GST

LD/68/74, [2019-TIOL-312-AAR-GST] M/s Jotun India Private Limited, 04/10/2019

When applicant provided parental insurance scheme for parents of its employees and recovered 50% premium from employees, AAR held that such recovery of the premium will not attract GST as it does not amount to 'supply.'

Facts:

The applicant introduced a parental insurance scheme for employees' parents, which is optional. Under the said scheme, the applicant initially pays the entire premium along with taxes to the insurance company. The insurance company issues the premium receipt in the name of the applicant. In the case of the employees who opt for the parental insurance scheme, the applicant recovers 50 percent of the premium from the salaries and the applicant bears the balance 50 percent amount of premium. The applicant sought present ruling as to whether GST is payable on the recovery of 50% of the insurance premium from the salary of the employees?

Ruling:

AAR noted that since the applicant is neither in the business of providing insurance coverage nor it is mandatory for the applicant to provide parental insurance cover as there is no such requirement under any law for the time being in force and therefore, non-providing parental insurance coverage would not affect its business by any means. Therefore, that activity of recovery of 50% of the cost of insurance premium cannot be treated as an activity done in the course of business or for the furtherance of business.

AAR noted that from combined reading of definition of 'supply' under section 7 of CGST Act, and definition of 'business' under section 2(17) of CGST Act, 2017, it emerges that the activity is undertaken by the applicant like providing of medi-claim policy for the employees' parent through insurance company neither satisfies conditions of Section 7 to be held as "supply of service" nor it is covered under the term "business" of Section 2(17) of CGST Act, 2017. Thus AAR held that the applicant is not rendering any services of health insurance to their employees' parent and hence, there is no supply of services in the present transaction between employer and employee.

LD/68/75, [2019-TIOL-312-AAR-GST] Metro Dairy Limited, 23/09/2019

When the commercial production of taxable goods commenced and production of exempted goods commenced subsequently, as regards availability of common credit on capital goods till production of exempted goods, AAR held that in terms of proviso to Rule 43(1)(d), (e), (f) and (g) of the GST Rules, the applicant is required to compute the admissible amount of common ITC capital goods, in the tax periods over the useful life of such capital goods, calculated from the date of invoice and balance ITC shall be reversed that has already been credited to its electronic credit ledger.

As regards common credit on input services, AAR held that as commercial production of exempted goods did not begin, the entire ITC on input services will be admissible subject to Rule 42(2) of CGST Rules, 2017.

Facts:

Applicant set up a manufacturing facility for production of taxable as well as exempted goods. Commercial production of taxable goods commenced in 2018, whereas commercial production of exempted goods did not commence at all during FY 2018-19. The Applicant has procured capital goods and input services that are common to the production of both taxable and exempted goods. The applicant sought a present ruling on the admissibility of the proportionate input tax credit on such capital goods and input services.

Held:

As regards mechanism for apportionment of input tax credit on capital goods, that were used for manufacturing taxable goods but are going to be used subsequently for production of both taxable and exempted goods, AAR held that amount of input tax on each of such capital goods shall be credited to the electronic credit ledger in terms of Rule 43(1)(c) of the CGST Rules, which also prescribes sixty months from the date of invoice as the useful life of such capital goods. The value of input tax credit on capital good shall be arrived at by reducing the input tax at a 5% rate for every quarter or part thereof. AAR held that the amount of input tax credit attributed to the period when such capital goods were used for manufacturing taxable goods shall be calculated in terms of proviso

to Rule 43(1) of CGST Rules, 2019 and the balance amount of the input tax to be apportioned after commencement of production of the exempted goods shall be calculated under Rule 3(1)(e), (f) and (g) of CGST Rules, 2017.

As regards common credit on input services, AAR held that since commercial production of exempted goods did not commence during FY 2018-19, no amount of the common credit of input tax on input services available during 2018-19 should, therefore, be attributed towards exempt supplies and subject to the provisions under Rule 42(2) of the GST Rules, the entire input tax on input services is an admissible credit during 2018-19.

LD/68/76, [2019-TIOL-283-AAR-GST] M/s Directorate of Skill Development Global Skill Development Park, 18/07/2019

AAR held that import of services by a government department from the supplier of service located in non-taxable territory, for business/commerce purposes are chargeable to GST under reverse charge mechanism in terms of *Notification No. 10/2017-IT (R).*

Facts:

The Applicant was the Director of Skills Development Department of Technical Education Skill Development and Employment Govt. of Madhya Pradesh who was awarded a project for the Establishment of Centre for Occupational Skills Acquisition within the Global Skills Park (GSP). The objective of the said project was to assist the Government of Madhya Pradesh (GOMP) in transforming its technical and vocational education and training (TVET) system to create a skilled workforce that meets the evolving development needs of the state. For the purpose of the said project, the applicant entered into an agreement with a Singapore based company for getting consultancy services for the said project. The applicant raised a question as to whether the applicant will be required to pay GST under reverse charge basis in terms of Section 5(3) of IGST Act, 2017 read with *Notification No. 10/2017-IGST(R)* and exemption *Notification No.9/2017-IGST(R).*

Ruling:

AAR noted that the applicant is also running a Society under Madhya Pradesh Finns and Societies Act, 1973 by the name Global Skill Park. The AAR analysed the main objects with which the said Society was established by the applicant and came to the conclusion that, as the said Society is carrying on business as defined in Section 2(17) of the CGST Act, the applicant can also be said to be engaged in business or profession. Accordingly, AAR held that since said activities are held to be carrying on business and profession, the exemption given under *Notification No. 9/2017-IT (R)* i.e., services received by government from provider of service located in non-taxable territory outside India, for the purpose other than commerce, industry or any other business or profession, would not apply to applicant and hence, applicant would be required to pay GST under reverse charge mechanism.

Service Tax

LD/68/77, [2019-TIOL-449-SC-LB] (i) State of West Bengal and Ors vs. Calcutta Club Ltd & (ii) Chief Commissioner of Central Excise and Service and Ors Vs. M/s Ranchi Club Ltd. , 03/10/2019

Supreme Court affirmed the decisions of various High Courts that even after 46th amendment to Article 366(29A) of the constitution of India, the doctrine of mutuality continues to hold good and thus, a supply of goods/services by incorporated clubs to its members would not attract levy of sales tax/service tax.

Facts:

The questions in present appeals were (i) whether respondent clubs were liable to pay sales tax on the supply of foods and beverages to its own members? (ii) Whether services provided by respondent clubs to its members were chargeable to service tax, especially after 01.07.2012 i.e. under negative list regime?

Held:

As regards levy of sales tax on supply of goods by member clubs to its members, Hon'ble Supreme Court affirmed the decision of Hon'ble High Court by holding that the doctrine of mutuality continues to be applicable to incorporated and unincorporated members' clubs after the 46th Amendment adding Article 366(29-A) to the Constitution of India. The ratio laid down in *CTO vs. Young Men's Indian Association (1970) 1 SCC 462* and other judgements that applied

this doctrine continue to hold the field even after the 46th Amendment. Sub-clause (f) of Article 366(29-A) has no application to members' clubs. Accordingly, Supreme Court dismissed the appeals filed by revenue by holding that goods supplied by clubs to its members would not attract sales tax.

As regards question of applicability of service tax on services provided by clubs to its members, Hon'ble Supreme Court held that as observed in context of levy of sales tax, that in members club there is no sale by one person to another for consideration, as one cannot sell something to oneself, even after 01.07.2012, the doctrine of mutuality continues to apply while construing definition of 'service' under section 65B(44) and explanation 3(a) thereto. Thus, Hon'ble Supreme Court held that even under the negative list regime, services provided by incorporated clubs to its members would not attract service tax. Accordingly, the show-cause notices, demand notices, and other actions taken to levy and collect service tax from incorporated members' clubs, are declared to be void and of no effect in law.

LD/68/78, [Delhi High Court: W.P.(C) 9264/2019 Solvina India Pvt. Ltd. Vs. Union of India & Ors., 27/08/2019

Service tax audit proceedings were initiated against the assessee after onset of GST, i.e., after 01st July 2017. As per assessee, Rule 5A of Service Tax Rules does not survive after GST introduction in the absence of any saving provision for the same, and that any proceedings under Rule 5A is non-est, illegal and without authority of law. Assessee submitted that savings clause under CGST or Section 6 of the General Clauses Act, 1897 does not apply to repeal/omission of a Rule and that it applies to the repeal of the Central Acts and Regulations. Since Chapter V of the Finance Act, 1994 has been omitted (and not repealed) by Section 173 of the CGST Act, Section 6(1) & (2) of General Clauses Act has no application. High Court ruled in favour of the assessee and directed stay on service tax audit proceedings.

Customs Act

LD/68/79, [Supreme Court of India: Civil Appeal Nos. 293294 of 2009 ITC Limited] Vs. The Commissioner of Central Excise, Kolkata, 18/09/2019

After assessment order was passed by Revenue, assessee had submitted to Revenue that it was not aware of the *Notification No.10/96CE* or the circular dated March 01, 2001 and that refund was eligible to the assessee in respect of the duty paid on the said waste paper/broke. Supreme Court held that refund application against the assessed duty cannot be entertained directly under section 27 of Customs Act, 1962 unless the order of assessment or self-assessment is modified by taking recourse to the appropriate proceedings. Assessee's contention that in the case of self- assessment, the duty paid under a mistake can be claimed without filing an appeal, was rejected by the Supreme Court. Supreme Court held that the refund authorities cannot take over the role of Assessing Officer and while processing a refund application, reassessment is not permitted nor conditions of exemption can be adjudicated. Supreme Court remarked that as per Section 128 of Customs Act, a person aggrieved by any order including self-assessment, has to get the order modified under section 128 first.

Sales Tax Act

LD/68/80, [Allahabad High Court: Writ Tax No. 354 of 2017], Assotech Realty Pvt. Ltd. Vs. Additional Commissioner Grade-1 Commercial Tax, 27/08/2019

Assessee is a builder who purchased the land from the Development Authorities and developed the same in course of his business. Assessment order was passed by the Revenue holding that there was no transfer of any material in execution of works contract and assessee was not liable to payment of any tax. Subsequently, in the case of *L & T vs. State of Karnataka*, the Supreme Court held that assessee was liable for payment of tax on the transfer of material used in execution of works contract. Relying on this judgement, re-assessment notice was sent by the Revenue to the assessee. Allahabad High Court held that a subsequent judgement of the Apex Court cannot be used to reopen the assessment or disturb past assessment which have been concluded. High Court observed that if an order, which has been passed and has been confirmed by this Court under the provision of the Act, then in absence of any new material being brought on record, the completed assessment should not have been reopened. High Court thus ruled in favour of the assessee.