Tax INFORM

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Contents

4 DIRECT TAX

Recent Case Laws

Notifications/Circulars

14 INDIRECT TAX

15 Goods & Services Tax

Recent Case Laws

Notifications/Circulars

Highlights of the Issue

DIRECT TAX

Domestic Tax Rulings:

- SC: Expenses incurred by pharmaceutical companies towards distribution of freebies to medical practitioners cannot be allowed as business expenditure under Section 37(1) of the Act.
- Revenue cannot reject an application for compounding of an offence when accused's conviction is already set aside.
- Mumbai Tribunal: Difference between income appearing in Form 26AS vis-à-vis income recorded in books of account must be added back while computing book profits under section 115JB.

International Tax Rulings

- Delhi Tribunal: No additions can be made under section 68 of the Act where such investment is confirmed by Mauritius tax authorities and is in compliance with RBI Guidelines.
- Resident and Ordinarily Resident eligible to claim treaty benefit with respect to salary income earned in the USA.
- No requirement to deduct tax at source on payment made for transponder charges to foreign entities.

Notifications/Circulars

- CBDT issues circular on Income-tax deduction from Salaries during FY 2021-22 under section 192 of the Act.

INDIRECT TAX

Goods and Services Tax
Case Laws:

- AAAR: "Supply of goods" includes shifting business from one state to another.
- AAAR: "Mango Pulp/Puree" is taxable at the rate of 18%.
- AAAR: Flavoured milk was to be classified as "beverage containing milk" and not "milk".
- AAAR: Only affiliate coaching centres of ICAI/ICMAI are eligible for exemption as an Educational Institution.
- AAAR: GST at the rate of 18% is applicable for toys consisting of electric components.
- AAR: Guest lectures incomes are taxable at 18%.
- AAR: No exemption is available for paid educational content used by healthcare professionals to fulfil the mandate of the professional body.
- AAR: Law schools are not eligible for a "Nil" rate for subscription services of "online text-based information.
- AAR: Yoga courses are taxable at the rate of 18% due to the absence of specific registration under Income Tax.
- AAAR: Demo Vehicles are not eligible for ITC as it is not received with the intention of "further supply".
- AAR: By-products of alcohol brewing are taxable at 5%.

Circular:

- The Central Government vide Notification No.1/2022 – Central Tax has revised the limit from "fifty crore rupees" to "twenty crore rupees" for the preparation of invoice in terms of Sub-Rule 4 to Rule 48 of the Central Goods and Service Tax Rules, 2017.

DIRECT TAX

A. Recent Case Laws

I. Domestic Tax Rulings

M/s Apex Laboratories Pvt. Ltd. [SLP (Civil) No. 23207 of 2019) / [TS-104-SC-2022]

SC: Expenses incurred by pharmaceutical companies towards distribution of freebies to medical practitioners cannot be allowed as business expenditure under Section 37(1) of the Act.

Facts: In the instant case, the AO had disallowed certain expenses incurred by the assessee towards gifting of freebies such as hospitality, conference fees, gold coins, LCD TVs, fridges, laptops, etc. to medical practitioners, for creating awareness about the health supplement 'Zincovit'. The AO placed reliance on the CBDT Circular No. 5/2012, which clarified that expenses incurred by pharmaceutical and allied health sector industries for distribution of incentives (i.e. freebies) to medical practitioners, are ineligible for deduction.

In this regard, the primary contention of the assessee was that as per Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 ("MCI Regulations"), medical practitioners were expressly prohibited from accepting freebies. However, there is no corresponding prohibition imposed on the pharmaceutical companies and thus the assessee was not bound by the Regulations.

Issue before the Supreme Court: The issue which arose before the SC was whether the expenses incurred by pharmaceutical companies towards distribution of freebies to medical practitioners, would be eligible as business expenditure under Section 37(1) of the Act.

Supreme Court's Ruling: The SC observed that Explanation 1 to section 37 of the Act contains within its ambit all the activities which are illegal / prohibited by law.

Accordingly, the SC held that when acceptance of freebies is punishable by the MCI (the range of penalties and sanction extending to ban imposed on the medical practitioner), pharmaceutical companies cannot be granted the tax benefit for providing such freebies, and thereby (actively and with full knowledge) enabling the commission of the act which attracts such opprobrium.

The SC further held that one arm of the law cannot be utilised to defeat the other arm of law and doing so would be opposed to public policy and bring the law into ridicule. Also, the

pharmaceutical companies have misused a legislative gap to actively perpetuate the commission of an offence.

It further noted that the agreement between the pharmaceutical companies and the medical practitioners in gifting freebies for boosting sales of prescription drugs, is also violative of Section 23 of the Contract Act, 1872. Also, the principle of interpretation of taxing statutes needs to be interpreted strictly and cannot sustain when it results in an absurdity, contrary to the intentions of the Parliament.

Considering the above, the SC upheld the CBDT Circular and held that pharmaceutical companies gifting freebies to doctors / medical practitioners is clearly "prohibited by law" and cannot be allowed to be claimed as a deduction under Section 37(1) of the Act.

It also held that the CBDT Circular, being clarificatory in nature, shall be in effect from the date of implementation of the MCI Regulations, i.e. from 14.12.2009.

Jai Singh Goel [W.P.(C) 2356/2020] / [TS-159-HC-2022(DEL)]

Revenue cannot reject an application for compounding of an offence, as accused's conviction was already set aside.

Facts: In the instant case, the Petitioner had filed a writ petition before the Hon'ble Delhi High Court challenging the order of the Chief Commissioner of Income Tax (Central) [CCIT(C)], dated 21.08.2018. In the CICIT's order the Petitioner's request for compounding of offence, under Section 276CC, read with Section 278E of the Act, was rejected, , on the ground that the application seeking compounding of the offence was not filed within the stipulated time and that the Petitioner already stood convicted vide order dated 19.02.2018, passed by the learned Additional Chief Metropolitan Magistrate (Special Acts) Central, Tis Hazari Courts, Delhi (ACMM).

Thereafter, the Petitioner had filed an appeal challenging the order dated 19.02.2018, passed by the learned ACMM. Simultaneously, the Petitioner had also filed an application seeking review of the order, dated 21.08.2018 before the CCIT(C).

In the appeal, the learned Special Judge-03, CBI (PCT Act), Delhi, vide its order dated 03.12.2018, set aside the conviction and order of sentence and directed the learned ACMM to consider the fresh documents filed by the Petitioner and pass fresh order in the trial.

However, the CCIT(C) rejected the review application, observing that the conviction of the Petitioner is still open for adjudication and the Petitioner has not been acquitted of the criminal charges.

Issues before the Delhi High Court: The issue which arose before the HC was whether the CCIT(C) can reject an application for compounding of an offence, where the assessee's conviction was already set aside and was pending for fresh adjudication before the ACMM.

Delhi High Court's Ruling: The HC observed and held as under-

With respect to-

a) Ground of limitation of time, the HC referred to the CBDT Circular dated 9th September 2019 and held that the objection does not survive any further.

b) Objection in relation to conviction, the HC observed that the learned Special Judge has already set aside the conviction and thus the objection no longer survives.

c) Dismissal of review application, the HC held that the application seeking compounding of the offence cannot be rejected, on the ground that the Petitioner has not been acquitted of the criminal charges. As a matter of fact, such application is premised on the fact that the Petitioner is facing such criminal charge and has not been acquitted thereof.

Considering the above, the HC allowed the application of the Petitioner seeking compounding of the offence under Section 276CC, read with Section 278E of the Act, on merits and in accordance with law.

Everest Kanto Cylinder Ltd (ITA No. 764/Mum/2021)/[TS-135-ITAT-2022(Mum)]

Mumbai Tribunal: Difference between income appearing in Form 26AS vis-à-vis income recorded in books of account has to be added back while computing book profits under section 115JB.

Facts: In the instant case, the Assessing Officer (AO) asked the taxpayer to reconcile the income appearing in Form 26AS vis-a vis income recorded in books of accounts. Subsequently, the assessee offered the difference of interest income (income as per Form 26AS and books of accounts) of Rs 30,82,223 to tax only while computing the taxable income under normal provisions. However, the AO also added the said differential amount even while computing the book profits under section 115JB (i.e. Minimum Alternate Tax provisions) of the Income-tax Act, 1961 (Act).

The primary contention of the assessee was that as per Explanation 1 to section 115JB to the Act, the difference as per Form 26AS cannot be added back to the book profits. In this regard, the assessee placed reliance on the ruling of Hon'ble Apex Court in the case of Apollo Tyres , wherein it was held that for the purposes of computing the book profit, the amount which is mentioned in Explanation 1 to section 115JB of the Act, can be added and no other amount(s) can be added back to the book profit.

Issue before the Mumbai Tribunal: The primary issue which arose before the Tribunal was whether an addition could be made under the provisions of section 115JB of the Act, with respect to differential amount as appearing in Form 26AS, vis-à-vis income recorded in the books of accounts.

Tribunal's Ruling: At the outset, the Tribunal observed that the book profit computed under section 115JB of the Act means the profit as shown in the statement of the profit and loss for the relevant tax year, drawn in accordance with the provision of section 129 of the Companies Act, 2013.

The Tribunal further observed that the assessee had failed to show that the differential interest income was not required to be recorded in the books of accounts, while preparing the profit and loss statement.

Thus, the Tribunal held that once the error was committed by the assessee, in preparation of profit and loss statement, by not adding the entire amount shown in Form 26AS as income, either on account of omission, inadvertent error or by way of fraud, which was otherwise required to be included in the statement of the profit and loss account, then it cannot be said that the amount, which was wrongly or deliberately or otherwise left to be included in the book of accounts, cannot be added to the book profit, for the purpose of section 115JB of the Act.

Considering the above, the Tribunal confirmed the order of the AO and upheld the issue in favour of the Revenue.

II. International Tax Rulings

M/s Azure Retreat (P) Ltd (ITA No. 949/DEL/2017) / [TS-120-ITAT-2022(DEL)]

Delhi Tribunal held that no additions can be made under section 68 of the Act where such investment are confirmed by Mauritius tax authorities and are in compliance with RBI Guidelines.

Facts: During AY 2012-13, the assessee had issued 15,04,978 equity shares at a premium of Rs 110 to M/s Blue Bay Hospitality Pvt Ltd, Mauritius ('Mauritian Company') for a total consideration of Rs. 16,55,47,646. Further, during the same period, the assessee had also issued equity shares at par value of Rs. 10 each, to M/s Blue Ocean Resorts Pvt Ltd, Shri Rajiv Sajhwhney and Shri Rishal Sawhney.

During the assessment proceedings, the AO observed that Mauritian Company is a loss-making entity, and it did not carry out any business activities during the year under consideration. Further, it had taken unsecured loan from a Dubai based resident, Mr. Joseph Thomas. The AO also found defects in the fair value of equity shares, computed as per the Discounted Cash Flow (DCF) Method. Thus, the AO made an addition of Rs. 16,55,47,646 as unexplained cash credit, under section 68 of the Act.

During the proceedings before the Commissioner of Income-tax (Appeals) [CIT(A)], the CIT(A) deleted the additions on the ground that the allotment of shares to the foreign investors were

made at the rate determined in accordance with the guidelines issued by Reserve Bank of India (RBI). Also, the CIT(A) was convinced that the issue price was not less than its fair market value. Additionally, the Income-tax Department had made a reference for exchange of information under Article 26 of India-Mauritius DTAA, wherein the Mauritius Taxing Authority had confirmed the aforesaid transaction.

Aggrieved against the order, the Revenue filed an appeal before the Tribunal.

Issue before the Delhi Tribunal: The issue which arose before the Tribunal was whether an addition under section 68 of the Act can be made where assessee has duly explained the source of source of the investment and the transaction has been duly confirmed by the Mauritian tax authorities.



Tribunal's Ruling: At the outset, the Tribunal observed that the assessee had received investment from Mauritian Company through banking channels and the fair value of the shares have been determined as per the guidelines of the RBI.

The Tribunal further observed that the Mauritius Taxing Authority had also confirmed that Shri Joseph Thomas is the ultimate beneficial owner of Mauritian Company and had given unsecured loan to the company. It was also confirmed that the entire transaction has been done through banking channels and the funds were received with the permission from the RBI.

Also, the assessee had conclusively explained the source of source, which has been confirmed by the Mauritius Revenue Authority.

Considering the above, the Tribunal confirmed the order of CIT(A) and upheld the issue in favour of the assessee.

Rajat Dhara (ITA No.1914/Kol/2019) / (TS-153-ITAT-2022(Kol)

Resident and Ordinarily Resident eligible to claim treaty benefit with respect to salary income earned in the USA.

Facts: During the year under consideration, the assessee qualified as a Resident and Ordinarily Resident (ROR) in India. The assessee filed its Return of Income (ROI) in India, wherein he claimed tax treaty benefit under Article 16 of the India-US Double Taxation Avoidance Agreement (DTAA), with respect to salary income of Rs 42,58,111 earned from Stanadyne LLC, USA.

During the assessment proceedings, the AO held that since the assessee qualifies as ROR in India, DTAA benefit is not applicable and hence the salary received by the assessee from his US employer shall be chargeable to tax in India. The AO further held that, in case of ROR, global income is taxable in India in accordance with the provisions of section 5(1) of the Act.

The CIT(A) confirmed the actions of the learned AO. Aggrieved against the order of CIT(A), the assessee preferred an appeal before the Tribunal.

Issue before the Kolkata Tribunal: The issue which arose before the Tribunal was whether a ROR could claim the treaty benefits under India-US DTAA, as per provisions of section 90 of the Act.

Tribunal's Ruling: At the outset, the Tribunal observed that as per the provisions of section 90 of the Act the assessee has an option to choose either the DTAA or the provisions of the Act, whichever are more beneficial.

The Tribunal further observed that as per Article 16 of the India-US DTAA, the salary income of an Indian resident earned by him in US shall be taxable in US, only if such person is present in the US for a period not exceeding 183 days in the relevant taxable year. In the present case, the stay of the assessee in US was for only 165 days and this fact was not rebutted or denied by any of the lower authorities.

In light of the above, the Tribunal held that provisions of section 90 do not bar, in any manner, the operation of the relevant provision of DTAA, in respect of income earned by the assessee in the other country, with whom the Central Government has entered into a DTAA.

Accordingly, the Tribunal set aside the order of the CIT(A) and held that the assessee is eligible to claim the treaty benefits under Article 16 of the India US DTAA and thus salary income earned in US, is not chargeable to tax in India.

M/s Viacom 18 Media Pvt. Ltd. (1067/Mum/2021)

No requirement to deduct tax at source on payment made for transponder charges to foreign entities.

Facts: In the instant case, the assessee was engaged in the business of marketing advertisement time for different television channels, and distribution of these channels. During the year under consideration, the assessee made payments for transponder service fees to three foreign entities namely: a) Intelsat Corporation USA, b) Intelsat Global Sales and Marketing UK and c) MEAST Satellite System, Malaysia.

For this purpose, the assessee applied for an order under section 195(2) of the Act for Nil withholding tax certificates for payment of transponder services fees.

The AO rejected the application and held that these payments are chargeable to tax as royalty under section 9(1)(vi) of the Act and hence the assessee should deduct tax at source on such payments under section 195 of the Act.

The CIT(A), relying on the decision of Bombay High Court in the case of Neo-Sports Broadcast Private Limited and the decisions of Delhi High Court in the case of Asia Satellite Communications Ltd and New skies Satellite BV held that the payment of transponder charges made by the assessee to the above-mentioned foreign entities, are not chargeable to tax in India and therefore there is no requirement to deduct tax at source.

Aggrieved against the order of CIT(A), the Revenue preferred an appeal before the Tribunal.



Issue before the Mumbai Tribunal: The issue which arose before the Tribunal was whether the payment made for transponder charges to foreign entities would constitute Royalty under section 9(1)(vi) of the Act, read with relevant DTAA and thereby the assessee would be required to deduct tax at source under section 195 of the Act.

Tribunal's Ruling: At the outset, the Tribunal placed reliance on the ruling of the Coordinate Bench in the assessee's own case for AYs 2015-16, 2016-17 and 2020-21, which had held that payment by assessee to a foreign company for utilization of transponder centred on a satellite, was not in the nature of Royalty, as per relevant Articles of the respective DTAAs.

Further, with respect to the Revenue's contention that the term 'process' as defined in Explanation 6 to section 9 (1) (vi) of the Act should be read in to the treaty, as the term 'process' used in the treaty is not defined and hence the meaning assigned in domestic law should be used; the Tribunal held that in Article 12(3) of India-Malaysia DTAA, the term used is 'Secret Formula or process' and not 'process', and therefore the meaning of term 'process' under domestic tax law, cannot be incorporated in the treaty.

Considering the above, the issue was held in favour of the assessee.



B. Notifications/Circulars

Circular No. 04/2022 dated 15th March 2022

CBDT issues Circular on Income-tax deduction from Salaries during FY 2021-22 under section 192 of the Act.

CBDT has issued a detailed Circular explaining the various obligations of employers with regard to deduction of tax at source from salaries, under section 192 of the Act, for the Financial Year 2021-22.

Section 192 states that any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the estimated amount payable under the income head of Salary, for that financial year.

The section also provides that such person shall furnish to the person to whom such payment is made, a statement giving correct and complete particulars of perquisites or profits in lieu of salary that is provided to him and the value thereof.

The Circular is a useful guide for employers/employees and covers relevant provisions of the Act and Income-tax Rules, 1962, regarding the ambit of salary, method of computing income under the income head of “salaries”, and also the procedure to be followed for discharge of the tax deducted at source.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws:

Shilpa Medicare Ltd [TS-1258-AAAR(AP)-2020-GST]

AAAR held that "supply of goods" includes shifting business from one state to another.

In this case, the applicant was shifting its business from Vizianagaram, Andhra Pradesh to Bengaluru, Karnataka and had sought an advance ruling before the Andhra Pradesh Authority for Advance Ruling on whether the transfer would amount to the supply of goods and/or services and whether a GST ITC-02 return could be filed to transfer the unutilized ITC. The Andhra Pradesh Authority for Advance Ruling held that the transaction would amount to the supply of services and GST ITC-02 could be filed. Aggrieved with the ruling, the Revenue preferred an appeal before the Andhra Pradesh Appellate Authority for Advance Ruling (hereinafter referred to as "AAAR"). The AAAR observed whether the business being transferred was qualified to be a going concern or not as per Schedule II of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") which provided for transactions not regarded as a supply of goods or services. The AAAR held that the case did not qualify to be a going concern as even though both the units held the same PAN, they were distinct persons. Therefore, the transaction was deemed to be a "supply of goods" as it was a transfer of goods between distinct persons and the transfer of unutilized ITC did not arise. Hence, the ruling passed by the AAR was set aside and the transaction was termed "supply of goods."

Foods and Inns Ltd [TS-46-AAAR(AP)-2022-GST]

AAAR held that "Mango Pulp/Puree" is taxable at the rate of 18%.

In this case, the appellant was engaged in the business of supplying mango pulp/puree within India. The Appellant had filed an application before the Andhra Pradesh Authority for Advance Ruling (hereinafter referred to as "AAR") enquiring whether the mango pulp/puree could be treated as fresh fruit and an exemption claimed; if not, what was the tax rate applicable on outward supplies of mango fruit pulp/puree? The AAR held that the mango pulp/puree cannot be treated as fresh fruit, and it is to be taxed at the rate of 18% as per Notification No.1/2017. Aggrieved with the ruling, the appellant preferred an appeal before the Andhra Pradesh Appellate Authority for Advance Ruling (hereinafter referred to as

"AAAR"). The AAAR held that under Notification No.1/2017, there was no specific rate prescribed for mango pulp and hence, the residuary entry tax rate of 18% must be applied.

Tirumala Milk Products Pvt. Ltd. [TS-763-AAAR(AP)-2021-GST]

AAAR held that flavoured milk was to be classified as "beverage containing milk" and not "milk".

In this case, the Appellant was engaged in the business of processing milk and manufacturing milk and milk products. The Appellant had filed an application seeking clarification on the HSN code applicable and the rate of tax for flavoured milk. The Andhra Pradesh Authority for Advance Ruling (hereinafter referred to as "AAR") had passed a ruling specifying the applicable HSN code and the rate as 12%. Dissatisfied with the ruling, the appellant filed an appeal with the Andhra Pradesh Appellate Authority for Advance Ruling (hereinafter referred to as "AAAR"), claiming that the authority misinterpreted the legislature's intent, misunderstood the process of making flavoured milk, and thus referred to it as preparation rather than milk. The AAAR observed that the product in dispute was already specified and included under Chapter 22, "Beverages containing milk" and was taxable at 12% and the provisions of Chapter 4, "Goods of Dairy produce; Birds' Eggs; Natural Honey; Edible Products of Animal Origin, not elsewhere specified or included", taxable at 5% were not applicable to the product in question. The AAAR confirmed and upheld the ruling passed by the AAR.

Master Minds [TS-1259-AAAR(AP)-2020-GST]

AAAR held that only affiliate coaching centres of ICAI/ICMAI are eligible for exemption as an Educational Institution.

In this case, the Appellant was a coaching institute providing coaching, hostel accommodation and catering services to CA and CMA students. The Appellant had approached the Andhra Pradesh Authority for Advance Ruling (hereinafter referred to as "AAR") to obtain a ruling on whether the supply of services for education, accommodation charges, charges collected for catering services are exempted from tax as per Notification No.12/2017 - Central Tax dated 28/06/2017. The AAR denied the Appellant of the exemption. Aggrieved with the ruling, the Appellant preferred an appeal before the Appellate Authority for Advance Ruling (hereinafter referred to as "AAAR"). The Appellant contended that it was an educational institution and it imparted education as prescribed by the Institute. The AAAR observed that the "education" imparted by the Appellant would not lead to obtaining a qualification recognized by the Institute and would be treated as a coaching institute and not an educational institution as the Institutes provide an elaborate scheme of education, practical training, and courses to be completed to obtain the qualification. Hence, the Appellant was not eligible for the exemption and the ruling passed by the AAR was upheld.

Navbharat Imports [TS-1262-AAAR(TN)-2020-GST]

AAAR held that GST at the rate of 18% is applicable for toys consisting of electric components.

In this case, the Appellant was a retailer dealing with baby tricycles, kids scooters etc., The Appellant had filed an application before the Tamil Nadu Authority for Advance Ruling (AAR) to obtain a ruling on whether toys consisting of lights and music ancillary to the toy are to be treated as “Electronic Toys” taxable at 18% or “Other than Electronic Toys” taxable at 12%. The AAR ruled that the toys contain an inbuilt electronic circuit and are “electronic toys” and are taxable at the rate of 18%. The Appellant preferred an appeal before the Tamil Nadu Appellate Authority for Advance Ruling (AAAR) on the grounds that the batteries in the toys were for sound and light and not for mobility. Further contended that the AAR has failed to appreciate that the electronic components are only ancillary functions and not primary functions. The AAAR held that though the toys function independently of the electronic unit, the fact remains that the toys are equipped with such electronic circuits even though it was an ancillary function. The AAAR ruled that as these toys consisted of electronic components, irrespective of usage, they attracted GST at the rate of 18%.



Sairam Gopalkrishna Bhat [TS-41-AAR(KAR)-2022-GST]

AAR held that guest lectures incomes are taxable at 18%.

In this case, the Applicant was a Law Professor at the National Law University, Bengaluru and provided guest lectures at multiple universities and colleges. The Applicant had sought an advance ruling before the Karnataka Authority for Advance Ruling (hereinafter referred to as "AAR") questioning whether the income earned from providing guest lectures was a taxable service and whether income earned from research and training funded by the government was taxable at 'Nil' rate or at 18%. The Applicant was of the opinion that guest lectures provided by him were recreational activities relating to arts or culture which were not taxable services. The AAR held that the services provided were in the nature of law and legal awareness and as per Notification No.11/2017 - Central Tax dated 28/06/2017, the said service was taxable at 18%.

CMEPEDIA [TS-42-AAR(KAR)-2022-GST]

AAR held that no exemption is available for paid educational content used by healthcare professionals to fulfil the mandate of the professional body.

In this case, the applicant provided educational content to healthcare professionals. The applicant sought an advance ruling on whether paid educational content used by professionals or students to meet a professional body's or institute's mandatory demand was tax-exempt. The applicant was of the view that the content distributed by them was recognized by a government body and hence was exempted from tax. The Karnataka Authority for Advance Ruling (hereinafter referred to as "AAR") observed that the services availed were not for obtaining a degree prescribed by law and hence, not covered by Notification No.12/2017 – Central Tax (Rate) dated 28/06/2017 which provided for exemption of services provided by an educational institution. The applicant was also not providing any health care services as a clinical establishment for the purpose of availing the said exemption in the Notification stated supra. The AAR held that the applicant was acting as a liaison agent between health care professionals and the professional organisations and hence, the said service of providing educational content was taxable.

Manupatra Information Solutions Pvt. Ltd. [TS-762-AAR(UP)-2021-GST]

AAR held that law schools are not eligible for a "Nil" rate for subscription services of "online text-based information".

In this case, the applicant was engaged in the business of providing online text-based information to law firms, lawyers, companies, law schools and the government. The applicant had filed an application before the Uttar Pradesh Authority for Advance Ruling (hereinafter

referred to as “AAR”) asking whether Notification No.12/2017 dated 28th June 2017, which provided a “Nil” rate for services provided to an educational institution by way of supply of online education journals or periodicals, was applicable to the services provided by them. The AAR observed that the invoices issued by the applicant mentioned “Annual Subscription of Online Database” and did not mention “Online education journals or periodicals.” Since databases and journals were different from each other, the said exemption was not available, and the “nil” rate of GST was not applicable.

Stonorti MarketplacePvt. Ltd. [TS-82-AAR(RAJ)-2022-GST]

AAR held that Yoga courses are taxable at the rate of 18% due to the absence of specific registration under Income Tax.

In this case, the applicant was engaged in educating and training in yoga. The applicant had filed an application before the Rajasthan Authority for Advance Ruling (hereinafter referred to as “AAR”) desirous of knowing if the services of coaching and training students in Yoga were eligible for exemption under Notification No.12/2017-Central Tax dated 28/06/2017. The AAR observed that to avail the exemption under Notification No.12/2017, there should be an activity of training or coaching, and it should be in recreational activities and the training should relate to art or culture. The AAR held that the services provided were not “recreational activities” and were “physical well-being activities,” hence, not eligible for the exemption. Further, Circular No.66/40/2018-GST dated 26/09/2018 stated that only entities registered under Section 12AA of the Income Tax Act, 1961 were eligible for the exemption. The AAR ruled that the service was covered under “Physical well-being service” and was taxable at 18% as per Notification No.11/2017 dated 28/06/2017.

Platinum Motocorp LLP [TS-774-AAAR(HAR)-2021-GST]

AAAR held that Demo Vehicles are not eligible for ITC as it is not received with the intention of “further supply”.

In this case, the appellant was purchasing cars for demonstration purposes and further supply. The appellant had filed an application before the Haryana Authority for Advance Ruling (hereinafter referred to as “AAR”) to obtain a ruling on whether an Input Tax Credit (ITC) can be claimed on demo cars and set off against the output tax payable. The AAR denied the benefit of the ITC as demo cars were not used for making taxable supplies. The Appellant preferred an appeal before the Haryana Appellate Authority for Advance Ruling (hereinafter referred to as “AAAR”) on the ground that the car was used for the furtherance of business and was always intended for further supply. The AAAR observed that, as per Sub-section of Section 17 of the Central Goods and Services Tax Act, 2017, ITC on motor vehicles would be available when they were used for further supply, transportation of passengers or to impart training. As

the intention of the Appellant for the car was for demo purposes, the AAAR denied ITC on such vehicles.

Allied Blenders and Distillers Pvt Ltd. [TS-91-AAR(TEL)-2022-GST]

AAR held that by-products of alcohol brewing are taxable at 5%.

In this case, the applicant was primarily engaged in the manufacture of alcohol. The applicant had applied to the Telangana Authority for Advance Ruling (AAR) to clarify the rate of tax applicable on the sale of the by-products of the manufacture of alcohol. During manufacture, by-products produced were sold as cattle feed as no other commercial use was known. In its application, the applicant stated that the by-product must be taxed at a “Nil” rate as it was used as cattle feed. The AAR observed that a separate HSN was available for “brewing or distillery drugs and waste” and the tax rate provided was 5%. Hence, the AAR ruled that the tax rate applicable to the sale of by-products was 5%.



B. Notification/ Circulars

Notification No.1/2022 – Central Tax

The Central Government, vide Notification No.1/2022 – Central Tax, has revised the limit from "fifty crore rupees" to "twenty crore rupees" for the preparation of invoices in terms of Sub-Rule 4 to Rule 48 of the Central Goods and Service Tax Rules, 2017 which provides for obtaining an Invoice Reference Number by uploading the invoice details on the Common Goods and Service Tax Electronic Portal.

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