

Week of 21<sup>st</sup> January, 2019

## **PROPOSED CHANGES AND INDUSTRY ISSUES**

### **AAR rules on nature of services provided by subsidiary company under service agreement**

The Authority for Advance Ruling, Maharashtra, in the case of Asahi Kasei India (P.) Ltd., has ruled that conducting a survey of the Indian market for a foreign group co. is "Market Research Service" and not "Support Service". The applicant subsidiary company entered into a service agreement and provided sales promotion and marketing support to its group companies. The scope of work under the agreement included collecting and analysing information i.e., market analysis and supporting the group in getting new business; providing marketing and administration support and back-office support (including accounting support); co-ordinating with the government. The AAR arrived at the conclusion that the services provided by the applicant are in the nature of export of services as defined under section 2(6) of the Integrated Goods and Service Tax Act, 2017.

### **Kerala High Court brings relief to Vehicle Dealers collecting TCS**

In the case of PSN Automobiles Private Limited v UOI and CBIC, the Kerala High Court has stayed the operation of clarification issued in Serial No.5 of Circular No. 76/50/2018-GST dated 31st December, 2018. As per the said circular 'taxable value' for the purposes of GST would include the TCS amount collected under the provisions of the Income Tax Act. In the above mentioned case, PSN Automobiles Ltd, a Kochi-based dealer, approached the High Court and contended that as per Section 15 of CGST Act, 'taxable value' of goods or services is the value paid or payable by the consumer for the transaction. The TCS amount of 1% cannot be treated as an integral part of sale price. The Court observed that the matter required "further and deeper adjudication", and passed an interim order.

### **Leather exporters seek lower GST on footwear**

The Council for Leather Exports (CLE) has sought reduction of the GST rate to 12 percent on footwear priced above Rs 1,000. At present, the GST rate on footwear worth up to Rs 1,000 is 5 percent, while the GST rate for footwear which is worth more than Rs. 1,000 is 18 percent.

### **Stock brokers face losses due to GST levy**

Stock exchanges issue GST invoices for the collection of penalties and other charges in the name of clearing members. So, trading members, or brokers, collecting these charges from their clients are unable to set off the GST levy. Stock exchanges impose penalties for various violations, such as fund shortages, security shortages, margin shortages, non-allocation of trades, invalid trades, and many other types of

defaults. These penalties are collected from the clearing members, largely banks, with 18% GST. Clearing members pass on these charges to the trading members as cost without mentioning the GST amount separately as most of the clearing members — traditional banks, largely — can claim only 50% of input tax credit. Due to their inability to claim credit, stock brokers are facing huge losses.

### **Non-compete fee received from purchaser of trademark is not taxable under GST**

In the recent case of Lal Products v Intelligence Officer, the assessee had a registered office in Kerala and had sold its trademark to one 'W' who had a registered office in Bangalore and the agreement was executed in Ahmedabad. The assessing authority assessed the non-competition fee received by assessee from 'W' as a local sale even though there was no sale of goods in said transaction. The Kerala High Court ruled that the fee is paid by the transferee to the transferor, in pursuance to an agreement by which the transferee manufactures the goods under the trademark, which right has already been transferred. There is no sale of goods in the said transaction and it has to be reiterated that the fees are paid by the purchaser outside the State to the assessee within the State.

### **Union Cabinet clears setting up of National GST appellate authority**

The Union Cabinet on 23<sup>rd</sup> January 2019 approved setting up of a centralised Appellate Authority for Advance Ruling (AAAR) under the goods and services tax regime that would decide on cases where there are divergent orders at the state level. The centralised authority as an appellate body will only take up cases wherein the Authority for Advance Ruling (AAR) of two states have passed divergent orders. In view of the confusion created by contradictory rulings given by different AARs on the same or similar issues, the industry had been demanding a centralised appellate authority that could reconcile the contradictory verdicts of different AARs.

### **Union Cabinet has approved the creation of National Bench of the Goods and Services Tax Appellate Tribunal (GSTAT)**

By a Press Release dated 23<sup>rd</sup> January 23, 2019, the Government has approved the creation of National Bench of the Goods and Service Tax Appellate Tribunal (GSTAT) which shall be situated at New Delhi. GSTAT shall be presided over by the President of GSTAT and shall consist of one Technical Member (Centre) and one Technical Member (State). Goods and Services Tax Appellate Tribunal is the forum of second appeal and the first common forum of dispute resolution between the Centre and States. Appeals against orders issued by the appellate authorities under the Central and State GST Acts lie before the GST Appellate Tribunal, which is common under the Central as well as State GST Acts. Being a common forum, GST Appellate Tribunal will ensure that there is uniformity in redressal of disputes arising under GST, and therefore, in implementation of GST across the country.

### **Glossary**

**AAR – Authority for Advance Ruling**

**CBIC – Central Board of Indirect Taxes  
and Customs**

**CGST – Central Goods and Service Tax**

**GST – Goods and Service Tax**

**TCS – Tax Collected at Source**

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