A.) AMENDMENTS UNDER PROFESSION TAX ACT' 1975 -

1) Government of Maharashtra has issued an Ordinance dated 22nd July, 2020 under the Maharashtra Profession Tax Act, 1975 by which amendments are made in Sections 5 and 6 of the said Act. Section 5(3A) is inserted for providing that "A Company which has been incorporated under the Companies Act, 2013, shall at the time of its incorporation, obtain the certificate of enrollment and certificate of registration under this Act and pay the tax and file the returns as may be prescribed".

2) Pursuant to above amendments, on 7th August, 2020 Government of Maharashtra has also amended the Profession Tax Rules, 1975 and provided that an employer registered u/s 5 (3A) of the Profession Tax Act, shall furnish his first return from the month in which he became liable to pay tax and shall continue to furnish returns thereafter as per the Provision of this Act.

B.) CIRCULARS

1) Pursuant to the Notification no. VAT – 1518/C.R. 64/ Taxation – 1, dt. 01/07/2020, the Commissioner of State Tax, Maharashtra has issued circular no. 10-T dt. 29th July, 2020,in which it is informed to the trading community that an application for refund of security deposit of Rs. 25,000/- can be filed up to 31st March, 2021 with the concerned Nodal officer of the dealer.

2) The Commissioner of State Tax, Maharashtra has issued Circular no. 11-T dt. 29th July, 2020, in which the guidelines on the "Online e-submission and e-hearing in first appeal" are given.

Case: M/s SHILPA MEDICARE LTD [2020-7-TMI-345] (ANDHRA PRADESH AAR)

The applicant intends to transfer (sale) of ongoing business unit to its another unit located in Karnataka. The applicant intends to know whether this transaction will amount supply of goods or supply of services and whether it would be covered under Entry 2 of Notification 12/2017CTR.

The AAR held that though 'transfer' is made for a consideration, but neither in the course of the business nor for the furtherance of the business. However, it qualifies to be one under the scope of supply as it is backed by the term 'includes' in Section 7(1) of the CGST Act, 2017. Further, the definition of services qualifies 'anything other than goods' as service and also the description of services under SI.No.2 Notification No. 12/2017 – CTR provides for "Services by way of transfer of a going concern, as a whole or an independent part thereof' as nil rated. Hence, the transaction is not liable to tax. As regards transfer of unutilized ITC the transferor can transfer unutilised input tax credit to the transferee, which is lying in his electronic credit ledger, by filing Form GST ITC-02.

Case: M/s ENFIELDS APPARELS LTD (2020) TIOL 214 –WEST BENGAL AAR

NCLT has declared the applicant as corporate debtor and ordered to start the process of liquidating and appointed a liquidator thereof. The applicant in possession of the leasehold factory unit along with car parking space for 99 years. According to lease deed, the applicant is entitled to assign to another person the unexpired residual period of the sub-lease after taking written approval of the Sub-lessor and on payment of transfer fee. The Liquidator wants to know whether GST is payable on the consideration receivable on such assignment. If so, what should be the SAC and the rate applicable? Further, whether he can claim input tax credit for the GST paid on the transfer fee.

AAR held that the activity of assignment is in the nature of agreeing to transfer one's leasehold rights. It does not amount to further sub-leasing, as the applicant's rights as per the Deed of sub-lease stands extinguished after assignment. Neither does it create fresh benefit from the land. It is in the nature of compensation for agreeing to do the transfer of the applicant's rights in favour of the assignee. It is a service classifiable under 'Other miscellaneous service' (SAC 999792) and taxable @ 18% under Sr.No.35 of Notification 11/2017-CTR. Further, service in the course or furtherance of business, more specifically because business includes supply or acquisition of goods or services in connection with the closure of a business in terms of section 2(17)(d) of the GST Act. Therefore GST paid on same is eligible as ITC.

Case: M/s NAVNEETH KUMAR TALLA (2020) TIOL 210 (TELANGANA AAR)

Applicant is engaged in supplying food and beverages at the canteen of client to customers - The Applicant himself does not get paid for by the consumers of the food and beverages - The Recipient of the services are hospitals who enter into contract with the applicant - The charges are received from the hospitals on monthly basis on the coupons collected.

AAR held that Exemption under entry 74 of Notification No. 12/2017-CTR is available only when the clinical establishment itself provides this service (supply of food) as a part of health care services to the in-patients and the same is not available, when such supply of food and beverages is made by a person other than clinical establishment based on a contractual arrangement with such establishment.

Q1. Whether the food supplied to hospital i.e. Government Hospitals, Private Hospitals and Autonomous Bodies on outsourcing basis the GST is chargeable?

Ans: Yes

Q.2 If GST is chargeable what is the tax rate?

Ans: For the period from 01.07.2017 to 26-07-2018 - 18% (CGST 9% + SGST 9%). For the period from 27.07.2018 onwards - 5%

(CGST 2.5% + SGST 5%) Provided that credit of input tax charged on goods and services used in supplying the service has not been taken

Case: M/s. Sterlite Technologies Ltd. [2020 (6) TMI 485] (Authority for Advance Ruling, Gujarat)

The applicant proposed to undertake transaction and supply of hardware, commercially known as 'Merchant Trade Transaction', wherein the applicant will receive an order from the customer located outside India and as per their instruction, Vendor would directly ship the goods to customer located outside India. Vendor would issue invoice on applicant against which payment would be made in foreign currency and applicant would raise invoice on customer and would receive consideration in foreign currency. In the above transaction, goods would not physically come into India, but would move from place outside India to another place outside India.

The Applicant has asked whether GST is payable on goods sold to customer located outside India, where goods are shipped directly from the vendor's premises (located outside India) to the customer's premises.

The Gujarat Advance Ruling Authority noted that the thumb-rule for determining the taxability of any transaction is to ascertain whether the transaction tantamount to 'supply' in terms of the provisions of law. In the instant case, the applicant is selling goods for a consideration in the course or furtherance of business and as such the transaction tantamount to 'supply' as per section 7 of the CGST Act, 2017. Once the test of supply is met with, the next step is to determine whether the same is an Intra-state supply or inter-state supply. As per the provisions of section 7 of the IGST Act in case the supplier is located in India and the place of supply is outside India, such supplies shall be treated as Inter-stated supplies. As the supplier is located in India and the place of supply is outside India as per the provisions of section 10 of the IGST Act, same would be Inter-state supply. Accordingly, IGST will be leviable unless the goods are

exempted or are zero-rated supplies which have been defined as export of goods or services in terms of the provisions of Sec. 16 of the IGST Act, 2017.

Case: M/s. Pulluri Mining & Logistics Private Limited [2020 (7) TMI 409] (Authority for Advance Ruling, Andhra Pradesh)

The applicant has received work order from M/s. Sree Jayajyothi Cements Private Limited for executing mining contract at various place in Andhra Pradesh. The above works are to be carried out by using the heavy equipment and vehicles. HSD Oil required for operating the said heavy equipment and vehicles will be under the scope of the service recipient and Oil is issued free of cost from service recipient's storage tank.

The Applicant asked whether the HSD Oil issued free of cost by the service recipient to the applicant would form part of the value of supply of service as per section 15(2)(b) of CGST Act, 2017.

The applicant contented that the value of HSD Oil need not be included in the value of supply and it need not pay GST on the value of HSD oil being supplied by the service recipient in relation to the said supply of service. It is because as per the work order issued by the service recipient, HSD oil is required for heavy equipment and vehicles will be under the scope of the service recipient and issued on free of cost basis from service recipient's storage tank.

After examination of the application and relevant section, the authority has stated that the diesel so provided by the service recipient to the applicant forms an important and integral component of this business process, without which the process of excavation of limestones at different mines, transportation and delivery of Limestone to the premises belonging to the recipient cannot happen. The authority ruled that in terms of the provisions of section 15(2)(b) it is amply clear that any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the contract value shall be added to the contract value. Thus, the HSD Oil issued free of cost by the service recipient to the applicant would form part of the value of supply of service by the applicant.

Whether the complaint filed by the complainant is maintainable under the RERA as complainant is filed by the developer?

Whether Land owner can stop the construction work due to non-compliance of terms and conditions of development agreement executed between the land owner and developer.

Whether the developer is liable to rectify the defects in construction work?

Provisions:

As per Section 31 (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation. —For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force

As per provision of Section 14(1) of the RERA, it is the duty of the promoter to developed and complete the project as per the plan sanction and project specification.

Provision of Section 11(4)(b) put a responsibility on promoter to obtain occupancy certificate /completion certificate.

As per Section 14(3) of RERA, if any structural defect or other defect in workmanship, quality or provision of service or other obligation as per agreement to sale bring to the notice of promoter than the such defect will be rectify by the promoter within 30 days form such notice.

Section 3(2)(i) of Maharashtra Ownership of Flat Act, 1963 prohibits the promoter from inducting any person without completion certificate into the flats and it's also prohibits the buyer from entering into possession of such flat without occupancy certificate or the completion certificate

Maharashtra Municipal corporation act prohibits the occupation of the building without occupancy or completion certificate and it is offence.

In the matter of M/s Sion Kamgar Co-Operative Housing Society Ltd v/s Municipal Corporation of Greater Mumbai- writ petition number 829 of 2013 it was held by the Hon'ble Bombay High Court that occupying the building without occupancy or certificate can not be permitted in Law.

Fact of the Case:

In the present case the complaint was filed by the developer with the allegation that land owners are obstructing the developer from completing the project and for fitting the fire safety system therefore the occupancy certificate/completion certificate has not been granted by the planning authority. While the landowner being a respondent has alleged that complainant being a developer has not transferred the title of the unit allotted to landowner and even parking is also not allotted as per agreed terms. Further it was brought to the notice of the Hon'ble authority that the complainant has used the poor quality of material in the project, the defect in the construction work is not rectified and the amenities in the project is also not provided to the 45 customers who has taken a possession in the project.

Conclusion:

The present complaint filed is maintainable under Section 31 of RERA.

It was held that landowner is also the co-promoter as per provision of section 2(zk) and co-promoter is also equal liable for compliance of RERA provision therefore landowner cannot obstruct the construction work of project.

It was held that developer being a promoter are liable to complete the project and to provide the amenities as per sanctioned plan and to rectify the construction defect without any charges.

The RERA Authority shall bring the matter to the notice of learned Municipal Commissioner for taking legal action against the offender according to law.