotton Seed Oil Cake which is taxable at 0%?	<p>As per Section 16 of the CGST Act/ Rajasthan Goods and Service Tax Act, 2017 (“RGST Act”) the Applicant is entitled to take credit of the ITC charged on any supply of goods or services or both to the Applicant which are used or intended to be used in the course or furtherance of his business.</p> <ul style="list-style-type: none">• As per Section 17(2) of the CGST Act/ RCGST Act, where any goods or services or both are used by the registered person partially for taxable supply including zero-rated supply and partially for the exempted supply, then, in that case, the claim of ITC shall be restricted to the extent of taxable supply including zero-rated supply only, meaning thereby, no credit available in case of exempted products i.e. by-product Cotton Seed Oil Cake which is taxable at 0%.

S.No.	Issue	Rulings
2	Whether the provision of Apportionment ITC under Section 17 of the CGST Act will be also applicable to the by-product Cotton Seed Oil Cake?	In view of the provisions of Section 17(2) of CGST Act/ RGST Act read with Rule 42 of CGST Rules/ RGST Rules, the amount of credit shall be restricted to so much of the input tax is attributable to the said taxable supplies including zero-rated supplies. The Applicant has to reverse the amount of credit used in the manufacture and sale of the product which attracts nil rate or exempted from GST.

S.no.	Issue	Rulings
3	What will be the treatment of claiming of ITC on Raw Cotton purchased from agriculturist on whom tax @ 5% is paid under RCM?	The raw cotton is purchased by the Applicant from agriculturist and tax @ 5% is paid under RCM by him. The Applicant is eligible for claiming of ITC as per Section 16 of the CGST Act/ RCGST Act, however, the credit is to be restricted to the extent of input tax attributable to the taxable supplies including zero-rated supplies only and has to reverse the amount of input tax attributable to the exempted supply i.e. Cotton seed oil cake in terms of Section 17(2) of CGST Act/ RCGST Act

S.No		
4	What will be the treatment of claiming of ITC on Plastic Bags (Bardana) which is only used for packing of the cotton seed oil cake?	The Plastic bags (Bardana) which is used only for packing of the Cotton Seed oil Cake is an integral part of the Cotton Seed oil Cake and Cotton Seed oil Cake cannot be sold without plastic bags. Therefore, though they are entitled to take credit of input tax suffered on Bardana but will have to reverse the same as per provisions of Section 16 and 17 of CGST Act/ RCGST Act

S. No.	Issue	Rulings
5	Whether the Applicant has to reverse the ITC for the period of 2017-18, 2018-19 as per the Rule 42 of the Central Goods and Service Tax Rules, 2017 (“CGST Rules”)?	The issue is not covered under Section 95(a) of CGST Act/ RGST Act, therefore, no ruling was given on this issue

THANK YOU

