ACUPRO CONSULTING

WEEK 4, JUNE 2023

THE GST PULSE

ONE PLACE FOR ALL THE UPDATES



Recent Judgement and Rulings

THE APPELLATE AUTHORITY'S REFUND ALLOWANCE CANNOT BE IGNORED ON GROUND THAT REVENUE DECIDED TO CHALLENGE SUCH ORDER.

HON'BLE DELHI HIGH COURT

M/s. G.S. Industries ("the Petitioner"), a manufacturer of handpump parts, filed refund applications for accumulated Input Tax Credit (ITC) due to an inverted duty structure. The Petitioner claimed INR 23,10,333/- for September 2017 to March 2018 and INR 14,46,417/- for April 2018 to March 2019. The Revenue Department acknowledged the refund applications but issued deficiency memos, seeking clarifications and a Chartered Accountant's certificate to confirm no passing on of tax and interest. The petitioner responded, but a Show Cause Notice was issued, demanding details of raw materials, purchase register, stock register and registered place of business. Despite providing explanations, the refund was rejected through separate orders on December 14, 2020.

Being dissatisfied with the refund rejection order the petitioner, filed an appeal before the Appellate Authority. The appeal was allowed by the Appellate Authority by relaying on the documents submitted by the Petitioner. However, the refund has not been disbursed. Being Aggrieved, the petitioner filed an appeal before the Hon'ble High Court, questioning the non-disbursal of the refund despite winning the appeal. The respondent contended that they have challenged the Order-in-appeal before the Commissioner.

The Hon'ble Delhi High Court held that the Order of Appellate Authority allowing refund to assessee cannot be ignored solely because Revenue decided to challenge the order allowing refund. The court further directed the Revenue to disburse the refund along with interest and clarified that Revenue is not precluded from availing any remedy and in case Revenue succeeds they would be entitled to recover the amount disbursed.



ASSESSEE IS ELIGIBLE FOR ITC ON VEHICLE MODIFIED AND SUPPLIED AS AN AMBULANCE

THE AAR, TELANGANA

M/s. Raminfo Limited ("the applicant"), has received a work order from the Government of Tripura to supply ambulances (Mobile Common Service Centers). To fulfill this order, they are procuring Maruti Suzuki Eeco (7-seater) vehicles and modifying them at their workshop in Hyderabad, Telangana. The Applicant has filed an advance ruling application before the Authority for Advance Ruling (AAR) in Telangana seeking clarification on the applicable rate of GST for the supply of goods and the eligibility of input tax credit (ITC) on the purchase of vehicles and other components.

Whether the Applicant is eligible to take ITC on purchase of Maruti Suzuki Eeco (7-seater) which will be transformed into an ambulance?

The AAR, Telangana, determined that the applicant, M/s. Raminfo Limited, can claim input tax credit (ITC) on the purchase of a Maruti Suzuki Eeco vehicle that will be transformed into an ambulance for supply to the Government of Tripura. The vehicle falls under HSN 8703, and as per Section 17(5)(a) of the CGST Act, ITC on vehicles meant for further supply is not blocked. The applicant is eligible to take ITC on the tax paid for the purchased vehicle, and they will charge GST at a rate of 28% on the supply of the ambulance as per the Goods rate notification.



RENT RECEIVED BY INDIVIDUALS OWNING PROPERTY JOINTLY CANNOT BE CLUBBED TOGETHER TO IMPOSE SERVICE TAX

THE CESTAT, CHENNAI

Mr. M. Vijayabharathi ("the Appellant") and Smt. Akila jointly entered into an agreement with tenants for renting immovable property. Upon investigation it was found that no service tax is paid on the rental income. A Show Cause Notice was issued, demanding service tax from both co-owners. The Adjudicating Authority confirmed the demand, along with interest and penalty. The Appellant appealed to the Commissioner of Central Excise (Appeals), who upheld the Adjudicating Authority's order.

Being Aggrieved the Appellant filed an appeal before CESTAT, Chennai, contending that a previous order in Smt. Akila's case exempted her from paying service tax on individual rental income as rental income is within the threshold limit. The question arises whether the co-owners are jointly liable to pay service tax on the rental income.

The CESTAT, Chennai set aside the order imposing service tax on the total rent received by co-owners jointly. The CESTAT held that the income received as rent by each co-owner was below the threshold limit for levying service tax, and therefore no service tax could be imposed on them.



CORPORATE GUARANTEE SERVICES WITHOUT ANY CONSIDERATION ARE NOT LIABLE FOR SERVICE TAX.

THE CESTAT, DELHI

M/s. Sowar Pvt. Ltd. ("the Appellant"), engaged in various services including repair and maintenance, installation, and renting of immovable property. The Revenue Department found that the Appellant had issued a corporate guarantee on behalf of its associate enterprises, leading to a allegations of providing banking and financial services. A Show Cause Notice was issued, demanding service tax, interest, and penalty. The appeal filed by the Appellant was rejected in the Impugned Order.

Being Aggrieved by the Impugned Order, The Appellant filed an appeal to the CESTAT, questioning whether providing a corporate guarantee to an associate enterprise constitutes a taxable service.

The CESTAT, Delhi, held that the Appellant is not liable to pay service tax on the corporate guarantee provided to banks and financial institutions on behalf of their associate enterprises. They observed that the Appellant did not charge any commission, interest, or fees for providing the guarantee. Further, Referring to previous judgments, it was established that since no consideration was received by the Appellant for providing the guarantee, no service tax is payable. Hence, the Impugned Order was set aside.



Thank You!

ALOK VASANT
PARTNER
TEL: + 91 9811008421
ALOK.VASANT@ACUPROCONSULTING.COM

BALWAN BANSAL
PARTNER
TEL: + 91 9871767277
BALWAN.BANSAL@ACUPROCONSULTING.COM

ANKIT JAIN
PARTNER
TEL: + 91 9811665549
ANKIT.JAIN@ACUPROCONSULTING.COM



NEWSLETTER CONTRIBUTORS
PANKAJ BANSAL
RONAK AGRAWAL

FOR MORE INFO VISIT
WWW.ACUPROCONSULTING.COM

COMMUNICATION ADDRESSES:
DELHI/NCR

ACUPRO CONSULTING
2ND FLOOR, 108, UDYOG VIHAR,
PHASE I,
GURGAON - 122016
HARYANA, INDIA
PH: +91 124-4ACUPRO(228776)

HTTPS://WWW.LINKEDIN.COM/COMPANY/ACUPROCONSULTINGINDIA/