



Indirect Tax

Newsletter _____

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Judgements & Rulings

Tribunal held that marketing, administrative and technical support services provided to Parent Company do not qualify as intermediary services

Brief Facts

- Thyssenkrupp System Engineering India Pvt. Ltd. ('Appellant') is a wholly-owned subsidiary of M/s ThyssenKrupp System Engineering GmbH, Germany ('Parent Company'), and is engaged in provision of business and marketing-related support services to its Parent Company.
- In relation to services provided by Appellant to its Parent Company, Service Tax Department initiated an inquiry and concluded in its adjudication order that the Appellant acted as an intermediary between the parent company and its customers in India and proposed levy of service tax on business and market-related support services treating Appellant as intermediary.
Consequently, Appellant filed an appeal, which was rejected by the learned Commissioner (Appeals) in its order.
- Aggrieved by the decision of Commissioner (Appeals), the Appellant preferred the present appeal before the Tribunal.

Observations

- Tribunal observed that the agreement between the Appellant and its foreign Parent Company specifies Appellant's role to handle tasks like customer relations, customer visits, gathering market information about products, and identifying new business opportunities on behalf of the Parent Company in India. Appellant's scope of work is confined to promoting the parent company in India by way of providing marketing, administrative, technical support services;

- Tribunal further noted that the Appellant's responsibilities are focused on promoting the parent company in India and Appellant did not assist the Parent Company in facilitating the exchange of goods or services and accordingly Appellant's services do not qualify as intermediary services (since they lack the necessary prerequisites);
- Tribunal while deciding the matter also relied on **Circular No. 159/15/2021-GST** dated 20 September 2021 which clarifies that to classify as an intermediary service, certain conditions must be met, including the involvement of at least three parties, the presence of two distinct supplies (main and ancillary), and the intermediary service provider having the character of an agent, broker, or similar entity. In the instant case, the Appellant does not meet the criteria for intermediary services, as it does not act as a facilitator between the parent company and its customers in India regarding the supply of goods or provision of services.

Decision

- Transaction do not qualify as intermediary services and accordingly considered as the export of services.
- Impugned order is set aside and appeal allowed in favour of the Appellant.

[M/s Thyssenkrupp System Engineering India Pvt. Ltd. - TS-563-CESTAT-2023-ST, Dated 11 May, 2023]

GST Clarifications and Updates

◆ **Notifies Central Goods and Services Tax ('CGST') (Fourth Amendment) Rules 2017 (effective from 26 October 2023)**

- CBIC has notified CGST (Fourth Amendment) Rules 2017 w.e.f. 26 October 2023;
- The said notification inter alia brings out the following changes:
 - Existing Rule 28 is renumbered as sub-rule (1) and sub-rule (2) has been inserted which states that where supplier supplies services by way of corporate guarantee to any bank or financial institution on behalf of a recipient and both parties are related person, then value of such services shall be deemed to be 1% of guaranteed amount offered or actual consideration, whichever is higher;
 - Amendment in Rule 159(2) for release of property attached provisionally by the Commissioner. Now, any property provisionally attached by the Commissioner shall be released by him after he passes a writing order instructing to do so or on expiry of 1 year from the date of such provisional attachment, whichever is earlier;
 - Form GST REG-01 has been amended to include registration by One Person Company;
 - Form GST REG-08: Order of Cancellation of Registration as Tax Deductor at source (TDS) or Tax Collector at source (TCS) has been changed completely.

[Notification No. 52/2023-Central Tax, dated 26 October 2023]

❖ **Additional condition inserted for the supplier supplying passenger transport services and charges outward GST @2.5%.**

- An additional condition has been inserted for a supplier of passenger transport services which states that If the input services received from vendor are in the same line of business and such vendor charges CGST at a rate higher than 2.5%, then credit of input tax charged on such input service shall not be taken in excess of the tax paid or payable @ 2.5%.

❖ **Additional condition inserted for supplier providing the motor vehicle on rent for carrying passengers where the cost of fuel is included in the consideration charged from the service recipient.**

- An additional condition has been inserted for a supplier providing motor vehicle on rent for carrying passengers (where cost of fuel is included in consideration charged from service recipient) that if the input services received from vendor are in the same line of business and such vendor charges CGST at a rate higher than 2.5%, then credit of input tax charged on such input service shall not be taken in excess of the tax paid or payable @ 2.5%.

[Notification No. 12/2023-Central Tax (Rate), dated 19 October 2023]

❖ Exempts following supplies from levy of GST (effective from 20 October 2023)

- CBIC has exempted the following services provided to a Governmental Authority by way of:
 - Water supply;
 - Public health;
 - Sanitation conservancy;
 - Solid waste management; and
 - Slum improvement and upgradation.
- Services provided by Indian Railways are no longer exempt from GST:
 - Services to a business entity which has not exceeded the threshold limit for registration under CGST Act in previous financial year;
 - Services provided to another Central government, State government, Union Territory or local authority;
 - Services supplied where consideration for such services does not exceed INR 5,000.

[Notification No. 13/2023-Central Tax (Rate), dated 19 October 2023]

Applicability of reverse charge mechanism on services supplied by government (effective from 20 October 2023)

- Services supplied by the Central Government, State Government, Union territory or local authority to a business entity by the way of services by the Ministry of Railways (Indian Railways) are excluded from the applicability of reverse charge mechanism;
- Services supplied by The Ministry of Railways (Indian Railways) by way of renting of immovable property to a person registered under the CGST Act are no longer taxable under reverse charge mechanism.

[Notification No. 14/2023-Central Tax (Rate), dated 19 October 2023]

Notifies the category of supply not eligible for refund of unutilized ITC under CGST Act (effective from 20 October 2023)

- The refund of unutilised ITC shall not be allowed under CGST Act, in case of supply of services by way of construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, except where the entire consideration has been received after issuance of completion certificate by the competent authority or after its first occupation, whichever is earlier.

[Notification No. 15/2023-Central Tax (Rate), dated 19 October 2023]

❖ **Notifies the category of services on which tax shall be paid by e-commerce operator on intra-state supplies (effective from 20 October 2023)**

- CBIC has notified that on services supplied by the way of transportation of passengers by an omnibus, tax is to be paid by the e-commerce operator except where the person supplying such service through electronic commerce operator is a company.

[Notification No. 16/2023-Central Tax (Rate), dated 19 October 2023]

❖ **Notifies applicability of reverse charge mechanism on supply of certain goods (effective from 20 October 2023)**

- Supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Central Government, State Government, Union territory or a local authority are taxable under reverse charge mechanism (except if such supplies are rendered by Indian Railways).

[Notification No. 19/2023-Central Tax (Rate), dated 19 October 2023]

❖ **Notifies supplies and class of persons eligible for refund under IGST route (effective from 1 October 2023)**

- CBIC has notified that all goods and services (except those specified in the notification) can be exported on payment of IGST and such supplier is eligible for refund of IGST so paid;
- Further, all suppliers supplying goods or services (except those specified) to a Developer or a unit in SEZ undertaking authorised operations on payment of IGST can claim refund of IGST so paid.

[Notification No. 05/2023-Integrated Tax, dated 26 October 2023]

❖ **Clarification w.r.t. remittances received by Indian exporters in INR in their Special Rupee Vostro Account shall be treated as consideration to qualify as ‘export of services’**

- For any service transaction to qualify as export of services, one of the main condition is that ‘payment has been received by supplier (i.e. Indian exporter) in convertible foreign exchange or in INR wherever permitted by RBI’;
- For the words ‘wherever permitted by RBI’, dispute regarding whether export proceeds received in Special Rupee Vostro Account would qualify as consideration for export of services remained;
- Now, CBIC has clarified that payment condition would be considered as fulfilled when Indian exporters, undertaking export of services, shall be paid the export proceeds in INR from the balances in the designated Special Rupee Vostro Accounts of the correspondent bank(s) of the partner country, opened by the Authorised Dealer Banks (subject to conditions of Foreign Trade Policy 2023, scope of RBI circulars and without prejudice to permissions required under any other law);

- The above clarification has been provided by examination of RBI circular '**A.P. (DIR Series) Circular No. 10 dated 11th July 2022 regarding International Trade Settlement in INR**' and para 2.52(d) of 'General provisions regarding import and exports' of Foreign Trade Policy 2023.

[Circular No. 202/14/2023-GST, dated 27 October 2023]

Clarification w.r.t. place of supply in different cases

1. Place of supply in case of supply of service of transportation of goods (including through mail and courier) in case the location of supplier of services or location of recipient of services is outside India
 - CBIC has clarified the position regarding place of supply in case of supply of service of transportation of goods (including through mail and courier) where the supplier or the recipient is located outside India;
 - Earlier as per the IGST Act, place of supply of transport of goods (other than by mail or courier) was ultimate destination of such goods (section 13(9) of IGST Act). But this provision was deleted via a notification which created ambiguity regarding place of supply of such services;
 - Now, CBIC has clarified that place of supply of goods transport services (other than through mail and courier) will be determined as per section 13(2) of the IGST Act by default;
 - Hence, if the location of recipient is available, the place of supply will be location of recipient and if location of recipient is not available, place of supply of such services shall be location of supplier of services;
 - For goods transported through mail and courier, it will continue to be governed by section 13(2) of the IGST Act.

2. Place of supply in case of advertising sector

- CBIC has clarified the position regarding place of supply in case of:
 - Sale of space or sale of right to use the space on the hoarding/ structure (immovable property) belonging to vendor to advertising company for display of their advertisement on such immovable property:
 - In such case, the hoarding/ structure erected on land is considered to be immovable property and place of supply of sale of space or right to use the space on such immovable property shall be location of such immovable property (section 12(3)(a) of the IGST Act);
 - This includes services by architectures, interior decorators, surveyors and other estate agents.
 - Display of advertisement on hoarding/ structure at a specific location where such hoarding/ structure is owned by a vendor or taken on rent by such vendor and the vendor is responsible for display of advertisement on such hoarding/ structure:
 - In this case, there is no sale of space or right to use the space by the vendor to advertising company. But, the vendor is providing advertisement services by providing visibility to an advertising company's advertisement for a specified period at a specified location;
 - Hence, such place of supply in such supply will be governed by section 12(2) of the IGST Act.

3. Place of supply in case of supply of 'co-location services'

- CBIC has clarified the position regarding place of supply in case of 'co-location services'. Co-location is a data center facility in which a company can rent some space for its own servers and other computer hardware along with various other IT bundled services;
- Such services are in the nature of 'hosting and information technology infrastructure provisioning services' and such arrangement also involves network connectivity, firewall services etc.;
- Hence, such place of supply in such supply will be governed by section 12(2) of the IGST Act. However, if where an agreement between parties is restricted to provide physical space on rent along with basic infrastructure, without components of hosting and information technology infrastructure provisioning services, the same shall be governed by section 12(3)(a) of the IGST Act.

[Circular No. 203/15/2023-GST, dated 27 October 2023]

Clarification w.r.t. issues pertaining to taxability of personal guarantee and corporate guarantee under GST

- CBIC has clarified the position regarding personal guarantee given by Director to the bank/ financial institutions for sanctioning of credit facilities to his Company without charging any consideration from Company as follows:
 - a) As per the GST law, the director and the Company are related person and any transaction between related person even if made without consideration is to be treated as supply. Hence, personal guarantee provided by Director to the bank/ financial institutions is a supply of service;

- b) Further, the circular gives reference to guidelines of RBI circular where the RBI mandated that promoters, directors and other managerial persons can provide guarantees in certain cases and that guarantees made by director is to be done without any consideration;
 - c) Accordingly, any personal guarantee provided by Director shall be treated as a supply of services with its value to be deemed as Zero; and
 - d) For cases where consideration has been charged by the Director directly or indirectly for providing personal guarantee, the taxable value of such supply of service shall be the remuneration/ consideration provided to such director/ person directly or indirectly.
- CBIC has further clarified the position regarding Corporate guarantee by a person on behalf of other related person or by holding company for sanctioning of credit facilities to its subsidiary company without charging any consideration as follows:
 - a) As per the GST law, where corporate guarantee is provided by one company on behalf of another company and both companies are related person, then any transaction between such companies even if made without consideration is to be treated as supply;
 - b) Accordingly, if holding company provides corporate guarantee to a bank or financial institution on behalf of its subsidiary company, it will be treated as supply of service even if such guarantee is provided without consideration;
 - c) Further, Rule 28(2) has been inserted to provide valuation of such corporate guarantees which states that value of such supply of services shall be 1% of the amount guaranteed or actual consideration whichever is higher;
 - d) Hence, for all corporate guarantees provided by a related person to another related person or by a holding company to subsidiary company, its valuation shall be governed by Rule 28(2) of CGST Rules 2017. However, this rules does not cover personal guarantee provided by the Director to his Company.

[Circular No. 204/16/2023-GST, dated 27 October 2023]

Clarification w.r.t. applicability of GST on certain services

1. 'Same line of business' in case of passenger transport services and renting of motor vehicles does not include leasing of motor vehicles
 - CBIC has clarified that input services in the 'same line of business' include services by way of passenger transport services by any motor vehicle (SAC 9964) or renting of motor vehicle with operator (SAC 9966) but not leasing of motor vehicles without operator (SAC 9973);
 - Services of passenger transport and renting of motor vehicle attract 5% GST with input in same line of business whereas leasing of motor vehicles without operator attracts GST and/ or compensation cess at same rate as supply of motor vehicle by way of sale.

2. Applicability of GST on reimbursement of electricity charges by real estate companies, malls, airports etc. from their lessees/ occupants
 - CBIC has clarified that whenever electricity is supplied with renting of immovable property and/ or maintenance of premises, it is a component of naturally bundled composite supply where primary supply is renting of immovable property and maintenance with electricity are ancillary services;
 - Hence, GST rate on renting of immovable property will be applied to electricity charges. Even if separate invoice is issued, then also it will be treated as composite supply and taxed accordingly;
 - But, if electricity is supplied by RWAs, real estate developers etc. as a pure agent, it will not form part of their valuation (case where amount recovered from occupants and paid to electricity board is same).

3. District Mineral Foundations Trusts (DMFTs) set up by state governments are Governmental Authorities and eligible for same exemptions from GST as any other Governmental Authority

- DMFTs work for the interest and benefit of persons and areas affected by mining operations. They provide healthcare facilities, education, drinking water welfare of women etc. DMFTs regulate the receipt and expenditure from District Mineral Funds ('DMF') set up;
- The services supplied out of DMF funds is free of charge and no consideration is realized from its ultimate beneficiaries;
- Hence, DMFTs set up by state governments are Governmental Authorities and eligible for same exemptions from GST as any other Governmental Authority.

4. Supply of pure services and composite supplies by way of horticulture made to CPWD are eligible for exemption under GST

- Public parks in govt. residential colonies, offices and other public areas are developed and maintained by CPWD. Panchayats and Municipalities are entrusted with functions like protection of environment, maintenance of community assets etc. under Article 243G and 243W of the Indian Constitution;
- Under GST law, supply of pure services and composite supply of goods and services where value of goods is less than or equal to 25% of total supply, is that are provided to Central Government, State Government or Union Territory or local authority by way of any function entrusted to Panchayat and Municipality under Article 243G and 243W of Indian Constitution respectively;
- Hence, supply of pure services and composite supplies by way of horticulture/ horticulture works (where value of goods is less than or equal to 25% of total supply) made to CPWD are eligible for exemption under GST.

[Circular No. 204/16/2023-GST, dated 27 October 2023]

Customs Updates

❖ Revision in all Industry Rates of Duty Drawback

- CBIC has notified the revised All Industry Rates (AIRs) of duty drawback. Previous Notification dated 28 January 2020 has been replaced by the said notification.
- For claiming these AIRs, the relevant tariff item has to be suffixed with letter 'B'. For example, for export of goods covered under tariff item (TI) 610901, the drawback serial number should be declared as 610901B.
- For claiming specified AIRs on export of items under Special Advance Authorization Scheme, the relevant tariff item has to be suffixed with letter 'D', instead of the usual suffix 'B' mentioned above. For example, for export of goods under Special Advance Authorization Scheme covered under tariff item (TI) 610901, the drawback serial number should be declared as 610901D;
- Certain AIRs of Duty Drawback have been introduced/ increased/ rationalized for certain items, pertaining to various sectors. Description of some of the existing tariff items have been revised for better product differentiation and for enabling tax neutralization for specific products.

This notification shall come into force from 30 October 2023.

[Notification No. 77/2023-Customs (Non-Tariff), dated 20 October 2023 and Circular no. 26/2023 dated 26/2023 dated 26 October 2023]

Foreign Trade Policy Updates



Amendment in import policy Condition related to computers, laptops and tablets

DGFT has amended import policy condition wherein Import of Laptops, Tablets, All-in-one Personal Computers, and Ultra small form factor Computers, Servers under HSN 8471 are 'Restricted' i.e., their imports with effect from 1 November 2023 will require an import licence.

DGFT has notified changes in the import policy condition to provide exemption from import authorisation with respect to import of these goods manufactured in SEZ by DTA and import by private entities on behalf of Central & State Government Entities, for Defence & Security purposes.

[Notification No. 38/2023, dated 19 October 2023]

Automatic System based issue of Status Holder Certificate (e-SHC) with no requirement of filing any application by the exporter.

In furtherance of e-Governance initiative and in the interest of trade facilitation, DGFT has recognized an IT module to grant system-generated electronic Status Holder Certification, based on merchandise export data available with Directorate General of Commercial Intelligence and Statistics (DGCI&S) without the need for filing any application by the exporter.

Wherever required, exporters may also file an application online for recognition as well as for up-gradation of Status under the Policy in ANF IB along with CA Certificate. Online Application for Status certificate shall be filed with regional jurisdictional offices (RA) of DGFT as determined by the location of Registered Office in the case of Company and of Head Office in the case of others.

[Public Notice no. 32/2023 dated 9 October 2023 and Trade notice no. 28/2023-24 dated 9 October 2023]

❖ **Availment of credit on transfer of duty-free material imported or procured against advance authorisation between different units of a company.**

DGFT has allowed the availment of Input Tax credit on transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose on which GST has been paid, whether located in same state or different States. However, the availment of Input Tax Credit shall be governed as per the provisions of the GST law & the rules made thereunder.

[Public Notice no. 34/2023 dated 13 October 2023]

❖ **Implementation of Import Management Systems for IT Hardware – DGFT.**

DGFT restricted the Import of certain specified IT hardware vide Notification No. 23/2023 dated 3 August 2023 read with Notification No. 26/2023 dated 4 August 2023 and Notification No. 38/2023 dated 19 October 2023. Clarification has been provided in this regard that SEZ units and EOUs/EHTP/STPI/BTP are not required to obtain a 'restricted import authorisation' for import of IT hardware restricted vide Notification 23/2023 dated 3 August 2023. The given exemption is allowed only for the captive consumption of the concerned importing unit(s)

[Policy Circular No. 06/2023-24 dated 19 October 2023]

Compliance Calendar

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in November 2023
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 October 2023- 11 th November 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 October 2023- 20 th November 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 October 2023 – 1 to 13 November 2023

4	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 October 2023 – 25 th November 2023
5	Form GSTR-1 (Details of outward supplies) (QRMP)	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 October 2023 to December 2023- 13 th January 2023
6	Form GSTR-3B (QRMP Scheme)	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 of quarter	For the quarter October 2023 to December 2023- 22 nd January 2023
		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 October 2023 to December 2023- 24 th January 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 October 2023-13 th November 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 October 2023-10 th November 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 October 2023-10 th November 2023

NOIDA

(Delhi NCR - Corporate Office) A-109, Sector - 136,
Noida - 201304, India
T: +91 120 2598000

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: +91 120 2598000

MUMBAI

4th Floor, Iconic Tower, URMI Estate, Ganpat Rao
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

