

Nangia Andersen LLP

Indirect Tax Newsletter

July 2023





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01

Advance Rulings & Judgements



Maharashtra Appellate Authority for Advance Ruling ('AAAR') held that support services received from foreign Parent Company is liable to Integrated Goods and Service Tax ('IGST') under Reverse Charge Mechanism ('RCM')

Brief Facts

- M/s. IVL India Environmental R&D Private Limited ('Appellant') is a wholly owned subsidiary of IVL Sweden and registered under Central Goods and Service Act 2017 ('CGST Act') in Maharashtra. IVL Sweden ('Parent Company') was awarded tender for Project Management Consultancy (PMC) by Municipal Corporation of Greater Mumbai ('MCGM');
- As per the terms of tender document and Letter of Acceptance a foreign company needed a wholly owned subsidiary in India and all the payments will be made by MCGM in INR to the wholly owned subsidiary only. Hence, the Parent Company incorporated the Appellant in India for the purpose of obtaining the contract from MCGM and was made responsible for raising the invoice and collection of payment;
- Parent Company and the Appellant jointly entered into the agreement with MCGM. Due to this, the Appellant after receiving the consideration, transfers to the Parent Company its relevant share;
- The Appellant contended that, it does not receive any services from its Parent Company and the Parent Company is solely responsible for execution of contract and it is the ultimate beneficiary of this contract;
- The Appellant further contended that PMC services supplied to the MCGM i.e., a local authority is wholly exempt under serial no. 3 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 and exemption given to the main consultant should be extended to the secondary consultant as well;
- The Appellant had earlier sought an Advance Ruling, where the Maharashtra Authority for Advance Ruling ('AAR') had concluded that the transfer of monetary proceeds by the Applicant (Appellant in AAAR) to its Parent Company would be liable for payment of IGST under RCM under Entry no. 1 of Notification 10/2017 -IGST (Rate) dated June 28, 2017;
- Aggrieved by the above order, the Appellant had put up an appeal before the Maharashtra AAAR.

Issue Involved

- Appellant vide instant Application before Appellate Authority for Advance Ruling sought a ruling on the following question: *“Whether mere transfer of monetary proceeds by the Appellant to its Parent Company without underlying import of service will be liable for payment of IGST under RCM under entry no. 1 of Notification 10 2017- IGST (Rate) dated June 28, 2017.”*

Decision

- AAAR upheld the order passed by AAR;
- While referring to the contract, AAAR observed that the Appellant has been termed as “Consultant” in the contract and the contract provides that MCGM will pay the consideration to the Consultant only. It was further observed that Parent Company is acting as a guarantor in the entire agreement and entire PMC work is carried out by the Appellant only;
- Appellant is carrying out the PMC work with the help of its Parent Company, which has all the expertise, resources, and work experience in this regard. Hence, without Parent Company, the Appellant could not carry out the PMC work. Thus, it can be concluded that Appellant is receiving support services from its Parent Company to carry out PMC work as per the contract;
- The said support services fall within the ambit of import of services and the Appellant is liable for payment of IGST under RCM in terms of entry no. 1 of Notification 10 2017- IGST (Rate) dated June 28, 2017.

[M/s. IVL India Environmental R&D Private Limited- MAH/AAAR/DS-RM/03/2023-24, dated 05 June 2023]



Tripura High Court held that the petitioner is entitled to avail Input Tax Credit (‘ITC’) on Goods and Services utilised for providing taxable work contract services

Brief Facts

- M/s SR Constructions (‘Petitioner’) entered into a works contract agreement with M/s Hotel Polo Pvt. Ltd. for construction of a hotel. During the construction process, the petitioner procured various materials from vendors and availed works contract services from subcontractors. Petitioner availed the ITC on such materials & works contract services. However, the Authorities raised the demand for ITC so availed on the ground that ITC availed on works contract service for supply of construction of an immoveable property is in violation of Section 17(5) of Central Goods and Services Tax Act (‘CGST Act’);
- Petitioner filed explanation against the demand raised, however adjudicating Authority passed the order against the Petitioner. Appellate Authority also confirmed the order passed by Adjudicating Authority;
- Aggrieved by the order of the Appellate Authority, petitioner filed the present writ petition before the Tripura high court.

Observations

- Hon’ble High court observed that Petitioner has fulfilled all the conditions of the work contract by providing services for the construction of a hotel building, involving the transfer of goods. Further, petitioner has provided works contract services to the owner of the hotel and not used services for their own benefit. Accordingly, they are entitled to claim ITC on the goods and services used for providing taxable work contract services;

Decision

- The impugned order passed by the appellate authority, affirming the order of the adjudicating authority is set aside and quashed.

[M/s SR Constructions [WP (C) 399 OF 2022, High Court of Tripura, Agartala Dated 04 April 2023]

Maharashtra Appellate Authority for Advance Ruling ('MAAAR') upheld the advance ruling pronounced by Maharashtra Authority for Advance Ruling ('MAAR') and ruled that Target incentive received by intel reseller are not in nature of trade discount

Brief Facts

- M/s MEK Peripherals (India) Private Limited ('Appellant') is a reseller of Intel Products. Appellant purchases the products from various distributors in India. Such distributors import products from Intel inside US LLC ('IIUL') and sells to Appellant. Appellant further sells the same product to various retailers;
- The Appellant also entered into agreement with IIUL which entitles Appellant to receive certain incentive as percentage of performance to quarterly goals on Intel products;
- In view of the above facts, Appellant filed Advance Ruling Application before the MAAR on following questions:
 - Whether the Incentive received from "Intel inside US LLC" under Intel Approved Component Supplier Program (IACSP) can be considered as "Trade Discount"?
 - If not considered as "Trade Discount" then whether it is consideration for any supply?
 - If it is considered as supply than whether it will qualify as export of service?
- The MAAR in its order held that incentive received from IIUL cannot be considered as Trade discount and accordingly are chargeable to tax. Further, incentive amount received is to be considered as consideration for supply of marketing services;
- Aggrieved by the order of MAAR, appellant filed the appeal before MAAAR.

Observations

- MAAAR observed that to qualify as a trade discount three conditions should be satisfied:
 - Buyer and supplier should have entered into an agreement which is not being satisfied in current case, as incentives are being directly received from IIUL and agreement exists between the IIUL and the Appellant only and not with the distributor;
 - Incentive received should be specifically linked to invoices which is not being satisfied in current case as incentives depend upon volume of sale undertaken by the authorized distributor of IIUL; and
 - ITC to be reversed by the recipient of supply. There is no such reversal done by the Distributors in the current case in relation to the goods supplied to the appellant.
- Thus, the incentives received from IIUL is not a trade discount.

- MAAAR further observed that the appellant is bound by the agreement to perform the following tasks:
 - They will make their best efforts to sell and market the Intel products
 - Assist Intel in implementing Intel's marketing campaigns
 - Provide first-level technical product support.

Payout is being accrued to the appellant in lieu of above services and not in the form of trade discount. Accordingly, it is supply of marketing as well as technical support services.

- In response to the third question raised by the appellant, MAAAR observed that marketing services are being provided in respect of goods which are made physically available by IIUL to the supplier of marketing services (i.e. the appellant). Therefore, the place of provision of service is the location of the supplier of services i.e, the appellant, which is in India. Hence, impugned supply does not qualify as export of services.

Decision

- MAAAR has confirmed and upheld the Advance Ruling pronounced by the MAAR & dismissed the appeal filed by the Appellant
- Incentives received by Appellant are not a trade discount but consideration for marketing and technical services provided to IIUL.

[M/s MEK Peripherals India Pvt Ltd [TS-248-AAAR(MAH)-2023-GST] Dated 20 June 2023]



Bombay High Court held that Section 13(8)(b) and Section 8(2) of IGST Act relating to place of supply and taxability with regard to intermediary services provided by a supplier in India to a recipient located outside India as constitutionally valid

- The proceedings which arose due to the split verdict by the Division Bench of the Bombay High Court on the constitutionality of the intermediary provisions has been concluded by this judgement.
- The third judge, who rendered his opinion that the intermediary provisions are legal, valid and constitutional but confined in their operation to the provisions of the IGST Act only and that the same cannot be made applicable for levy of tax on services under the Central Goods and Services Tax Act, 2017 (CGST Act) and the Maharashtra Goods and Services Tax Act, 2017.
- The matter was placed before the division bench for their final verdict and in pursuance of the same, the Bombay High Court has passed the final judgment based on the views of two of the three judges and held the intermediary provisions to be legal, valid and constitutional.
- Controversy on the constitutionality of the provisions governing intermediary services post the referral order attains finality with the passing of the final judgment.

[WRIT PETITION NO.2031 OF 2018 dated 6 June 2023]

Supply of common services will attract GST liability under respective GST Acts

Brief Facts

- Profisolutions Private Limited (the “Applicant”) (a service provider) is a Private Limited Company engaged in providing engineering services for industrial and manufacturing projects having Branch office at Chennai.
- The branch office of the applicant is providing support services (like engineering services, design, accounting services etc) through the employees of the Company to the head office in Bengaluru.

Applicant Contentions or observations

- Applicant stated that employees are appointed and working for the Company as whole and not employed for head office or branch specifically which is a distinct person under GST.
- Salary and benefits paid to employees are in relation to employment, which is neither a supply of goods nor services under para 1 of the Schedule 3 of CGST Act which reads as ‘Services by an employee to an employer in the course of or in relation to his employment’.

Decision

- Supply of service between two registrations of the same person in the same state or different states attract the provisions of Section 25(4) and section 7 read with Schedule I (2) and Section 15.
- Employees are treated as related person in terms of explanation to Section 15 and treated as Supply by virtue of Schedule I (2) to CGST Act, 2017.
- Services, including the services of common employees of a person, provided by branch office to head office and vice versa, each having separate GST registration, will attract GST liability under respective Acts.

[ADVANCE RULING ORDER No. 07/ARA/2023, Dated 31 March 2023 - AUTHORITY FOR ADVANCE RULING, TAMIL NADU]

Intra-company equipment movement between branches in different States taxable as 'lease rental service'

Brief Facts

- CHEP India Private Limited ('CIPL' or 'Applicant') is engaged in the business of leasing of pallets, crates and containers ('Equipments'). The ownership of all the Equipments of the Applicant is consolidated into Maharashtra registration.
- The Applicant would enter into a lease arrangement with the customers and with all the other CIPL units for leasing the equipment based on their demand requirement.

Observations

- The AAAR observed that the supply of services involved in the transaction under question is being provided by CIPL Karnataka to CIPL Maharashtra in the capacity of Bailee of CIPL Maharashtra, for which CIPL Karnataka is charging a facilitation fee along with applicable GST from CIPL Maharashtra as per the inter-unit Memorandum of Understanding entered between the appellant and other state units.
- The movement of goods from Karnataka to Tamil Nadu would be treated as supply of lease rental services by CIPL Maharashtra to CIPL Tamil Nadu and returning back the goods on lease by Karnataka to Maharashtra and leasing back same goods on new lease contract to Tamil Nadu.

Decision

- The transaction between CIPL, Maharashtra and CIPL other locations would be treated as supply of leasing services.
- The value of supply of leasing services by CIPL, Maharashtra to other registration should be determined basis the value which is charged by the recipient branch to the ultimate customer in the other states.
- Movement of equipment from CIPL, Karnataka to CIPL, Tamil Nadu on the instruction of CIPL, Maharashtra cannot be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act, 2017 as the said transaction would fall under the ambit of supply of services of facilitation in terms of section 7 of the CGST Act, 2017.

[Appeal No. MAHGST-AAAR/11/2022-23; TS-242-AAAR(MAH)-2023-GST]



02

GST Clarifications and Updates



Extended the due date for filing form GSTR-1 for registered persons whose principal place of business is in Manipur

- CBIC has extended the due date of filling form GSTR-1 for registered persons whose principal business is in state of Manipur. The said extension has been granted for the tax period April 2023 and May 2023;
- Earlier, the due date was 31 May 2023 for tax period April 2023 GSTR1, but the same has now been extended till 30 June 2023 for GSTR1 of tax period April 2023 and May 2023.

[Notification No. 15/2023 – Central Tax, dated 19 June 2023]

Extended the due date for filing form GSTR-7 for registered persons whose principal place of business is in Manipur

- CBIC has extended the due date of filling form GSTR-7 for registered persons whose principal business is in state of Manipur. The said extension has been granted for the tax period April 2023 and May 2023;
- Earlier, the due date was 31 May 2023 for GSTR7 of April 2023, but the same has now been extended till 30 June 2023 for GSTR7 of tax period April 2023 and May 2023.

[Notification No. 16/2023 – Central Tax, dated 19 June 2023]

**All the above notifications shall be deemed on have come into force with effect from the 31st day of May 2023*

Advisory related to e-Invoice Verifier App by GSTN

- E- Invoicing Verifier App has been introduced by GSTN for verifying the e-Invoices and other related details in convenient manner;
- The app operates on non- login basis and ensure comprehensive coverage and convenience. It helps to check authenticity of the e- invoice by QR Code Verification; and
- The said app can be downloaded from Google Play Store as 'E-invoice QR Code verifier'.

[GSTN Advisory dated 08 June 2023]

Advisory related to update on Enablement Status for Taxpayers for e-Invoicing

- According to Notification No. 10/2023 - Central Tax dated 10 May 2023, the threshold limit for e-Invoicing has been reduced from INR 10 crores to INR 5 crores. The same will be applicable from 1 August 2023;
- All the taxpayers whose Aggregate Annual Turnover crosses the above limit are now enabled on all the six IRP portals including NIC-IRP for e-Invoice reporting;
- The taxpayers can check their enablement status on e-Invoice portal and can enlighten themselves with e- Invoicing reporting mechanism; and
- A taxpayer who is otherwise but not auto enabled on the e-Invoice portal, can self-enable for e-Invoicing using the functionality provided on the portal.

[GSTN Advisory dated 16 June 2023]

Advisory related to the return compliance in Form DRC-01B

- To ease the process of return compliance in Form DRC-01B, various FAQs have been released on GST portal;
- Also, to make the filing process of form DRC-01B more convenient for the taxpayers, step to step filing process has been released by GSTN.

[GSTN Advisory dated 29 June 2023]

03

Customs Updates



Reduction of BCD on Soya bean oil, edible grade and Sunflower oil

CBIC has amended the Notification No. 48/2021 dated 13th October 2021 and reduced the BCD rate from 17.5% to 12.5% on Soya bean oil, edible grade and Sunflower oil. This notification shall come into force with effect from 15th June 2023.

[Notification No. 39/2023-Customs (Tariff), dated 15th June 2023]

Courier Imports and Exports (Electronic Declaration and Processing) (Second Amendment) Regulations, 2023

- CBIC has made additional regulations to further amend the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010.
- The regulations may be called the Courier Imports and Exports (Electronic Declaration and Processing) (Second Amendment) Regulations, 2023 which shall come into force on the date of their publication in Official Gazette.
- Under Heading Table - D Column (A) in Form – HA ‘Courier Shipping Bill’, for the words “Whether export consignment contains jewellery falling under CTH 7117 or CTH 7113 (Yes/ No)”, the words “If export consignment contains jewellery falling under CTH 7117 or CTH 7113, please state whether the facility of re-import will be availed for the said jewellery (Yes/No)”, shall be substituted.

[Notification No. 43/2023-Customs (Non-Tariff), dated 15th June 2023]

04

Foreign Trade Policy Updates

Amendment in Import Policy Condition 6 (Pet Coke) under Chapter 27 of Schedule – I (Import Policy) of ITC (HS) 2022

Import of Pet Coke for fuel purpose in 'Prohibited'. However, Policy Condition 6 of Chapter 27 of Schedule -I (Import Policy) of ITC (HS) 2022 has been amended to allow import of Needle Pet Coke for making graphite anode material for Li-Ion battery as feedstock/raw material, and Low Sulphur Pet Coke by integrated steel plants only for blending with the cooking coal in recovery type coke ovens equipped with desulphurisation plants, subject to terms and conditions set out by Ministry of Environment, Forest and Climate Change (MoEF&CC).

[Notification No. 10/2023, dated 2nd June 2023]

Procedure for applying for Amnesty scheme for onetime settlement of default in export obligation by Advance and EPCG authorization holders in manual mode - DGFT

- The procedure for filing applications for Amnesty scheme for one-time settlement of default in export obligation by Advance and EPCG authorization holders is specified in Policy Circular No. 1/2023-24 dated 17.04.2023. It was mentioned in the said Policy Circular that applications for Amnesty Scheme shall be filed using EODC module of DGFT website.
- Representations have received in DGFT that there are certain problems faced by some exporters in filing applications in EODC module of DGFT website.
- In view to address the Issue, an online form in manual mode is developed in a standalone website, <http://www.amnestyscheme.in>. Exporters can also file an application under Amnesty Scheme through said website in manual mode in the following circumstances,
 - The data of the Authorisation/Licence(s) are not available in online database of EODC module of DGFT website : <http://dgft.gov.in>
 - There is a persistent problem in filing online application for Amnesty Scheme.
 - Instructions to file online application in manual mode is provided in the Policy Circular.

[Policy Circular No. 02/2023-23, dated 23rd June 2023]

Amendment in Amnesty scheme for one time settlement of default in export obligation by Advance and EPCG authorization holders

The last date to apply under the Amnesty Scheme has been extended till 31 December 2023 and last date for payment of Customs Duty plus interest has been extended till 31 March 2024.

[Public Notice No. 20/2023, dated 30th June 2023]





05

Other Updates



Circular regarding the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2023 (Mah. Act No. XVIII of 2023 dated 6th April 2023) issued

Settlement Act 2023 introduced by Maharashtra Government mainly aims for settlement for pre-GST arrears of tax/ interest/ penalty/ late fee as per statutory orders. The Act provides methodology for determination of amount to be paid and extent of waiver, duration of time to apply and pay the required amount, conditions to which the benefit would be subject to under the Settlement Act, Forms and Procedure, etc

[TRADE CIRCULAR 11T of 2023, No. DC (A&R)3/VAT/MMB-2023/1/ADM-8, Dated 26th June, 2023]

06

Compliance Calendar

Indirect Tax

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling In September 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 June 2023 - 11 th July 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 next month	For Tax Period June 2023 - 20 th July 2023
3	Invoice furnishing facility ('IFF') (QRMP Scheme)	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 June 2023 - 1 to 13 th July 2023
4	Form GST PMT-06 (Monthly payment of tax) (QRMP Scheme)	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 June 2023- 25 th July 2023
5	Form GSTR-1 (Details of outward supplies) (QRMP Scheme)	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 April 2023 to June 2023- 13 th July 2023

Indirect Tax

6	Form GSTR-3B (QRMP Scheme)	<ul style="list-style-type: none"> Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 1ⁱ states and union territories 	Quarterly	22 nd day of the subsequent month following the end of quarter	For the quarter April 2023 to June 2023-22 nd July 2023
		<ul style="list-style-type: none"> Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2ⁱⁱ states and union territories 	Quarterly	24 th day of the subsequent month following the end of quarter	For the quarter April 2023 to June 2023-24 th July 2023
7	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13 th of the succeeding month	For Tax Period June 2023-13 th July 2023
8	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source.	Monthly	10 th of the succeeding month	For Tax Period June 2023-10 th July 2023
9	Form GSTR-8 (Statement of Tax collection at source)	Return to be filed by e-commerce operators who are required to collect tax at source under GST.	Monthly	10 th of the succeeding month	For Tax Period June 2023-10 th July 2023

Group 1 states - Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh or the Union Territories of Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep

Group 2 states - Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha or the Union Territories of Jammu and Kashmir, Ladakh, Chandigarh, Delhi

NOIDA

(Delhi NCR - Corporate Office) A-109, Sector - 136,
Noida - 201304, India
T: +91 120 5123000

GURUGRAM

001-005, Emaar Digital Greens Tower-A 10th Floor, Golf
Course Extension Road, Sector 61, Gurgaon-122102
T: +91 0124 430 1551

CHENNAI

Prestige Palladium Bayan,
Level 5, 129-140, Greams Road, Thousand
Lights, Chennai - 600006 T: +91 44 46549201

PUNE

3rd Floor, Park Plaza, CTS 1085,
Ganeshkhind Road, Next to Pune Central
Mall, Shivajinagar, Pune - 411005, India

www.nangia-andersen.com | query@nangia-andersen.com

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Follow us at:   

DELHI

(Registered Office) B-27, Soami Nagar, New Delhi -
110017, India T: +91 0120 5123000

MUMBAI

4th Floor, Iconic Tower, Urmi Estate, Ganpatrao
Kadam Marg, Lower Parel, Mumbai - 400013, India
T : +91 22 6173 7000

BENGALURU

Prestige Obelisk, Level 4, No 3 Kasturba Road,
Bengaluru - 560 001, Karnataka, India
T: +91 80 2248 4555

DEHRADUN

1st Floor, "IDA" 46 E.C. Road, Dehradun - 248001,
Uttarakhand, India T: +91 135 271 6300

