

Case: M/s MANAGEMENT & COMPUTER CONSULTANTS [2021-10-TMI-324] (WESTBENGAL AAR)

Facts of the Case:

1. The applicant is in the business of supplying services relating to conduct of examination by educational institutions as well as Information Technology services to entities engaged in the businesses other than education sector.
2. They provide services related to conduct of examinations to various Educational Boards, Councils & Universities which can be broadly categorized as (i) Pre-Examination (ii) Technical assistance provided for Online Examinations, and (iii) post-Examination services.
3. The supply of such services involves printing of documents for online and offline mode both viz., registration certificates, examination forms, admit cards, mark sheets, pass certificates to manage design, development of web-based application software where examination can take place in online mode

Questions before AAR:

1. Whether following Supply of services related to be treated as exempted supply in terms of Entry No 66 under Notification 12/2017-Central Tax (Rate) dated 28/06/2017 as amended vide Notification 02/2018-Central Tax (Rate)dt 25/01/2017 :
 - (i) Online and offline printing of Pre-Examination items such as Registration Certificate, Examination Enrollment Forms, Admit Cards, Award List for marks entry and other Pre examination related services to Educational Boards, Council and Universities
 - (ii) Designing, Developing and managing Web based applications and related services for conducting online Examination of Educational Boards, Council and Universities
 - (iii) Post examination services of Scanning and Processing of Examination Results, generation and printing of Mark Sheets (Online and offline), Printing of Pass certificates and other related Examination activities for Educational Boards, Council and Universities

Arguments by Applicant:

1. As regards to pre-examination process, the applicant submits that he provides services mainly related to design and developing of online Registration Forms, Examination Forms, admit cards, Award List, Attendance Register as well as generation and printing of these forms in desired formats using security check stationery. In addition to the above, numerous reports are generated and various validation exercises undertaken in order to achieve the objective of rendering error free services for conducting examinations
2. It is submitted by the applicant that he also provides technical assistance for conducting the online examinations as desired by some educational institutions wherein question papers are uploaded in cloud server. After downloading the question, candidates write the answers and upload it within the stipulated time. These answer sheets are allotted to examiners through online process for their evaluation and then the marks awarded are submitted by examiners in Marks Entry Portal
3. As stated by the applicant, supply of services also includes post examination services which involve numerous activities undertaken to deliver result data in electronic device for web publication as well as printing of Mark sheets / Pass certificates in specially designed, colorful, security check stationery and laminations
4. The services detailed in the preceding paras are related to conduct of examination and shall therefore get covered under entry serial number 66 of the Notification No.12/2017-CTR.
5. He also placed his reliance on the following advance rulings:
 - a. Datacon Technologies 2020 (41) G.S.T.L 380 (A.A.R-GST-KAR), the Karnataka Authority for Advance Rulings has observed that 'Examination is an incomplete activity without assessment. Scanning of answer sheets and quantifying marks is an essential

part albeit main objective of the examination process. Educational institutions or the examinees do not look at these activities in isolation.

- b. Edutest Solutions Private Limited (2018 (18) G.S.T.L77(AAR-GST), the Gujarat Authority for Advance Rulings has observed that 'the expression 'relating to' used in sub-item (iv) of item (b) of Sr. No. 66 of Notification No. 12/2017-Central Tax (Rate) widens the scope of the said entry'
- c. K.L. Hi Tech Secure Print Limited (2018 (18) G.S.T.L 112 (AAR-GST), the Telangana Authority for Advance Rulings held that printing of pre-examination items, post examination items, scanning & processing of results are integral part of conduct of examination & accordingly shall be exempted under entry 66 as stated above

Decision of AAR

1. Explanation has been inserted vide Notification No.14/2018-CTR dated 26.07.2018, which states that "
(iv) For removal of doubts, it is clarified that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students."
2. Furthermore, Circular No. 151/07/2021-GST dated 17.06.2021 has been issued for the purpose of clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination) wherein it has been stated that "Central and State Educational Boards" are treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.
3. It is noticed from the documents submitted that the applicant has been awarded work order by different universities like University of Calcutta, Jadavpur University, University of Gour Banga, Netaji Subhas Open University, The West Bengal University of Teachers' Training, Education Planning and Administration. The applicant has also been given the job by The West Bengal Council of Rabindra Open Schooling and West Bengal State Council of Technical and Vocational Education and Skill Development.
4. There is no dispute that all the universities as referred in the preceding para are regarded as 'educational institution'. However, we need to consider whether the councils namely The West Bengal Council of Rabindra Open Schooling and West Bengal State Council of Technical and Vocational Education and Skill Development can also be termed as educational institution
5. From the website of The West Bengal Council of Rabindra Open Schooling (www.twbcros.org.in), we find as follows: "From the point of view of its constitution and responsibilities, this Council is analogous to other State Boards, Councils like the West Bengal Board of Secondary Education, West Bengal Board of Madrasah Education or the West Bengal Council of Higher Secondary Education. The West Bengal Council of Rabindra Open Schooling is recognised by the Government of West Bengal as well as the Government of India, the National Institute of Open Schooling (NIOS), other Boards etc. and it is a member of the Council of Boards of School Education in India (COBSE)."
6. On the other hand, the West Bengal State Council of Technical & Vocational Education and Skill Development is a statutory body under the West Bengal State Government for administration and examining Vocational courses in West Bengal. The courses are offered from various affiliated Institution like Higher Secondary, Secondary Schools and Polytechnic Colleges across the State of West Bengal. The Higher Secondary Course offered by the Council consist of two parts, i.e. Class XI and Class XII, under various section like Engineering and Technology, Agriculture, Business and Commerce, Home Science etc.
7. It transpires from above that the West Bengal State Council of Technical & Vocational Education and Skill Development, a statutory body, offers courses under various sections like Engineering and Technology, Agriculture, Business and Commerce etc. and also conducts examinations for admission to different vocational education courses and therefore the function of the council is similar to other education boards.
8. The process of conducting examination includes pre-examination works, the examination itself and post-examination works. It has already been stated that the applicant has undertaken activities like pre and post examination data processing job relating to B.A./B.Sc. Examination, data processing job for online submission of PPR/FSI Forms relating to B.A./B.Sc. Examinees, upgradation of existing software towards development of pre & post examination system through automation of existing registration process of UG & B PG Courses etc. The said activities, as we opine, can be treated as services relating to conduct of examination.
9. We are of the view that supply of services by the applicant shall get covered under entry serial no. 66 of the Notification No. 12/2017 – CTR.

10. Case: M/s ADAMA INDIA PVT LTD [2021-TIOL-228-AAR] (GUJARAT AAR)

Facts of the Case:

1. The applicant supplies insecticides, fungicides and herbicides. That as per Section 135 of the Companies Act, 2013, it has been spending the mandatory amount on CSR activities in the form of donations to the Government relief funds/educational societies, civil works or installation of plant and machinery items in schools or hospitals, distribution of food kits etc;
2. The vendors who supply goods/services to the applicant for the purpose of undertaking the CSR activities charges GST on their output supplies;
3. The applicant intends to avail the Input Tax Credit (ITC) of the inputs and input services being procured for the purpose of undertaking the CSR activities

Questions before AAR:

1. Whether CSR activities are in the course of furtherance of business and will therefore be counted as eligible ITC in terms of Sections 16 and 17(5) of the CGST Act, 2017?

Arguments by Appellant:

1. The first and foremost condition for availing the ITC of inputs and input services as per Section 16 of the CGST Act is to ensure that the same is being used in the 'course and furtherance of business. Thus, for any inputs or input services to become eligible ITC, it is imperative that the same must be used in the course and furtherance of business, although the expression 'course and furtherance of business' has nowhere been defined in the GST law.
2. The definition of "business" envisages that even an activity or a transaction which is done in connection with the main business operations of the Company shall be covered under the definition of 'business' under the GST law. In the present case, the expenses incurred on the CSR activities by the Applicant are a mandatory requirement as per the Companies Act and any disclosure regarding non-compliance of the said requirement will lead to tarnishing the image of the company, lower brand value, lower market standing and lower credit rating.
3. It is submitted that use of the expression 'in connection with' or 'incidental' in the aforesaid definition of business purports to expand the scope of the definition so as to include such activities which though might not have a direct bearing on the profits of the Company, but, if not done, might result in the business suffering from coercive process and unlawful expropriation which will ultimately hamper its profit-making ability. The said principle was upheld by the Calcutta HC in the matter of Birla Cotton Spinning & Weaving vs. Commissioner of Income-tax wherein it was held 'Business expediency may not require that all expenses be incurred for earning immediate profits.
4. Hon'ble Mumbai CESTAT in the matter of Essel Propack vs. Commissioner of CGST, Bhiwandi wherein it was held that CSR is mandatory and essential for smooth business operations of a Company and unless the same is to be treated as input service in respect of activities relating to business, production and sustainability of the company itself would be at stake.
5. Hon'ble Karnataka HC in the matter of Commr. Of CEX, Bangalore, vs. Millipore India pvt. ltd held that the CSR expenses being a statutory obligation are connected with the business since its cost form part of the finished goods being manufactured by a business.
6. They further submit that once it is established that incurring the CSR expenditure is in the course and furtherance of business, the ITC of the categories of inputs and input services being procured by the applicant to undertake CSR activities is eligible ITC and does not suffer from any infirmities as envisaged under Section 17(5) of the CGST Act.
7. That all the input items such as furniture, stationery, plant and machinery items, oxygen concentrators/oxygen plant which are being procured and donated as part of the CSR activity cannot be treated as gift and hence Input Tax Credit (ITC) on such items cannot be denied under the provisions of section 17(5)(h); that since the expression 'gift' has not been defined anywhere in the GST law, reference is drawn from the Hon'ble SC judgement in the matter of Ku. Sonia Bhatia vs. State of UP & Ors. [1981 SCR (3) 239] wherein it was held that a gift is an act of generosity and is voluntary in nature.
8. The company is spending the mandatory 2% of the Average Net Profits in the CSR activities and the GST suffered on the input/input services items procured is accounted for as CSR related expense; that in cases where GST suffered on inputs and input

services items on activities pertaining to CSR is being allowed as eligible input tax credit, the company shall have more funds at its disposal and will be able to contribute more towards the social cause while meeting the mandatory 2% requirement.

Decision of AAR

1. The Companies (CSR Policy) Rules, 2014, made by the Central Government in exercise of its powers under section 469 of the Companies Act. Rule 4(1) of the said Rules reads as follows:
"4.(1) The CSR activities shall be undertaken by the company, as per its stated CSR policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business."
2. Section 16(1) of the CGST Act, stipulates that a registered person is entitled to take credit of input tax charged on any supply of goods or services or both, which are used or intended to be used in the course or furtherance of his business. Thereby, we hold that the Section 16(1) of the CGST Act bars CSR activities from input/input service.
3. The applicant cited case laws: i. CESTAT order in the case of Essel Propack vs. Commissioner of CGST, Bhiwandi and (2) Hon'ble Karnataka High Court's decision in the matter of CEX, Bangalore vs. Millipore India pvt. Ltd. Both these orders pertain to the pre-GST era when demands on wrong availment of cenvat credit were issued based on the violations of the Cenvat Credit Rules, 2004 and are not pertaining to GST scheme of law.
4. As regards the reliance of the applicant on the Decision of the Advance Ruling Authority of Uttar Pradesh in the matter of Dwarikesh Sugar Industries limited, we hold that this Advance Ruling, as per the provisions of Section 103 of the CGST Act, the Advance Ruling pronounced by the Advance Ruling Authority shall be binding only on the applicant who had sought it and the concerned officer or the jurisdictional officer in respect of the applicant.
5. CSR activities, as per Companies (CSR Policy) Rules, 2014 are those activities excluded from normal course of business of the applicant and therefore not eligible for ITC, as per Section 16(1) of the CGST Act.

Case: M/s KANHAIYA REALTY PVT LTD [2021-TIOL-230] (WEST BENGAL AAR)

Facts of the Case:

1. The applicant intends to manufacture and supply hosiery goods such as Vests, Briefs, etc.
2. The applicant further proposes to implement a scheme with the objective of incentivizing its sale of hosiery goods amongst the retailers whereby it would offer unconnected goods for sale at a discounted price to such retailers who have bought a certain unit of hosiery product from it as would be prescribed in its retail scheme circular. However, the retailers will be at liberty not to purchase the goods offered under the said promotional schemes.
3. Under the said retail scheme, various products like gold coins, refrigerators, coolers, split air conditioner, etc. would be offered at reduced/ discounted prices to such retailers who purchase specified units of hosiery goods. For example, the retailer would be eligible to buy a split air conditioner for Rs. 50 only against purchase of 1300 boxes of hosiery goods

Questions before AAR:

1. Whether the supply of goods such as gold coins, refrigerator, mixer grinder, cooler, split air conditioner, etc. at nominal price to retailers against purchase of specified units of hosiery goods pursuant to a promotional scheme would qualify as individual supplies taxable at the rates applicable to each of such goods or mixed supply taxable at the highest GST rate as per Section 2(74) read with section 8 (b) of the CGST Act, 2017, in light of the fact that the hosiery goods and good being sold at nominal price are sold under separate invoices with separate prices ?
2. Whether credit of the input tax paid on the items being sold at nominal prices (as indicated above) would be available to the applicant.

Arguments by Applicant:

1. In view of section 16 & 17 (5) of CGST Act, the applicant apprehends that the GST authorities, on account of the discount which is being proposed to be provided by the applicant on the said goods may qualify the same as gifts and hence deny credit of the same.
2. That in the alternative, the tax authorities may also try and classify the supply of the said goods and the hosiery goods as mixed supply in accordance with section 2(74) read with section 8 (b) of the CGST Act, 2017. However, the argument here is that supply of hosiery goods and the supply of goods under promotional scheme are separate individual supplies and hence do not qualify as

'mixed supply'. The supply of the said goods would be subsequent to the supply of the hosiery goods to the retailers, as the criteria for being eligible to purchase the said goods can only be met post sale of the hosiery goods.

3. The applicant submits that for any supply to qualify as a 'mixed supply' the parameters stipulated under Section 2(74) of the CGST Act has to be met. However, none of the parameters as discussed above are met in the present case.
4. The first condition is that there has to be two or more supplies which are made in conjunction to each other. Hence, in the facts of the present case, it has to be first ascertained whether the supply of hosiery goods and the supply of said goods can be said to have been made 'in conjunction with' each other or not. In the present case, the supply of hosiery goods and the supply of the said goods would not be made 'in conjunction with' each other. Rather as per the proposed retail scheme circular, supply of the said goods would be contingent upon the supply of hosiery goods. In other words, it is not necessary that the supply of hosiery goods would ipso facto entail a supply of the said goods. It is only when the retailers meet the prescribed criteria as would be stipulated in the proposed retail scheme circular, the supply of said goods would take place.
5. The applicant submits that the second condition for qualifying as a 'mixed supply' is that the two supplies must be made for a single price. This is one of the essential conditions for any supply to qualify as a 'mixed supply'. In case, the supplies are not made for a single price, then the same would not qualify as a 'mixed supply'. The applicant would be ascribing separate consideration for the supply of hosiery goods and the supply of said goods. Hence, the second condition for qualifying as a 'mixed supply' is also not met on the facts of the present case.
6. That third condition of qualifying as a 'mixed supply' is that the supply should not qualify as a 'composite supply'. The applicant submits that as the supply of hosiery goods and the supply of the said goods would not be made 'in conjunction with' each other and would not be naturally bundled in the ordinary course of business, the supply of hosiery goods and the supply of the said goods would not qualify as a 'composite supply'.
7. The applicant therefore submits that the supply of hosiery goods and supply of said goods will not qualify as a 'mixed supply' and therefore has to be treated and valued as individual supplies only.
8. They further submit that it would be entitled to take input tax credit of the GST paid while procuring the said goods at the time of discharging its output tax liability. That the critical condition which has to be met for availing the input tax credit is that the goods must be used in the course or furtherance of business. The applicant submits that the retail scheme circular which is proposed to be floated by them is aimed and intended to boost the sale of its hosiery goods. The primary activity of the applicant is the sale of hosiery goods and to boost the sale of the same and to have a competitive edge over its competitors, the applicant would provide the said goods to those retailers who meet the criteria as would be prescribed under the retail scheme circular. So, the provision of providing said goods under the retail scheme circular would undoubtedly qualify as an activity which is incidental and undertaken in the course or furtherance of business.
9. Further, the semantics of the retail scheme circular would evidence that the same would not be given as a 'gift' and therefore restriction envisaged under Section 17(5)(h) would be inapplicable in the present case. Places reliance on Hon'ble High Court of Rajasthan in the case of Commercial Tax Officer vs Jyoti Electronics [2016 (336) E.L.T.517 (Raj)]

Decision of AAR

1. It is admitted that mixed supply and composite supply are mutually exclusive thereby conditions as defined under clause (30) of section 2 of the GST Act in respect of composite supply must not be present in a supply so as to qualify for mixed supply. As the supply of the aforesaid two items shall be made for different prices, it doesn't satisfy the condition of being 'made for a single price' and the supplies, therefore, cannot be regarded as mixed supply. We also agree with the view of the applicant.
2. The question therefore comes whether the supply involved in the instant case can be termed as composite supply. We find that the supply shall not fall under the category of 'composite supply' since supply of hosiery goods and goods under promotional scheme cannot be considered as naturally bundled and supplied in conjunction with each other in the ordinary course of business. We therefore hold that supply of hosiery goods and goods under promotional scheme are separate supply and tax on the supply shall be levied at the rate of each such item as notified by the Government.
3. Sections 16 of the GST Act deals with 'eligibility and conditions for taking input tax credit' which entitles a registered person to take credit of input tax charged on any supply of goods or services or both to him which are used on intended to be used in the course or furtherance of his business. In this regard, we accept the submission of the applicant that the retail scheme circular which is proposed to be floated by the applicant is aimed and intended to boost the sale of its hosiery goods. So, the provision of providing

said goods under the retail scheme circular would undoubtedly qualify as an activity undertaken in the course or furtherance of business.

4. The applicant argues that the goods under promotional scheme cannot be treated as 'gift' since 'gift' is something which is given completely out of one's volition and without any concomitant charge. In the instant case, the applicant intends to provide the said goods to the retailers at a certain consideration, though at a very nominal price and that too upon fulfilment of the criteria as specified in the scheme circular. Hence, it cannot be said that the said goods are being given as 'gift' and therefore restriction of availment of input tax credit under clause (h) of Sub-section (5) of section 17 shall not be applicable in respect of the said goods.
5. However, we are of the view that in the given scenario, the value of the said goods shall be required to be determined as per provision of section 15 read with rule 27 of the CGST/ WBGST Rules, 2017 as we find that here price is not the sole consideration for the supply.
6. The applicant has admitted that supply of the said goods would be contingent upon the supply of hosiery goods and the supply of said goods would take place only when the retailers meet the prescribed criteria as would be stipulated in the proposed retail scheme circular. The applicant would therefore certainly not make any supply of the said goods at such reduced price where the retailers fail to achieve the target or do not opt for the scheme. Supply at a very nominal price is therefore not an independent supply rather it entirely depends upon the supply of hosiery goods under certain conditions.
7. In view of the above discussions, we rule as under:
 - a. Supply of goods at nominal price to retailers against purchase of specified units of hosiery goods pursuant to a promotional scheme would qualify as individual supplies taxable at the rates applicable to each of such goods as per section 9 of the GST Act
 - b. Credit of the input tax paid on the items being sold at nominal prices would be available to the applicant.