

Recent AAAR and AAR decisions under the GST law

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Summary

The Gujarat Appellate Authority for Advance Ruling (AAAR) has in a recent ruling¹ confirmed the order of Authority for Advance rulings (AAR) wherein it was held that services provided by a hotel located in the non-processing zone of a special economic zone (SEZ) to clients located outside the territory of the SEZ shall be liable to Integrated Goods and Services Tax (IGST). In another ruling², the Maharashtra AAR has held that input tax credit (ITC) shall not be available on gold coins distributed to customers under a sales promotion scheme.

1. Taxability of hospitality services provided from a unit located in an SEZ to clients located outside the SEZ

Facts of the case

- The applicant³ constructed a hotel in the non-processing zone of an SEZ for providing rooms on tariff and supplying ancillary services such as supplying food/beverages, laundry services, housekeeping services, etc., within the hotel premises.
- The Gujarat AAR⁴ had held that the applicant is liable to pay IGST⁵ on the hospitality services provided to its clients located outside the territory of the SEZ. The applicant challenged the AAR's order before the AAAR.

¹ Gujarat AAAR No. GUJ/GAAAR/APPEAL/2019/2, dated 2 January 2019

² No. GST-ARA-72/2018-19/B-165 dated 20 December 2018

³ M/s Sapthagiri Hospitality Pvt. Ltd.

⁴ vide Advance Ruling No. GUJ/GAAR/RULING/2018/14 dated 30 July 2018

⁵ Under Section 5(1) of the IGST Act 2017

Held by the AAAR

- The AAAR noted the provisions⁶ of the IGST Act and observed that in order to qualify as a zero-rated supply, the service must be provided 'to' an SEZ developer/unit. Confirming the AAR's order, it was held that supply of hospitality service by the applicant to clients located outside the SEZ shall be treated as a Domestic Tariff Area (DTA) supply and accordingly liable to IGST unless specifically exempted.
- The AAAR also rejected the applicant's argument⁷ and stated that as per the provisions of the SEZ Act, 2005, an SEZ is deemed to be located outside the customs territory of India only to the extent of authorised operations. Further, the AAAR also observed that the applicant could not point out any inconsistencies between the provisions of the SEZ Act and the IGST Act.

Our comments

The ruling reiterates that the supply of goods/services by an SEZ unit to DTA units is liable to IGST. However, taxpayers located in SEZs need to be cognisant that even in case the situs of services provided is within the SEZ, the services may still be liable to IGST if such services are provided to a person in the DTA. Interestingly, the CBIC has also recently issued a circular stating that supply of goods or services to an SEZ unit shall be treated as 'zero rated supply' only if such supply is for carrying out authorised operations.

2. Eligibility of ITC on gold coins distributed to customers under a sales promotion scheme

Facts of the case

- The applicant⁸ is engaged in the business of developing, manufacturing and distributing crop-protection chemicals and hybrid seeds.
- It introduced a target-based sales promotion scheme⁹ for its customers. As per the scheme, customers placing prescribed minimum purchase orders or fulfilling the prescribed payment criteria shall be eligible for a free gold coin.

⁶ Section 16 of IGST Act, 2017

⁷ The applicant argued that an SEZ is deemed to be a territory located outside the territory of India and no Indian Law (Including GST laws) is applicable in an SEZ.

⁸ M/s Biostadt India Limited

⁹ known as 'Kharif Gold Scheme 2018'

- The applicant purchased the gold coins, on payment of applicable GST, and the coins were distributed under the above scheme. The applicant approached the AAR for its ruling on the eligibility of ITC on the taxes paid by the applicant while purchasing the gold coins.
- The applicant submitted that goods (other than capital goods) used in the course or furtherance of business shall fall within the meaning of the term 'input'¹⁰ on which ITC becomes eligible. Accordingly, the applicant argued that since the distribution of gold coins is for the purpose of business of the applicant, ITC should be available on it.

Held by the AAR

- The AAR, after analysing the sales promotion scheme and provisions of the Gift Tax Act, 1958, observed that in the absence of any contractual obligation on the applicant, gold coins distributed by it are merely a voluntary 'gift' to its customers on meeting the prescribed criteria.
- Further, the AAR noted that as per the provisions¹¹ of the CGST Act, ITC is not available, amongst other things, on goods distributed as 'gift'.
- The AAR agreed with the applicant's contention that the distribution of golds coins was in furtherance of the business of the applicant. However, it held that in view of specific provisions for blocking ITC on goods distributed as 'gifts', the applicant shall not be eligible for claiming ITC on gold coins distributed under the sales promotion scheme.

Our comments

While the decision is in line with the legal provisions, the interpretation of 'gift' adopted by the AAR could have wider ramifications for companies in the retail and FMCG sectors where sales promotion schemes are widely prevalent. The CBIC has recently issued a circular¹² clarifying that distribution of goods as gifts/free samples does not qualify as 'supply' under the GST law and is thereby not chargeable to tax. The circular has also clarified that ITC shall not be available in respect of goods distributed as gifts or free samples. Companies should therefore evaluate their sales promotion schemes to determine if they qualify as a 'gift' and are consequently eligible to ITC.

¹⁰ Section 2(63) of CGST Act

¹¹ Section 17(5) of the CGST Act

¹² Circular No. 92/11/2019-GST dated 7 March 2019

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