

Recent advance rulings under the GST Law

Summary

The Authority for Advance Ruling (AAR) constituted under the Goods and Services Tax (GST) Law has recently pronounced advance rulings clarifying certain positions on the applicability of GST on supply of goods from retail outlets in international airports, taxability of construction services under GST, exemptions to education services, taxability of supply of food and beverages to SEZs and Railways and exemption on non-branded cereals and pulses.

Issues considered and AAR's decision

| 1. Rod Retail Pvt. Ltd. – AAR Delhi ¹ | |
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| Issue | Held by AAR |
| <ul style="list-style-type: none"> Whether the supply of goods to international outbound passengers, holding international boarding passes, from retail outlets located in international airports and claimed to be beyond the Customs Frontiers of India, should be considered as zero rated supply², being export of goods³, or subjected to GST? | <ul style="list-style-type: none"> Such supply cannot be treated as 'export' or 'zero rated supply' and GST is payable at the applicable rates. <ul style="list-style-type: none"> As per GST Law, goods are said to be exported only when they cross the territory of India⁴. Goods cannot be said to be exported merely on crossing the Customs Frontier of India⁵. When goods are exported by air, the export will be completed only when goods cross the airspace limits of the territory or the territorial waters of India. Outlets are located at the security hold area of international airports, which is not outside India but is within the territory of India. Hence, the applicant is not taking goods out of India and the supply cannot be treated as 'export' or 'zero rated supply'. |

¹ AAR Delhi No.01/DAAR/2018 dated 27 March 2018

² As defined under section 2(23) of Integrated Goods & Services Act, 2017 (IGST Act)

³ As defined under section 2(5) of IGST Act

⁴ As defined under sections 2(56) of CGST Act and 2(27) of Customs Act, 1962

⁵ According to section 2 (28) of the Customs Act, 1962 (52 of 1962) in relation to the Customs Frontier of India under IGST Act, 'Indian customs waters' means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) and includes any bay, gulf, harbour, creek or tidal river.

2. Shri Sanjeev Sharma – AAR Delhi ⁶

| Issue | Held by AAR |
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| <ul style="list-style-type: none">• Whether GST is applicable on the sale of:<ul style="list-style-type: none">– undivided share in land and– superstructure (under construction)?• If yes, what is the tax rate and value on which tax is applicable? | <ul style="list-style-type: none">• GST is applicable on two-thirds of the total amount. The rate of GST is 18 per cent based on the following:<ul style="list-style-type: none">– Sale of land is specifically excluded from the scope of supply under GST and hence GST is not applicable on it.– However, as per GST Law⁷, construction activity is treated as supply of services.– The supply in the given case is a composite supply⁸ consisting of three components, namely (i) land, (ii) goods and (iii) services. Land and its superstructure become inseparable and cannot be sold individually.– In such a scenario, since GST is not applicable on land, the value of land has to be excluded from the taxable value.– As per GST Notification⁹, the deemed value of land has been fixed at one-third of the total amount. |

3. Simple Rajendra Shukla – AAR Maharashtra ¹⁰

| Issue | Held by AAR |
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| <ul style="list-style-type: none">• Whether private coaching services for entrance examination come under the ambit of GST ? | <ul style="list-style-type: none">• Education services are taxed at the rate of 18 per cent under GST.<ul style="list-style-type: none">– However, there is a GST exemption for the education services provided by/to an educational institution as defined under the Notification¹¹.– Private tutorial coaching is not covered under the said definition of 'educational institution'.– Thus, GST is applicable on these services. |

4. Gogte Infrastructure Development Corporation Limited – AAR Karnataka¹²

| Issue | Held by AAR |
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| <ul style="list-style-type: none">• Whether hotel accommodation and restaurant services provided within the premises of a hotel which is outside an SEZ, to employees and guests of SEZ units, can be treated as | <ul style="list-style-type: none">• In this case, place of supply shall be the hotel premises which is outside the SEZ. Thus, the said services shall be an 'intra-state' supply and taxable under GST. |

⁶ AAR Delhi No.03/DAAR/2018 dated 28 March 2018

⁷ Schedule II of CGST Act, 2017

⁸ As mentioned in Section in 8(a) of the CGST Act, 2017

⁹ As per Central Tax Notification no. 11/2017 (Rate) dated 28 June 2017 issued by the Central Government as per powers laid down under Section 15 (5) of the CGST Act, 2017 regarding value of taxable supply

¹⁰ AAR Maharashtra No. GST- ARA-06/2017/B- 05 dated 09 March 2018

¹¹ As per Central Tax Notification no. 12/2017 (Rate) dated 28 June 2017 issued under Section 11 of the CGST Act, 2017 regarding powers given to Central Government to grant exemption from tax

¹² AAR Karnataka No. KAR ADRG 2/2018 dated 21 March 2018

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| supply of goods and services to SEZ units and thus as zero rated supply? | <ul style="list-style-type: none"> - As per the provisions of GST Law¹³, only supply of goods and services for authorised operations of an SEZ are treated as supplies to SEZ and can be zero rated. - Place of supply of services by way of lodging and accommodation shall be the location of the immovable property. Also, place of supply of restaurant services shall be the location where the services are performed. |
| 5. M/s Deepak & Co. (AAR Delhi; No.02/DAAR/2018 dated 28 March 2018) | |
| Issue | Held by AAR |
| <ul style="list-style-type: none"> • What is the applicable tax rate on activities of supplying: <ul style="list-style-type: none"> - food/beverages on board trains and on railway platforms as per the agreements with IRCTC/Indian Railways? - newspapers in trains? | <p>Supplying food/beverages on board train or in food stalls on the railway platforms is considered as a pure supply of goods. It does not have a service element and would not be treated as a composite supply of services. A train is a mode of transport and it cannot be called a restaurant.</p> <p>Taxability would be as under:</p> <ul style="list-style-type: none"> • Supply of goods, ie food, bottled water etc., shall be charged to GST on individual values of goods (excluding the service charges) at their respective applicable rates. • Service charges invoiced separately are classified under the head 'catering services in train' and GST is charged at the applicable rate. • Supply of newspapers invoiced separately shall be taxed at 'nil' rate of GST. |
| 6. Aditya Birla Retail Limited – AAR Maharashtra ¹⁴ | |
| Issue | Held by AAR |
| <ul style="list-style-type: none"> • Does declaring only the name of the company under 'Manufactured and packaged by' or 'Marketed by' as per the statutory requirements, without declaring the registered trademarks/logo on packages sold from exclusive stores, constitute 'supply other than those bearing a brand-name' and qualify for GST exemption? | <ul style="list-style-type: none"> • Supply of goods at exclusive stores would amount to supply under a brand name. • Supply of such goods would not fit into the exemption given to non-branded items. <ul style="list-style-type: none"> - Certain cereals and pulses supplied by the applicant are exempt from GST subject to conditions. - Exemption is only to such items other than those packaged in unit containers and bearing a brand name (ie non-branded items). |

¹³ Section 16(1)(b) of IGST Act, 2017 read with Rule 46 of CGST Rules, 2017

¹⁴ AAR Maharashtra No. GST- ARA-06/2017/B-05 dated 09 March 2018

Our comments

In complex situations, where there is ambiguity on tax positions, taxpayers may seek advance rulings to gain clarity and avoid prolonged litigation. Advance rulings are binding only on the respective applicant and concerned jurisdictional GST officer. If an applicant has a divergent view on the AAR's decision, it may appeal to the Appellate Authority for Advance Ruling.

However, given the nascent stage of the GST regime, the AAR's decisions can help as a reference point for other taxpayers and may be used as a guidance for adopting tax positions.



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