

Week of 4<sup>th</sup> February, 2019

## PROPOSED CHANGES AND INDUSTRY ISSUES

### **Domino's indulged in profiteering on supply of Pizza & Garlic Bread, as base price increased in excess of ITC denial**

The National Anti-Profiteering Authority has fined Jubilant FoodWorks, which operates the Domino's Pizza chain in India, Rs 41.42 crore for not passing on the benefit of a reduction in the goods and services tax to consumers. The company has been asked to deposit the amount with the government. The GST council had cut rates on restaurants to 5% without input tax credit from 18% with such credit, with effect from November 15, 2017. The NAA held that Jubilant did not pass on the benefit of this reduction to customers during the period from November 15, 2017 to May 31, 2018. It also asked the company to reduce prices of its products by way of commensurate reduction in taxes.

### **EPC contract for electrical cable supply and laying work, falls under works contract service and is taxable at 18% GST**

In the case of Yogiraj Powertech (P.) Ltd., In re, the Authority for Advance Rulings, Maharashtra has ruled that the activity of the applicant company for electrical cable supply and laying work of new underground cable for metro rail project was in nature of composite supply of works contract. The applicant had sought an advance ruling in respect of the question that whether EPC contract for electrical cable supply laying work could be classified as contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of immovable property wherein transfer of property in goods was involved in the execution of such contract and whether these contracts could be classified as works contracts as per GST Law.

### **Promotion and Marketing service to overseas client is an 'Intermediary Service', AAR's order upheld**

In Toshniwal Brothers (SR) (P.) Ltd., In re, the Appellant Authority for Advance Ruling has upheld the ruling of AAR, Karnataka which laid down that, the service of promotion and marketing of products of overseas client is in nature of facilitating supply of products of overseas client, hence, constitutes an 'intermediary service' defined under section 2(13) of IGST Act. Thus, it automatically flows that the place of supply of such service will be in terms of section 13(8) of the IGST Act.

### **No contravention of anti-profiteering provisions on supply of 'Black Pepper', since no reduction in tax rate: NAA**

The NAA in the case of Kerala State Screening Committee on Anti-profiteering v. S.J. Spices Ltd. has ruled that there has been no violation of anti-profiteering provisions by the company as there has been no reduction in tax rate. The Kerala State Screening Committee on Anti-Profiteering had referred the case to Standing Committee on Anti-Profiteering, alleging profiteering by the Respondent on the supply of Black Pepper by not passing on the benefit of reduction in the rate of tax. The committee examined the matter and found that the product was taxed at 5% VAT and is now taxed at 5% GST, hence arriving at the conclusion that there has been no reduction in the rate of tax after implementation of GST.

### **Foreign supplier exporting goods to Free Trade Warehousing Zone and then selling those to Indian customers not liable for GST registration**

In the case of Sadesa Commercial Offshore De Macau Ltd., In re, the applicant company belonging to 'S' group was a leather manufacturer producing quality crust and finished leather in its industrial facilities. The applicant had sought advance ruling on question that whether sale of tanned bovine leather stored in Free Trade Warehousing Zone by the applicant foreign supplier which was cleared to DTA customer in India would result in supply subject to levy under section 5(1) of IGST Act 2017 or under provisions of CGST Act, 2017 or Tamil Nadu GST Act, 2017 and rules made there under and, further, whether a foreign supplier being an applicant, located outside taxable territory and supplying goods to DTA customers on goods stored in third party FTWZ unit was required to get registered under IGST Act 2017 or under provisions or CGST ACT, 2017 or Tamil Nadu Goods and Service Tax Act, 2017 and Rules made thereunder. The AAR, Tamil Naidu ruled that for supply of warehoused goods, while being deposited in FTWZ on or after 1-4-2018, the applicant was not liable to pay IGST at time of removal of goods from FTWZ to DTA under provisions of IGST Act in addition to duties payable under Customs Tariff Act, 1975 on removal of goods from FTWZ unit. On or after 1-4-2018, in the event the applicant is exclusively conducting the activity described in their application of exporting goods to FTWZ and which are subsequently sold to Indian customers who clear same on payment of appropriate customs duties, they are not liable to registration under section 23(1) of CGST Act and TNGST Act.

### **No ITC admissible on GST paid for stay in hotel accommodation provided to GM/MD of company**

The AAR, Maharashtra in the case of Posco India Pune Processing Center (P.) Ltd., In re has ruled that Input Tax Credit is not admissible in respect of GST paid for stay in case of rent free hotel accommodation provided to the general manager and managing director of a company as the same is used for personal consumption of general manager / managing director and is not in furtherance of any business.

### **Telecom department pushes for GST relief, lower import duties**

The Department of Telecommunications has asked the finance ministry to offer some GST-related relief to telcos and to bring down import duties of network equipment, but the ministry is not considering any other company specific relief measures as sought by Vodafone Idea. The industry had also called for a rollback of the basic customs duty increase on several telecom equipment in October 2018 and the duties imposed on printed circuit boards used in them in a bid to curb non-essential imports and address its current account deficit as well as encourage the 'Make in India' initiative.

## Glossary

**AAR – Authority for Advance Rulings**  
**CGST – Central Goods and Service Tax**  
**DTA- Domestic Tariff Area**  
**FTWZ – Free Trade Warehousing Zone**  
**GST – Goods and Services Tax**  
**GSTN – Goods and Service Tax Network**  
**IGST – Integrated Goods and Service Tax**  
**ITC – Input Tax Credit**  
**NAA – National Anti-profiteering Authority**  
**SGST – State Goods and Service Tax**  
**TNGST –Tamil Naidu Goods and Service Tax**

**GST Council- Goods and Services Tax Council, a constitutional body comprising of members of the Central and the State Governments to recommend changes under the existing GST regime.**

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