ACUPRO CONSULTING

WEEK 3, JANUARY 2023

# THE GST PULSE

ONE PLACE FOR ALL THE UPDATES



# Recent Judgements and Rulings

## *SUPPLY OF SHARPENERS ALONG WITH PENCILS AMOUNTS TO 'MIXED SUPPLY' TAXABLE AT THE HIGHER RATE AMONG ALL THE SUPPLIES.*

### *THE AUTHORITY FOR ADVANCE RULING, GUJARAT*

M/s Doms Industries Pvt. Ltd. ("the Petitioner") is a manufacturer and supplier of all kind of stationary items. The Petitioner used to sell sharpeners and rulers along with other products as a kit under the HSN code of the item with highest value. Further, the petitioner charged GST of the highest rate applicable on the products. After the change of GST rate on sharpener and scale (i.e. from 12% to 18%), sharpener sold as an accessory in the kit, has the highest GST rate.

The Petitioner sought an advance ruling from the authority that whether the supply of Sharpener along with Pencils, being the principal supply, will be considered as the "Composite Supply" or "Mixed Supply"? and supply of Sharpener along with the kit having a nominal value will have an impact on rate of tax? What will be the HSN code?

The Gujarat AAR held that the kits supplied by the Petitioner satisfy all the conditions of 'Mixed Supply' under Section 2(74) of the CGST Act. A mixed supply containing more than two supplies shall be treated as a supply and will attract the higher rate of tax in the mix supply. Further held that, the Petitioner is required to use the HSN code of the particular supply which attracts higher rate of tax among all the taxable supplies containing in a kit.



# *HIRING OF GOODS TRANSPORTATION VEHICLE BY GTA SERVICE PROVIDER IS EXEMPTED FROM GST.*

## *THE AUTHORITY FOR ADVANCE RULING, CHHATTISGARH*

M/s Prahallad Ray Rekhraj Agarwal ("the Petitioner") is a proprietorship firm which plans to venture into the business of transportation of goods by road. The petitioner will issue consignment notes for providing such services. However, the Petitioner does not own any goods transportation vehicle. Therefore, will hire vehicles from vehicle owners wherein, the vehicle owner will have complete control over the vehicle including the driver and all incidental expenses. Further, the vehicle owner will raise invoice in the name of the Petitioner and Petitioner will further raise invoice in the name of customers whose goods were transported by the Petitioner.

The Petitioner submitted that the services by way of providing goods transportation vehicle on hire is exempt as per Entry No. 22 (b) of Notification No. 12/2017- Central Tax (Rate) Therefore, no liability under RCM shall arise on the Petitioner as per Notification No. 13/2017.

The Chhattisgarh AAR held that, as per the Entry No. 22 (b) of the Services Exemption Notification, the service by way of giving on hire a means of transportation of goods to the Petitioner is eligible to Nil rate of GST and no liability shall arise upon the Petitioner as per the notification



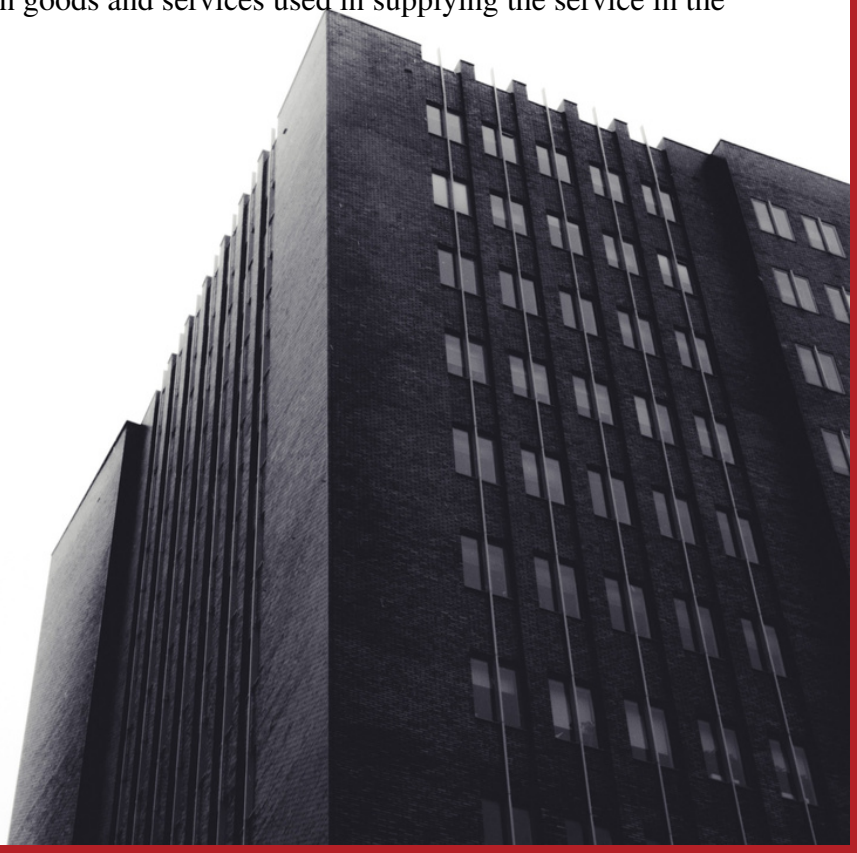
# *ITC CAN BE AVAILED BY THE BUS OPERATORS ON RENT PAID TOWARDS HIRING OF BUSES*

## *THE AUTHORITY FOR ADVANCE RULING, CHHATTISGARH*

M/s Abhay Singh Gill ("the Petitioner") is engaged in the service of transportation of passengers by air conditioned buses. The petitioner was charging consideration with GST @5% from passengers inclusive of fuel cost. The buses were taken on rent by the Petitioner from another service provider for which the petitioner was issued bill of rent along with GST at the rate of 18%. It was contended by the Petitioner that he is entitled to avail ITC of GST paid at the rate of 18%. as per Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017. The notification provides ITC on tax charged on services by another service provider for transporting passengers in a motor vehicle or renting of a vehicle.

Whether the Petitioner is entitled to avail ITC of GST paid at the rate of 18% to the service provider on renting of buses?

The Chhattisgarh AAR held that, the Petitioner would be entitled to avail ITC on the input services, provided the petitioner fulfils the conditions to claim ITC as stipulated under Section 16 of the CGST Act. The section provides that every registered person shall be entitled to claim ITC on any supply of goods and services which are used or intended to be used for furtherance of business and that tax is charged on input on goods and services used in supplying the service in the same line of business.



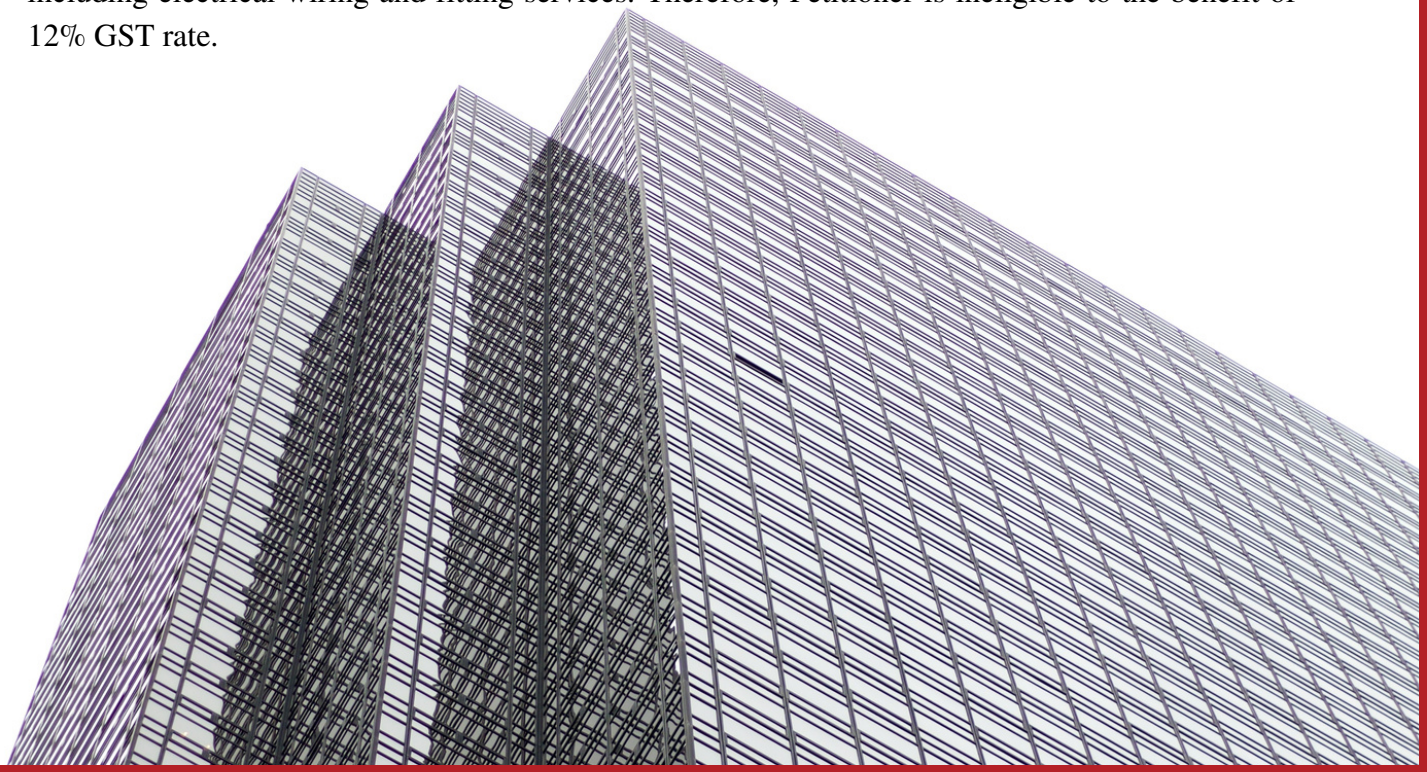
# INSTALLATION SERVICES FOR ILLUMINATION OF ROADS CANNOT BE CONSTRUED AS "CONSTRUCTION SERVICES"

## THE AUTHORITY FOR ADVANCE RULING, CHHATTISGARH

M/s HPL Electric and Power Ltd. ("the Petitioner") is engaged in the business of manufacture, sale and installation of electrical equipments. The Petitioner has entered into an agreement with M/s. Adani Infra India Ltd. ("AIIL") to provide services for design, engineering, supply, installation etc. of Highway Lighting System, which is a part of the project of development and maintenance of a 53km 4-laned highway in Chhattisgarh.

The Petitioner had contended that the work carried out by the petitioner is essential for completion of road and it cannot be operational without lighting system. Further, it was contended that the work carried out by the Petitioner was a works contract as defined under Section 2(119) of the CGST Act and was classified under SI. No. 3(iv)(a) of the Services Rate Notification and should attract GST rate of 12%. The Petitioner approached the AAR to sought whether the supply made by the Petitioner to AIIL can be classified under SI. No. 3(iv)(a) of the Services Rate Notification and the benefit of GST of 12% can be availed in respect of said supply by the Petitioner to AIIL?

The Chhattisgarh AAR held that, the Sl. No. 3(iv)(a) of the Services Rate Notification states that the work should be 'by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public'. The work carried out by the Petitioner is not "construction services", rather it is "installation services" being electrical installation services including electrical wiring and fitting services. Therefore, Petitioner is ineligible to the benefit of 12% GST rate.



# *GST @ 18% LEVIABLE ON DOORSTEP HEALTHCARE AND LOGISTICS SERVICES PROVIDED TO SENIOR CITIZENS.*

## *THE AUTHORITY FOR ADVANCE RULING, WEST BENGAL*

M/s Snehador Social & Health Care Support LLP ("the Petitioner") is involved in providing healthcare services to senior citizens, which includes arranging of doctors, nurses, taking clients to diagnostic centres, etc. along with logistics support like delivery of medicines and groceries, etc. To avail the services provided by the Petitioner, customers need to enroll as a member. Further, the Petitioner also provides services like additional general physician visit, night call-general physician, etc. at the cost of extra charges.

The Petitioner has approached the Advance authority stating that the healthcare services provided by the petitioner should fall under the heading of 'Clinical Establishment' vide Sl. No. 74 of Notification No. 12/2017 – Central Tax (Rate) dated June 28, 2017. Hence shall be exempted from GST.

The West Bengal AAR held that, the supply of healthcare services qualifies for exemption under Sl. No. 74 under the Services Exemption Notification, if it is provided by a clinical establishment, an authorized medical practitioner or a paramedic. The AAR stated that the services provided by the petitioner falls under the category of 'human health and social care services and is taxable at 18% GST.



# GST TO BE CHARGED ON CHARGES COLLECTED FROM CONTRACTUAL WORKERS FOR CANTEEN SERVICES PROVIDED

## THE AUTHORITY FOR ADVANCE RULING, GUJARAT

M/s Troikaa Pharmaceuticals Ltd. ("the Applicant") provides canteen facility to its employees and contractual workers, as mandated under the Factories Act, 1948. The canteen service is provided by a third party, to the Applicant, who raises an invoice by charging 5% GST. The applicant borne 50% value of the invoice and balance 50% is recovered from the employee's salary pay out.

The Applicant submitted that, the recoveries for providing canteen facility is not supply as per Section 7 of the CGST Act. It is nor a 'business' of the Applicant neither had any intent to make profit from the amount recovered. Hence, no GST should be levied on such recovery of charges. Moreover, the Applicant should be allowed to claim ITC on the GST paid for such canteen service to the contractor as the same is mandatory under the Factories Act.

The AAR Gujarat held that, the GST is not leviable in the hands of the Applicant on the amount recovered from the employees as it is mandatory to provide canteen services to its employees under the Factories Act. However, GST would be leviable on the portion collected from the contractual workers, as the it is not mandate for the contractual workers under the Factories Act. Further, Input Tax Credit on GST paid on canteen facility provided to employees shall be allowed to the Applicant subject to the condition that burden of GST have not been passed on to the employees. However, the applicant is not eligible to the ITC on food supplied by canteen service provider to the contractual worker under Section 17(5)(b) of the CGST Act.



# *ASSESSEE ALLOWED TO RECTIFY THE BONAFIDE ERRORS COMMITTED IN FILING OF FORMS AND GST RETURNS FOR FY 2017-2020*

## *THE HON'BLE KARNATAKA HIGH COURT*

M/s Wipro Limited India ("the Petitioner") while making supplies to the M/s ABB Global Industries and Services Private Limited, incorrectly mentioned the GSTIN of ABB India Limited in the invoices. The ABB India limited is a completely different legal entity from M/s ABB Global.

The Petitioner filed a, contending that the error committed in the invoices and relevant forms were bonafide. Therefore, as per the Circular No. 183/15/2022, the Petitioner should be allowed to access the GST portal in order to rectify Form GSTR-1 uploaded between FY 2017-18 and 2018-19 so that the recipient can claim credit of the tax paid by the Petitioner.

The Hon'ble Karnataka High court held that the Circular allows rectification of the bonafide and inadvertent mistakes committed by the assesee at the time of filing of Forms. Therefore, the benefit of circular would be given to the petitioner. The Revenue Department is directed to follow the procedure as stated in the Circular to the transactions of Petitioner in the F.Y. 2017-18, 2018-19 and 2019-20.



# *SELLER CANNOT BE PENALIZED FOR MENTIONING THE QUANTITY OF GOODS IN PIECES INSTEAD OF WEIGHT*

## *HON'BLE ALLAHABAD HIGH COURT*

M/s. Ganpati Battery Traders ("the Petitioner") is involved in the business of sale and purchase of old batteries. The Petitioner sold large and small damaged batteries to M/s Shanti Prakash Power Private Limited. The truck, through which the batteries were transported, was detained for verification under Section 20 of the IGST Act, 2017. The Petitioner was served with a notice by the Assistant Commissioner ("the Respondent") on the basis that the goods were sold based on number of pieces and not by weight. The respondent imposed the penalty of INR 9,70,542/-.

The Petitioner filed an appeal against the order of the Assistant Commissioner contending that it had purchased the goods by piece and further sold it by piece and all the correct details were furnished by the Petitioner in the invoice differentiating the goods.

The Hon'ble Allahabad High court observed that, the respondent has failed to record any finding as to how it has arrived to the conclusion that the trade practice required the goods to be sold is according to the weight and not per piece. The Petitioner had purchased and sold the goods on the basis of per piece and was maintaining the Books of Account in the same manner. Also, the petitioner had issued the invoices as per the rule 46 of the CGST rules, 2017. Further held that, the Department was wrong in detaining the goods and imposing the penalty of INR 9,70,542/-



# *18% GST LEVIABLE ON SUPPLYING, INSTALLING, TESTING AND COMMISSIONING OF OXYGEN PIPELINE SYSTEM IN GOVERNMENT HOSPITALS*

## *THE AUTHORITY FOR ADVANCE RULING, GUJARAT*

M/s Goel Medico ("the Applicant") is engaged in the activity of supply, installing, testing and commissioning of oxygen pipeline system in government hospital.

The Applicant submitted that their activity being a composite supply is covered under the Services Accounting Code ("SAC") 995464 and should be exempted vide Notification No. 05/2021-Central Tax (Rate) dated June 4, 2021 which stipulates concessional rate of GST on Covid-19 relief supplies of goods.

The Authority of Advance ruling, Gujarat opined that, the services provided by the applicant are works contract services. However, the exemption under the Impugned Notification was only on the COVID related items and not to the work contract services. Therefore, the activity of Applicant is not covered under the Impugned Notification. Hence, services provided by the applicant are not exempted and fall under classification under SAC 995464, liable to 18% GST.



# Recent Updates

## *GSTN ENABLED FUNCTIONALITY TO FURNISH LETTER OF UNDERTAKING (LUT) FOR FINANCIAL YEAR 2023-2024*

### *GOODS AND SERVICES NETWORK (GSTN)*

The GSTN has enabled the functionality to furnish the letter of undertaking on the GST portal.

**The functionality can be accessed through the below mentioned path on the GST common portal:**

Dashboard > Services > User Services > Furnish Letter of Undertaking> Select FY & apply



# Thank You!


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