TRILEGAL

Indirect Tax – Monthly Updates

15 July 2021

This update covers:

1 Goods and Services Tax (GST)

1.1 Bombay High Court pronounces split verdict on the constitutional validity of IGST provisions for place of supply relating to intermediary services.

This update covers key judicial decisions relating to GST, service tax, central excise, customs, electricity duty and also some important indirect tax related notifications and circulars.

The judges of Bombay High Court, Justice Abhay Ahuja and Justice Ujjal Bhuyan, in the case of *Dharmendra M. Jani v. Union of India, 2021 (6) TMI 563 and 2021 (6) TMI 383*, while deciding upon the constitutional validity of Section 13(8)(b) and Section 8(2) of the Integrated Goods and Services Tax Act (**IGST Act**), (which deals with place of supply in case of intermediary services), differed in their opinions and gave a split verdict. The Petitioner in this case was engaged in providing marketing and promotion services to customers located outside India on commission basis, acting as an intermediary.

Justice Bhuyan, while holding Section 13(8)(b) of the IGST Act, (which resulted in the levy of GST on intermediary services provided to a recipient outside India) to be unconstitutional, noted that the provision runs contrary to the scheme of the Central Goods and Services Tax Act, 2017 (**CGST Act**) as well as the IGST Act, besides being beyond the charging sections of both the Acts. Holding intermediary services provided to recipients outside India as 'export of services', he observed that under Article 246A, 269A and 286 of the Constitution of India (**Constitution**), the Parliament is only empowered to frame laws for the levy and collection of GST in the course of inter-state trade or commerce and that the Constitution does not empower imposition of tax on export of services outside the territory of India by treating the same as local supply.

Justice Ahuja, on the other hand, while upholding the constitutionality of Section 13(8)(b) of the IGST Act, opined that Section 13(8)(b) has been enacted keeping in mind the underlying concerns of revenue and that since there are specific provisions defining intermediary services, the question of application of general provision of Section 2(6) of 'export of services' will not apply. He also held that the impugned provision does not in any manner deem an export of service to be a local supply. The power to stipulate the place of supply as contained in Sections 13(8)(b) is pursuant to the provisions of Article 269A(5) read with Article 246A and Article 286 of the Constitution and therefore, the impugned provision is not in any way *ultra vires* the Constitution. He further held that there is no question of extraterritorial legislation as the said section only provides the place of supply and also that there is no discrimination between the Petitioner and other exporters, given intermediary services have been specifically dealt with in the legislation and there is a reasonable classification based on intelligible differentia. Against the challenge that Section 13(8)(b) runs contrary to the scheme of the CGST Act and IGST Act and deems inter-state supply as intra-state supply, it was observed that the said provision pertains to the case of intermediary services, where the service recipient is outside India and where the place of supply has been provided to be the location of the supplier. He further observed that when the Constitution has empowered the Parliament to formulate principles determining the place of supply, Section 13(8)(b) cannot be said to be *ultra vires* the charging section, as Section 13(8)(b) does not violate the levy on the supply made by the intermediary and that the said section does not deem an inter-state supply to be an intra-state supply.

The matter will now be decided by a third Judge given the split verdict. While earlier, a Division Bench of the Gujarat High Court in the case of *Material Recycling Association of India v/s Union of India & Ors., R/SCA 13238 of 2018*had rejected a similar challenge to Section 13(8)(b) of the IGST Act and held the provision to be constitutional. A review petition against the same is pending before the Gujarat High Court.

Much has been discussed on the scope of various provisions under the CGST Act and IGST Act and their constitutional validity. In this regard, it will be important to see how Courts examine the distinction between (i) the phrases *'in the course of inter-state trade or commerce'* as well as *'in the course of export of goods and services out of the territory of India', (ii) the power of Parliament 'to formulate, by law, the principles for determining the place of supply and when supply of goods or services takes place in the course of inter-state trade or commerce'* in context of Article 269A(5) of the Constitution (relating to the levy and collection of goods and services tax in course of inter-State trade or commerce) on one hand and on the other, the power of the Parliament under Article 286(2) of the Constitution (to formulate, by law, principles for determining when supply of goods or services takes place in the course of export of goods and services out of territory of India). It will be equally interesting to see how the Courts interpret the plenary powers of Parliament under Article 246A(2) (to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce) specially in the light of Article 286.

1.2 Supreme Court defines the scope of Section 83 of CGST Act and lays down guidelines for provisional attachment

A Division Bench of Supreme Court in its judgement dated 20 April 2021, in the case of *Radha Krishan Industries Vs. State of Himachal Pradesh* in *Civil Appeal No. 1155 of 2021,* interpreted the scope of Section 83 (providing for provisional attachment to protect revenue in certain cases) of the CGST Act read with Himachal Pradesh GST Act.

The Appellant before the Supreme Court was engaged in manufacturing lead. The authorities while investigating the case of one GM Powertech (supplier to the Appellant as well) issued notice to the Appellant to produce various details and documents pertaining to its inward and outward supplies. The authorities then issued notices to two customers of the Appellant for provisionally attaching sums due to the Appellant.

In the meanwhile, tax liability of around INR 40 crores was confirmed against GM Powertech. Thereafter, the authorities issued two orders of provisional attachment attaching the receivables of the Appellant from its customers and proceedings under Section 74(1) of the CGST Act were initiated by way of issuance of show cause notice to the Appellant, after the provisional attachment. The orders of provisional attachment were challenged by way of writ petition before the High Court of Himachal Pradesh which dismissed the same on the grounds of existence of alternate remedy. The order of the High Court was thereafter challenged before the Supreme Court.

The Supreme Court while interpreting Section 83 of the CGST Act held that the legislature was conscious of the draconian nature of the power of attachment of any property (including a bank account) and its consequences and therefore, it provided specific statutory pre-conditions regulating the exercise of such power. The Court noted that these conditions were, (i) the necessity of formation of opinion by the Commissioner, (ii) the formation of the opinion before ordering a provisional attachment, (iii) the existence of opinion that *'it is necessary so to do'* for the purpose of protecting the interest of the government revenue, and (iv) the observance by the Commissioner of provisions contained in the rules in regard to manner of attachment.

The Court held that when the exercise of power under Section 83 is challenged, its validity will depend on strict and punctilious observance of these statutory pre-conditions by the Commissioner. On the use of the expression *'it is necessary so to do'* the Court held that necessity postulates that the interest of revenue can be protected only by a provisional attachment without which the interest of the revenue would stand defeated. The Supreme Court added that the doctrine of proportionality has to be read into provisional attachment and as per the Court proportionality mandates the existence of a proximate or live link between the need for the attachment and the purpose it is intended to secure.

The Court further read into the section the test of existence of 'tangible material' on the basis of which opinion is formed by the commissioner. The Court held that, 'tangible material' on the basis of which opinion is formed by the Commissioner should indicate a live link to the necessity to order a provisional attachment, to protect the interest of the Government's revenue. While interpreting Rule 159 of the CGST Rules which prescribes the procedure for provisional attachment, the Court held that the said Rule does not contemplate a situation in which the taxable person can object on the ground that the attachment is in excess of the amount due, nor does it provide for a specific opportunity to the taxable person to offer any alternative form of security in lieu of attachment. However, while recognising that the taxable person does not have a right to demand that only a particular form of security be accepted, the Court held that where the taxable person sets up a plea that the extent of the attachment is excessive or where it offers an alternative form of security, the Commissioner ought to determine these issues under Rule 159(5).

Consequently, while allowing the appeal, the Supreme Court held that the provisional attachment was *illegal* and set-aside the judgment and order of the High Court.

1.3 Gujarat High Court holds that the limitation period prescribed under Section 54 of CGST Act is not applicable to refund claims of IGST paid on ocean freight

The Gujarat High Court in *Comsol Energy Pvt. Ltd. v. State of Gujarat, Special Civil Application No. 11905 of 2020*, on the issue of whether the limitation period prescribed under Section 54 of the CGST Act is applicable to refund claims pertaining to IGST paid on ocean freight, held that an amount collected without authority of law, such as IGST paid on ocean freight, cannot be considered as tax collected and therefore, Section 54 of the CGST Act will not be applicable and that Section 17 of the Limitation Act, 1963, will apply instead in such cases. Accordingly, the Revenue was directed to process the refund claim of the Petitioner along with interest. Earlier in the *Mohit Minerals* judgement of the Gujarat High Court, the levy of IGST on ocean freight under reverse charge by virtue of Notification No. 8/ 2017- IGST (Rate) and Notification No. 10/ 2017- IGST (Rate) was held to be *ultra vires* Section 5(3) of the IGST Act and declared to be unconstitutional.

1.4 Karnataka High Court holds that horse race clubs are liable to pay GST only on commission collected by it and not entire bet amount

A single Judge Bench of Karnataka High Court in *Bangalore Turf Club Ltd. and Ors. v. Union of India, 2021 (6) TMI 230* has declared Rule 31A(3) of the CGST Rules as *ultra vires* Section 9 of the CGST Act and consequently, held that the liability for payment of GST of the race club will be on the commission received out of the total amount received by the totalizator and not on the 100% of the face value of the bet.

The Petitioner in the matter was carrying on the business of a race club which included conducting horse racing and facilitated betting by punters. A punter places his bet either with the totalisator run by the Petitioner or a book- maker licensed by the Petitioner. With effect from 23 January 2018, Rule 31A was introduced where under sub-rule 3 thereof, the value of supply of actionable claim in the form of chance to

win in betting, gambling or horse racing in a race club was to be 100% of the face value of the bet or the amount paid to the totalisator. Rule 31A(3) was challenged by the Petitioner on the ground that the said rule violates Section 7 read with Section 9 of the CGST Act as the supply of bets is not in course or furtherance of petitioners business, yet the Rule levies GST on the entire bet amount, i.e., even on the amount not received by the Petitioner. The Petitioner argued that Rule 31(3)(A) treats the entire bet amount as consideration while the commission retained by the Petitioner constitutes consideration for the said activity.

On the other hand, it was argued by the Revenue that the amount that comes to the totalisator is liable to be taxed as it is an actionable claim and all actionable claims are liable to be taxed in terms of the CGST Act itself. It was argued that the rules have only qualified it further bringing in a specific provision for taxing 100% of the value of the bet amount paid into the totalizator.

Distinguishing the present matter from the decision of the Supreme Court in the matter of *Skill Lotto Solutions Pvt. Ltd. Vs. UOI, (2020) SCCOnline SC 990*, the Karnataka High Court observed that the challenge before the Supreme Court was with regard to unequal treatment to only three categories of actionable claim, i.e., lottery, betting and gambling, as regards all other actionable claims not being taxed under GST and that unlike lottery, where the face value of the ticket is known by its publication in the official gazette, in the matter of race clubs, the amount that gets into the totalisator is not the prior determined face value of the entire bet. The Karnataka High Court noted that the Petitioner held the amount received in the totalizator for a brief period in its fiduciary capacity. Once the race was over, the money was distributed to the winner of the stake. The Court observed that making the entire bet amount that was received by the totalisator liable for payment of GST would be against the principle that a tax can only be on the basis of consideration. The consideration that the Petitioners received was by way of commission for planting a totalisator. This was not different from that of a stock broker or a travel agent - both of whom are liable to pay GST only on the income - commission that they earn and not on all the monies that pass through them.

Therefore, Rule 31A(3) of the CGST Rules, insofar as it declares that the value of actionable claim in the form of chance to win in a horse race of a race club to be 100% of the face value of the bet, is beyond the scope of the CGST Act.

1.5 CESTAT, Chandigarh, allows refund of EC, SHEC and KKC credit which was initially transitioned into GST but subsequently reversed upon amendment to Section 140 of CGST Act.

CESTAT, Chandigarh, in *Schlumberger Asia Services Ltd. v. Commissioner of CE & ST, TS-227-CESTAT-2021-ST*, allowed the Appellant's refund claim for unutilized Education Cess (EC), Secondary and Higher Education Cess (SHEC) and Krishi Kalyan Cess (KKC) which was transitioned into the GST regime but upon retrospective amendment to Section 140 of the CGST Act on 30 August 2018 (which provided that an assessee cannot carry forward the credit lying in their CENVAT credit account of EC, SHEC and KKC), the same was reversed.

The Tribunal rejected the contention of the Revenue that such credit was GST credit. It also held that the refund claim was not barred by limitation as the Appellant could not have filed the refund claim within 1 year from 1 July 2017, as the amendment in Section 140 itself took place on 30 August 2018, which was the relevant date for filing the refund claim and in fact the refund claim was filed by the Appellant within one year from 30 August 2018.

2 Service Tax

2.1 Madras High Court quashes levy of service-tax on takeaway services by A/c restaurants

Madras High Court, in *Anjappar Chettinad A/C Restaurant & Ors. v. Joint Commissioner, TS-234-HC-2021(MAD)-ST*, quashes orders levying service tax on 'take away/ parcel services' for various periods up to June 2017, holding that not all services rendered by restaurants in the sale of food and drink are taxable and it is only certain specified situations that attract tax. The sale of food and drink simplicitor, services of selection and purchase of ingredients, preparation of ingredients for cooking and the actual preparation of the food and drink would not attract the levy of service tax.

The Court observed that the provision of niceties such as arrangements for seating, décor, music and dance, live or otherwise, are critical to the determination as to whether the establishment in question would attract levy of service tax. It was also held that the provision of food and drink to be taken-away in parcels from restaurants amounts to the sale of food and drink and does not attract service tax under the Act.

3 Central Excise

3.1 Gauhati High Court holds that refunds granted pursuant to a Supreme Court judgment that is reversed by a subsequent Supreme Court Judgement cannot be considered to be refunds 'erroneously granted'

Gauhati High Court, dealing with a batch of writ petitions in *Topcem India v. UOI, 2021 (4) TMI 226*, sets aside the demand-cum-show cause notices challenged before it. The question for consideration before the Court was whether refunds previously granted pursuant to the judgment of the Supreme Court in *SRD Nutrients,* can be considered to be refunds erroneously granted, given that the subsequent judgment of the Supreme Court in *Unicorn Industries held the judgement in SRD Nutrients to be per incuriam.*

The High Court examined a number of judgements to hold that the term 'erroneous' means any error deviating from law and a change of law subsequently does not make an action taken earlier by a quasi-judicial authority in terms of law as it stood then, erroneous so as to enable Departmental officers to invoke powers under Section 11A of the Central Excise Act. The Court observed that the Department itself had granted the refunds earlier in terms of the *SRD Nutrients* which was accepted by the Department and therefore, the refunds were not erroneous.

The Court held that the orders passed by the Department officers being in exercise of quasi-judicial powers cannot be co-laterally revoked/ reviewed except when permitted under the statute. In the present case, it was observed that, the statute did not provide for any review against the sanction orders passed by the concerned officers and the only recourse available was that of appeal under Section 35 of the Central Excise Act, which was not resorted to by the Department and which instead had sought revocation/recall of the orders already passed sanctioning refund in terms of *SRD Nutrients*.

The Court accordingly held that in view of the dismissal of the earlier review petition filed by the Department against the judgment of the Apex Court in *SRD Nutrients*, the *lis* between the Petitioner and the Department had attained finality in respect of the issue now sought to be reopened by the Department by way of the demand cum show cause notices. Therefore, the later judgment of the Apex Court in *Unicorn*

Industries holding *SRD Nutrients* to be *per incuriam* will not permit the Department to unilaterally revoke or re-open the issue without taking recourse to the remedies available to them before a judicial forum.

The Court accordingly held that the show cause notices were issued without any jurisdiction and by wrong interpretation of powers conferred under Section 11A of Central Excise Act]and were accordingly quashed.

4 Customs

4.1 Madras High Court rules that the principle of unjust enrichment is not applicable to pre-deposit made under protest during pendency of appeal

The Madras High Court, in *The Daily Thanthi v. Commissioner of Customs, 2021 (2) TMI 94*, set aside the order passed by the Commissioner of Customs demanding documentary evidence to substantiate that there was no unjust enrichment, and held that the amount deposited during the pendency of the appeals before the Supreme Court has to be construed as having paid 'under protest' and has to be refunded without insisting on such importer or manufacturer satisfying the requirement of 'unjust enrichment' as in the case of pre-deposit. Such amount has to be considered outside the purview of 'unjust enrichment' in Section 27 of the Customs Act, 1962.

The Petitioner had, during the pendency of its appeal before the Supreme Court, paid a certain sum 'under protest'. The said appeals were eventually allowed by the Supreme Court and the Petitioner had approached the Department for the refund of the amount deposited earlier by way of refund claim. The Department however rejected the refund claim on the ground of unjust enrichment.

It was argued on behalf of the Department that the amount paid by the Petitioner was not a pre-deposit within the meaning of Section 129E of the Customs Act and therefore, the test of unjust enrichment as contemplated under Section 27 will apply.

The Court observed that in the present case, payments were made as a result of an order passed under Section 129B and in terms of Section 131 of the Customs Act. In terms of Section 131 of the Customs Act, an importer or manufacturer (as the case may be) is required to pay the 'sums due' to the Government pursuant to the order of the CESTAT (against which appeal or reference has not been preferred before the High Court or Supreme Court). The Court observed that though payments under Section 131 are not made as a condition for hearing the appeal, such payments also partake the nature of pre-deposit and are not paid as 'duties' for the purpose of Section 27.

It was therefore held that amounts paid pursuant to an adverse order passed under Section 28 of the Customs Act, 1962 whether under Section 129E or under Section 131 of the Customs Act, 1962 are not 'duty' for the purpose of Section 27 of the Customs Act. The Court further observed that the Supreme Court in the matter of *Mafatlal Industries* was only concerned with the amendments to Section 27 of the Customs Act and did not examine this specific issue from the perspective of Section 129E of the Customs Act.

5 Electricity Duty

5.1 Tripura High Court holds imposition of electricity duty on inter- state sale of electricity to be illegal and beyond the competence of state legislature

The Tripura High Court, in the matter of *ONGC Tripura Power Company Limited Vs. State of Tripura and Anr., W.P.(C) 14/ 2021* has declared Section 4(4)(d) of the Tripura Electricity Duty Act, 2019 (**ED Act**) as

unconstitutional and held that imposition of electricity duty on electricity sold outside the state of Tripura is beyond the competence of the State legislature.

The Petitioner had set up a power generation station in Tripura and was engaged in the generation of electricity and its sale in Tripura as well as other north-eastern states of Assam, Meghalaya, Manipur, Nagaland, Arunachal Pradesh and Mizoram and power exchanges outside Tripura. The Petitioner challenged the imposition of electricity duty on inter-state sale of electricity under Section 4(4)(d) of the ED Act on the ground that while the government of Tripura could levy tax on the sale of power within the State in terms of powers conferred under Entry 53 of List II of the Seventh Schedule to Constitution (State List) (dealing with taxes on consumption or sale of electricity), the sale of power outside the State of Tripura falls under Entry 92A of List I of the Constitution (Union List) (dealing with taxes *on the sale or purchase of goods in the course of inter-State trade or commerce)*. The Petitioner further placed reliance on the decision of the Supreme Court in *State of A.P. Vs. NTPC, (2002) 5 SCC 203* in which the Constitution Bench of the Supreme Court had held that State legislature lacks competence to levy duty on inter-state sale of electricity.

The State of Tripura countered the challenge by arguing that after the constitutional amendment of the relevant entries, the restriction built into Entry 54 of the State List (Taxes on sale or purchase of goods subject to provisions of Entry 92A of List I) , as it existed prior to the amendment thereof, no longer applied and therefore, the *NTPC* judgment was not applicable. It was argued that as a result of the constitutional amendments to the entries, Entry 53, even when read along with amended Entry 54, is freed from the rigors of Entry 92A.

In light of the above challenge, the High Court proceeded on the premise, with the eventual acquiesce of the State thereon, that the subject transaction amounted to inter-state sale of electricity. The Department, in one of its previous correspondences, had also taken a position that since the point of sale was not explicitly mentioned in the agreements, the sale was intra-state sale. Therefore, the question to be decided by the High Court was whether the State was competent to legislate on taxation of inter-state sale of power by the Petitioner.

The Court observed that there were two limbs of the NTPC judgment which were required to be looked into and that mere examination of the amended entries itself will not be the true test as the entries in the lists of the Seventh Schedule are not the source of power of legislation but are fields of legislation. Consequently, apart from the correct interpretation of the entries in the lists of the Seventh Schedule, it is important to determine if the legislation also overcomes the constitutional limitation built into the Articles of the Constitution. Thus, the High Court examined the Entries, i.e., Entry 92A of List I and Entries 53 and 54 of List II of the Seventh Schedule, as well as Articles 246A, 269A and 286 of the Constitution.

The Court observed that while the newly inserted Article 246A enables the Union government as well as the State Legislatures to frame laws in respect of goods and services tax, Article 246A (2) specifically empowers the Parliament to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of 'inter-State trade or commerce'. Furthermore, even Articles 269A(5) and 286 (2) empower the Parliament alone to formulate principles for determining the place of supply and when supply of goods or services takes place in the course of 'inter-state trade or commerce' and for determining when supply of goods or services takes place in the course of import of goods and services into and export of goods and services out of territory of India, respectively. Therefore, even after the constitutional amendments, there was restriction on the State legislature to levy tax on the sale of goods when such sale took place in the course of inter-State trade or commerce exists.

Regarding the amended entries, the Court observed that though Entry 54 of State List (which earlier read as '*Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I*') was amended to read as '*Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter- State trade or commerce or sale in the course of international trade or commerce of such goods*', there was no change in Entry 92A (which reads as '*Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce*'). Thus, whereas the earlier Entry 54 included sale and purchase of all kinds of goods other than newspaper, it is now confined to only 6 items and there was deletion of the said entry being subject to Entry 92A of List I.

Given the said amendment to Entry 54 of List II, the Court in relation to the amended Entry 54 of List II firstly observed that the State legislature cannot frame a law for taxing inter-state supply of electricity as its power is now confined to only the six specified items as mentioned in the amended Entry 54. The Court also observed that post the amendment of Entry 54, the phraseology used in Entry 92A itself has been specifically incorporated in Entry 54, which resultantly excludes cases of sale in the course of inter-state trade or commerce.

Thus, with the settled position being that electricity constitutes 'goods' for application of GST laws, the Court observed that there is already a central legislation to tax inter-state supply of electricity and accordingly, held Section 4(4)(d) to be unconstitutional and that duty already paid be refunded subject to the bar of unjust enrichment.

6 Important Notifications & Circulars

6.1 Notification No. 02/ 2021- CT (Rate) dated 2 June 2021 [amends Notification No. 11/ 2017- CT (Rate)]

- GST rate on maintenance, repair or overhaul services in respect of ships and other vessels, their engines and other components or parts is reduced to 5%.

  This rate reduction seeks to provide a level playing field to domestic Maintenance, Repair and Overhaul ('MRO') units and extends similar treatment to such units as the MRO units in aviation sector.

- An explanation is inserted to clarify that land owner-promoters can utilize credit of GST charged to them by developer promoters for payment of tax on apartments supplied by the landowner promoter in such project.

6.2 Notification No.03/ 2021- CT (Rate) dated 2 June 2021 [amends Notification No. 06/ 2019- CT (Rate)]

The developer promotor who receives development rights or FSI or long term lease of land against consideration has been allowed to pay GST relating to apartments any time before or at the time of issuance of completion certificate or date of first occupation.

This amendment seeks to address the issue of blockage of credit due to the time lag between the requirement for the developer to pay GST (which earlier was at the time of issuance of completion certificate) and the sale of units by the landowner, which could be much earlier.

6.3 Circular No. 149/05/2021-GST dated 17 June 2021

This circular clarifies that Anganwadi provides pre-school non-formal education and is covered under the definition of educational institution as pre-school and therefore, services by way of serving of food in Anganwadi (including mid-day meal) is exempt from GST irrespective of its funding.

6.4 Circular No.150/06/2021-GST dated 17 June 2021

It is clarified that Entry 23A of Notification No. 12/ 2017- CT (Rate) (which exempts services by way of access to a road or a bridge on payment of annuity) does not exempt GST on annuity/ deferred payments made for construction of roads.

The GST Council had recommended exemption on annuity paid by NHAI and State authorities/State owned corporations to the Concessionaires for construction of public roads. The Notification No. 32/2017-Central Tax (Rate), dated 13 October 2017 which followed however provided exemption to 'services by way of access to a road or a bridge on payment of annuity'. Accordingly, the circular seeks to provide clarification on the scope of exemption.

6.5 Circular No. 151/07/2021-GST dated 17 June 2021

This circular clarifies the following:

- GST is exempt on services provided by Central or State Boards (including boards such as National Board of Examination (NBE), by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution [under S. No. 66 (aa) of Notification No. 12/ 2017- CT (Rate)]. Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations
- GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards [under S. No. 66 (b) (iv) of Notification No. 12/2017-CT (Rate)].
- GST at the rate of 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for Foreign Medical Graduates Examination screening test so as to authorise them to provide their respective services.

6.6 Circular No. 154/10/2021-GST dated 17 June 2021

It is clarified that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt under entry No. 34A of Notification No. 12/2017- CT (Rate) dated 28 June 2017.

6.7 Circular No. 155/11/2021-GST dated 17 June 2021

This circular provides that laterals/parts to be used solely or principally with sprinklers or drip irrigation system, which are classifiable under heading 8424, would attract a GST of 12%, even if supplied separately. However, any part of general use, which gets classified in a heading other than 8424, in terms of Section Note and Chapter Notes to Harmonised System of Nomenclature ('HSN'), shall attract GST as applicable to the respective heading.

Entry 195B which was inserted vide Notification No. 06/ 2018- CT (Rate) provided a GST rate of 12% to 'sprinklers; drip irrigation systems including laterals; mechanical sprayer' which resulted in confusion on the rates applicable to parts of sprinkler irrigation system such as nozzles, meters, pressure gauges, etc.

UPDATES

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