



Indirect Tax Newsletter

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Nangia Andersen LLP

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Advance Rulings & Judgements

West Bengal Authority for Advance Ruling ('AAR') held that sale of alcoholic liquor for human consumption is an 'exempt supply', hence requires Input Tax Credit ('ITC') reversal

Brief Facts

- Karnani FNB Specialities LLP ('Applicant') is engaged in the business of providing restaurant services from its lounge bar called "The GRID" and is also indulged in providing catering services as well as banquet renting services. At times, along with such supplies or on a standalone basis, the Applicant, is also engaged in selling/serving of alcoholic liquor for human consumption to its customers.
- Applicant has sought an advance ruling as to whether the Applicant was obliged to reverse ITC under section 17(2) of the Central Goods and Services Tax Act ('CGST Act') read with rule 42 of the Central Goods and Services Tax Rules, 2017 (CGST Rules) in view of the sale of alcoholic liquor for human consumption affected by it at its premises under the facts & circumstances of the present case.

[M/s Karnani Fnb Specialities LLP- WBAAR 24 of 2022, Dated 9 February 2023]

Observations

- Applicant is of the firm view that sale of alcohol being outside the ambit of GST, it is not liable to reverse ITC on such a supply by way of treating it as non-taxable supply under Section 2(78) of the CGST Act (and therefore, exempt under Section 2(47)).
- Department submitted that ITC should be reversed since the Applicant affects the sale of alcoholic liquor for human consumption in addition to the supply of restaurant and outdoor catering services.

Ruling

- AAR ruled that the applicant would be required to reverse ITC in terms of sub-section (2) of section 17 of the GST Act read with Rule 42 of the GST Rules for sale of alcoholic liquor for human consumption.
- AAR explains reversal of tax charged on outward exempted supplies of alcoholic liquor for human consumption would no way lead to discharging of GST liability on outward supply.

Karnataka High Court held that supply of vouchers is neither goods nor services and therefore cannot be taxed

Brief Facts

- Premier Sales Promotion Private Limited ('Petitioner') is engaged in procuring Prepaid Payment Instruments (PPIs) of Gift Vouchers, Cash Back Vouchers and E-Vouchers from the issuers and supplying them to its clients for specified face value. The clients in turn issues them to their employees in form of incentive/ to other beneficiaries as part of a promotional scheme;
- The Petitioner filed an application before the Karnataka Authority for Advance Ruling ('AAR') for a ruling about Taxability of such instruments. Karnataka AAR ruled that supply of vouchers are taxable as goods. Aggrieved by the order of Karnataka AAR, petitioner challenged the said order before Karnataka Appellate Authority for Advance ruling ('AAAR'). Karnataka AAAR affirmed the order passed by Karnataka AAR;
- Aggrieved by the order, Petitioner filed the writ petition before Karnataka High Court against the order of Karnataka Appellate Authority

Observations

- The Petitioner relied on RBI's master direction on issuance and operation of PPIs. Petitioner submitted that vouchers involved in this case are PPIs which do not disclose the goods & services at the time of issuance;
- Petitioner also relied on the following:
 - Sodexo SVC India Private Ltd. Vs. State of Maharashtra;
 - M/s. Kalyan Jewellers India (Appeal filed u/s 100(1) of the Tamil Nadu Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017)

- The vouchers involved in the instant case are semi-closed PPIs wherein the goods and services to be redeemed cannot be identified during issuance. The said vouchers are distributed to the employees of clients who may redeem them against purchases. Cash cannot be withdrawn against these semi closed PPIs which have been issued with the prior approval of RBI;
- On the basis of the above, Hon'ble High Court observed that, in substance the transaction between the petitioner and his clients is procurement of printed forms and their delivery. The printed forms are like currency. The value printed on the form can be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers. Therefore, the issuance of vouchers is similar to pre-deposit and not supply of goods or services.

Decision

- Vouchers are neither goods nor services and therefore cannot be taxed.

[Premier Sales Promotion Private Limited [TS-23-HC (KAR)-2023-GST, Dated 06 February 2023]

Goods and Services Tax



Clarification issued by CBIC in relation to levy of Service Tax on the declared service "Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"

- CBIC clarified that description of declared service "Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" as per clause (e) of section 66E of the Finance Act, 1994 is similar to supply specifically declared to be a supply of service in para 5 (e) of Schedule II of the CGST Act, 2017;
- CBIC issued Circular No. 178/10/2022-GST dated 3rd August 2022 regarding applicability of GST on liquidated damages, compensation and penalty arising out of breach of contract. Contents of the said circular may also be referred w.r.t. to applicability of Service Tax under Finance Act, 1994;

- CBIC further clarified that a contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. Such contractual arrangement must be an independent arrangement in its own right. There must be a necessary and sufficient nexus between the supply and the considerations;
- CBIC advised the field formations that while taxability in each case shall depend on facts of that case, the guidelines discussed in instant circular and jurisprudence that has evolved over time maybe followed.

[Circular No. 214/1/2023-Service Tax dated 28 February 2023]

Clarifies that any authority or body setup by Central/ State Governments for conducting entrance examinations shall be treated as educational institutions

- For the purpose of Exemption Notification, CBIC has clarified that any authority, board or body set up by the Central Government or State Government including National Testing Agency for conduct of entrance examination for admission to educational institutions, shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions.

[Notification No. 01/2023-Central Tax (Rate), dated 28th February 2023]

Provisions relating to RCM applicable to Central/ State Governments will also apply to Courts and Tribunals

- CBIC has notified that, the extent to which the provisions of Reverse Charge Mechanism notification applies to Central Government and State Governments, such provisions shall apply to Courts and Tribunals too.

[Notification No. 02/2023- Central Tax (Rate), dated 28th February 2023]

Modified the GST rate on Rab and Pencil Sharpeners

- CBIC has levied 5% GST on Rab that is pre-packaged and labelled and has reduced the GST rate on pencil sharpeners from 18% to 12%.

[Notification No. 03/2023- Central Tax (Rate), dated 28th February 2023]

Exempts GST on Rab that is not pre-packaged or labelled

- CBIC has exempted GST on Rab that is not pre-packaged or labelled.

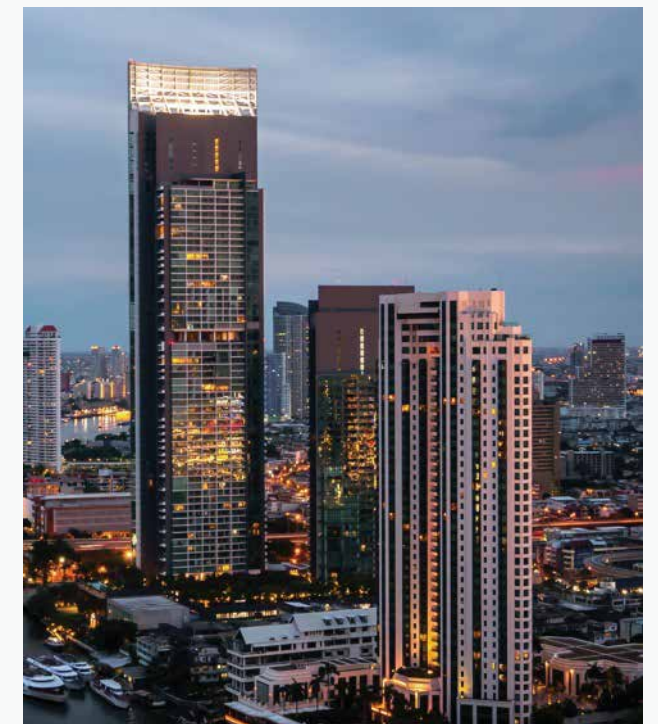
[Notification No. 04/2023- Central Tax (Rate), dated 28th February 2023]

Compensation Cess would not be levied on Coal rejects supplied to a coal washery

- Compensation Cess would not be levied on coal rejects supplied to a coal washery arising out of coal on which compensation cess has been paid and input tax credit thereof has not been availed by any person".

[Notification No. 01/2023- Compensation Cess (Rate), dated 28th February 2023]

Note: All the above notifications come into effect from 1 March 2023.



Foreign Trade Policy Updates

Alignment of RoDTEP Appendix 4R with the First Schedule of the Customs Tariff Act, 1975

- Consequent to inclusion of export items from Chapter 28, 29, 30 & 73 vide Notification No. 47 dated 7 December 2022 under RoDTEP, Appendix 4R is aligned with First Schedule of the Customs Tariff Act, 1975 for implementation w.e.f 15 February 2023. The revised Appendix 4R for chapter 28, 29, 20 & 73 will be applicable for exports made from 15th February 2023 to 30th September 2023.

[Notification No. 55/2015-20, dated 7th February 2023]

One time relaxation for furnishing additional fee to cover excess imports affected under the Export Promotion Capital Goods Scheme to promote Ease of Doing Business - reg

- One time relaxation is granted in submission of additional fee to cover excess duty utilised in EPCG authorisations issued under Foreign Trade Policy (2009-14) (extended upto 31.03.2015) subject to the condition that excess duty utilized was not more than 10% of the duty saved value of the authorization to promote ease of doing business.

[Public Notice No. 58/2015-20, dated 24th February 2023]

Custom Updates

Projects Imports (Amendment) Regulations, 2023

- The CBIC has notified the Project Imports (Amendment) Regulations, 2022 to further amend the Project Imports Regulations 1986. In the table against S. no. 4, in column 2, for the words "Any other Plant and Project" the words "Any other Plant and Project, other than solar power plant or solar power project" has been substituted. The notification has become effective from 2 February 2023.

[Notification No. 07/2023-Customs (Tariff), dated 2nd February 2023]

Amendment to Notification No. 104/1994- Customs

- CBIC has inserted the following explanation after the second proviso to notification no. 104/1994-Custom dated 16 March 1994
- "Explanation.- A device such as tag, tracking device or data logger already affixed on the container at the time of import shall also be eligible for exemption from the duty of customs and the integrated tax as is available to the said container under this notification."

[Notification No. 14/2023-Customs (Tariff), dated 28th February 2023]

Amendment to Notification No. 25/2002-Customs dated 1 March 2002 - related to certain electronic items

- In notification no. 25/2002, in the table, against S.No. 69, in column (3), after the words "Mobile Handsets", the words "or Battery of Electrically Operated Vehicles" shall be inserted. The Notification no. 25/2002-Customs dated 1 March 2002 provides exemption to the goods specified in column(2) of the Table and falling under Chapters 69, 82, 84, 85 or 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for use in the manufacture of the finished goods specified in the corresponding column (3) of the said Table, from the whole of the duty of customs leviable thereon which is specified in the said First Schedule.

[Notification No. 06/2023-Customs (Tariff), dated 1st February 2023]

Amendment to 32 notifications to provide a specific end date for the said notifications

- CBIC has notified the specific end date for the 32 notifications

[Notification No. 12/2023-Customs (Tariff), dated 1st February 2023]

Compliance Calendar

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling In Sep 2022
1	Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	11 th day of succeeding month	For Tax Period January 2023 - 11 th March 2023
2	Form GSTR-3B (Monthly return)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	20 th day of succeeding month	For Tax Period February 2023 - 20 th March 2023
3	QRMP Scheme				
	Invoice furnishing Facility ('IFF')	Optional facility to furnish the details of outward supplies under QRMP Scheme	Monthly	1 st day to 13 th day of succeeding month	For Tax Period February 2023 - 1 to 13 March 2023
	Form GST PMT-06 (Monthly payment of tax)	Payment of tax in each of the first two months of the quarter under QRMP Scheme	Monthly	25 th of the succeeding month	For Tax Period January 2022 - 25 th March 2023
	Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover up to INR 5 crores who have opted for QRMP Scheme	Quarterly	13 th day of the subsequent month following the end of quarter	For the quarter January 2023 to March 2023 – 13 th April 2023
	Form GSTR-3B	Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 1 states and union territories	Quarterly	22 nd day of the subsequent month following the end of quarter	For the quarter January 2023 to March 2023 – 22 nd April 2023

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling In Sep 2022
	Form GSTR-3B	Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2 states and union territories	Quarterly	24 th day of the subsequent month following the end of quarter	For the quarter January 2023 to March 2023 - 24 th April 2023
4	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13 th of the succeeding month	For Tax Period February 2023 - 13 March 2023



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