



GST BULLETIN

APRIL 2023

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JUDICIAL UPDATES

1. ITC not eligible on vouchers procured from third-party vendors & supplied to customers

Case of : Myntra Designs Pvt

Decision by : Karnataka AAAR

- The appellant owns an e-commerce portal and is a major Indian fashion e-commerce company. To enhance their business, the appellant proposed to run a loyalty program where loyalty points would be awarded on the basis of purchases made by the customer on its e-commerce platform.
- Appellant submitted that it fulfils all the conditions for availing ITC as per section 16, unaffected by section 17 and explained that it is an online fashion platform and has a scheme for its customers, where based on their footfall and their purchases, a customer is eligible to redeem points for vouchers (Myntra does not issue vouchers but purchases them from elsewhere) and subscription packages.
- Appellant submitted that since the inward supply in question is received as a service and not goods, which is in fact a business expenditure for furtherance of business and hence eligible for credit
- Appellant also submitted that vouchers given to the customers are not a gift in as much as there is a contractual obligation between the appellant and customer that once the customer has earned the loyalty points appellant is obliged to give the voucher.



- AAAR outlining the primary conditions for eligibility of ITC as contained u/s 16, perused the draft agreement with their vendors presented by Appellant wherein the vendors states that they are in the business of issuing electronic vouchers as 'service'.
- Following the judgement passed by Karnataka HC in ***Premier Sales Promotions Pvt Ltd*** holding that 'vouchers' are neither goods nor services, AAAR observed that it is to be respected as the law applicable as on date until the decision is stayed or reversed by a higher court.
- Thus, AAAR ruled that when the vouchers intended to be procured by the Appellant are neither goods, nor services, the question of ITC eligibility does not arise as "*primary condition for eligibility to input tax credit is that there should be an inward supply of either goods or services on which tax is charged by the supplier*".

Full Judgement: [Myntra Designs Private Limited](#)

SNR's Take

The The AAAR has confirmed the view taken by AAR in holding that the GST on purchase of vouchers from third party vendors cannot be availed.

2. Supply of 'readily available ice-cream' from outlet not 'Restaurant Service' since cooking/preparing aspects not present

Case of : HRPL Restaurants Pvt Ltd

Decision by : Gujarat AA



- The Applicant runs a chain of restaurants / eating joints. It works under two business models i.e. company owned restaurants and franchise restaurants.
- AAR observed that, in its outlets, the Applicant is supplying food which is prepared and cooked in the restaurant/eatery in addition to supplying the ice creams, which are not prepared by it. Referring to SAC 996331 as regards services by restaurants/ cafes, etc. under Notification no. 11/2017, AAR emphasized on [CBIC Circular No. 164/20/2021](#), where it was clarified that service provided by way of cooking and supply of food by cloud kitchens are covered under restaurant service taxable at 5% GST.
- Thus, AAR reckoned that *the intention of the legislature is that the service provided by any entity, which is engaged in cooking and supply of food would be covered within the ambit of 'restaurant service' and "readily available food items [not prepared, cooked in the restaurant] sold over the counter to the customer whether consumed in the outlets/restaurant or by of takeway, does not qualify as 'restaurant service' and is a supply of goods"*.
- Thus, the AAR held that outlet selling "already manufactured ice-cream, do not engage in any form of cooking" and hence "as recommended by the Council, supply of ice- creams [not prepared, cooked], by the outlets of the applicant, stand on a different footing than restaurant service".



- Further, perusing Entry no. 6 of Schedule II which governs composite supply as well as the relevant provisions of CGST Act, AAR elaborated that supply of ice cream, as a desert by the outlets of the Applicant along with cooked or prepared food is therefore, naturally bundled and supplied in conjunction with the principal supply i.e. cooked/prepared food, in the ordinary course of business amounts to composite supply thus, falls under the ambit of restaurant service.

Full Judgement: [HRPL Restaurants Pvt Ltd](#)

SNR's Take

AAR has delivered a reasonable ruling in conformity with CBIC Circular wherein different aspects related to supply of ice creams or already prepared food items were deliberated upon. In case the supply relates to already manufactured ice-cream, it can't be treated as restaurant service, since there is no preparation, manufacturing or cooking involved.

3. Purchaser not entitled to ITC unless seller or preceding seller discharges its tax liability

Case of : Vimal Alloys Pvt Ltd

Decision by : Punjab AAR

- Applicant is running a furnace and for the purpose of the same, it is procuring ferrous alloys, scrap, gas and other materials. The applicant had sought Advance Ruling as to, whether the purchaser is entitled to claim Input Tax Credit on the purchases made by it from the seller who had discharged its tax liability though the preceding seller has not discharged its liability under the Act?
- The applicant submitted that, it could only ensure that its seller had filed the returns and reflected the transactions in question as the utility for the same had been provided at the GST Portal. He submitted that he had neither any obligation nor infrastructure to ascertain as to whether the seller had discharged its tax liability in accordance with law or not.
- He further contended that it cannot also ascertain as to what product its seller was buying and selling or whether the preceding sellers of its seller had discharged their tax liabilities or not.
- But the department on the other hand submitted that input tax credit could be availed only if the tax had actually been paid in cash or through admissible ITC.



- The AAR referred to the relevant provision of Section 16 which prescribes conditions and restrictions for a registered person for availing ITC of input tax charged on supply of any goods or services or both to be used in furtherance of business.
- The AAR determined that, as per Section 16(2)(c), it is very much clear that no registered person shall be entitled to take credit of any input tax in respect of any supply of goods or services or both unless the tax charged in respect of such supply has been actually paid to Government.
- Thus, AAR explicated that, if the seller or preceding sellers have not deposited the tax either in cash or through utilization of ITC admissible in respect of the said supply, purchaser is not eligible to claim ITC on such supply.

Full Judgement: [Vimal Alloys Pvt Ltd](#)

SNR's Take

The AAR has deliberated upon a burning issue regarding the allowability of ITC. The applicant has raised some valid points regarding the inability to check whether the suppliers have filed their GST Return & discharged tax liabilities. However, the AAR has given the ruling basis the available legal backing which overlooks the shortcomings of the system currently in place and put the entire onus on purchaser for claiming ITC.

4. GST under RCM applicable on renting 'residential-dwelling' used as 'guest-house' for company employees

Case of : Indian Metals and Ferro Alloys Ltd.

Decision by : Odisha AAR



- The applicant filed an application seeking advance ruling as to whether taking residential premises situated in residential areas, from registered person as well as unregistered person, for use as guest house in Delhi and Odisha on rent which are meant to provide accommodation to its visiting employees, would be taxable as per Forward Charge Mechanism (FCM) or RCM.
- AAR observed that, nature of rented properties clearly appeared to be residential properties used for commercial purpose. However, Emphasizing on Sl. No. 5AA (that makes 'Service by way of renting of residential dwelling' by 'any person' to 'any registered person' taxable w.e.f. July 18, 2022), AAR elucidated that "type or nature/purpose of use of residential dwelling i.e. for residence or otherwise by the recipient, has not been a condition in the said RCM notification".
- AAR Hence, AAR clarified that GST @ 18% under RCM will arise on the tenant if he is a registered person under GST with no other condition.

Full Judgement: [Indian Metals and Ferro Alloys Ltd.](#)

SNR's Take

AAR has reaffirmed the general understanding that in case of renting of residential premises to a registered person, the GST liability shall be discharged by registered person under reverse charge mechanism (RCM) on which GST was made applicable w.e.f. 18th July 2022.

5. "Sugarcane juice" not an Agricultural Produce, taxable at 12%

Case of : Gobind Sugar Mills Ltd.

Decision by : AAR,UP

- The applicant M/s Gobind Sugar Mills Ltd, manufacturer of Sugar, Molasses and Ethanol submitted the application seeking advance ruling on classification of sugarcane juice and the rate of GST.
- The applicant submitted that they would sell sugarcane juice to distilleries where they produced ethanol falling under Chapter heading 2207 attracting GST at 5% without performing any additional processing. Sole raw material for manufacturing of Sugar is sugarcane, coming under Chapter Heading 1212 and attracting Nil rate of GST, and also classed under farm produce.
- The AAR explained that in order for a good to become agricultural produce, three conditions must be satisfied:
 1. It must be produced out of cultivation of plants and rearing of all life forms of animals.
 2. On which no further processing is done or such processing is done as usually done by cultivator or producer which does not alter its essential characteristics i.e. product broadly retains its physical and chemical form/Constitution.
 3. The processing done should be in such a manner which is usually done by a cultivator & producer which should only help it to attain marketability at primary market.



- It was noted by the authority that in the present case sugarcane juice is produced by way of crushing of sugarcane and hence not produced by farmers. Also, the process changes its form and constitution along with changes are of such nature so as to attain the use for secondary market and become raw material for production of sugar, molasses etc.
- Since all the three Conditions of agricultural produce are not fulfilled by sugarcane juice and hence it could not be considered as agricultural produce.



Full Judgement: [Gobind Sugar Mills Ltd.](#)

SNR's Take

The AAR has examined the production and purpose of sugarcane juice in light of the conditions set for a product to be treated as an agricultural produce and has correctly ruled that sugarcane juice is not an agricultural produce and accordingly ruling gave classification entry under HSN 20098990 with GST rate of 12%.

CIRCULARS/NOTIFICATIONS:

1. CBIC gives effect to the New Amnesty Scheme proposed by 49th GST Council Meeting:

49 th GST Council Meeting, held on 18th February 2023, recommended the introduction of New Amnesty Scheme under the following circumstances-

- Registration has been cancelled for non-filing of GST returns and application for revocation of cancellation of GST registration is not filed within the time limit specified under section 30 of the Central Goods and Services Tax Act, 2017;
- Conditional deemed withdrawal of assessment orders where the concerned relevant returns are not filed within a period of 30 days of the assessment order issued under section 62 of the Central Goods and Services Tax Act, 2017;
- Filing of pending returns in Form GSTR-4; Form GSTR-9 and Form GSTR-10 with conditional waiver or reduction of late fee.

Central Board of Indirect Taxes and Customs (CBIC) has now issued various notifications giving effect to recommendation of GST Council.

Read Notification:

Amnesty to GSTR-4 non-filers: [02/2023-Central Tax](#)

Amnesty for revocation of cancellation of GST registration: [03/2023-Central Tax](#)

Amnesty for deemed withdrawal of assessment orders being issued under section 62 of the Central Goods and Services Tax Act, 2017: [06/2023-Central Tax](#)

Amnesty to GSTR-9 non-filers: [07/2023-Central Tax](#)

Amnesty to GSTR-10 non-filers: [08/2023-Central Tax](#)

2. CBIC issues clarification regarding GST rate and classification of 'Rab' based on the recommendation of the 49th GST Council meetings:

- Based on the recommendation of the GST council in its 49th meeting, held on February 18, 2023, 5% GST rate has been notified on Rab, when sold in pre-packaged and labelled, and Nil GST, when sold in other than pre-packaged and labelled with effect from the March 01, 2023.
- Further, CBIC has also issued a circular clarifying that in view of the prevailing divergent interpretations and genuine doubts regarding the applicability of GST rate on Rab, the issue for past period is hereby regularized on "as is" basis.

Read Notification: [191/03/2023-GST](#)



COMPLIANCE CALENDER:

DATE	PARTICULARS
10-04-2023	The due date for filing GSTR 7 for the month of March 2023.
10-04-2023	The due date for furnishing GSTR 8 for the month of March 2023 for registered e-commerce taxpayers in India.
11-04-2023	The last date to file the GSTR-1 for taxpayers having an annual aggregate turnover of more than INR 1.5 crore or the ones who have opted for the monthly return filing.
13-04-2023	The due date for filing of GSTR-1 for Quarterly filers (January 2023- March 2023).
13-04-2023	The due date for filing GSTR-6 for Input Service Distributor (ISD) of March 2023.
20-04-2023	Due date for Form GSTR-3B for the month of March 2023.
24-04-2023	Due date for Form GSTR-3B for the month of March 2023 for quarterly filers of GSTR-1

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