NITYA
tax associates


# *Legal Precedents' Series* | Issue 11 | Writs, NAA and AAR

**Period: July 2019**

**August 30, 2019**

## PART A: WRITS

### 1. Constitutional validity

| Issue | Order | Reference |
|---|---|---|
| Power of Director General of Anti-Profiteering ('DGAP') to *suo motu* seek information for all products of taxpayer | The DGAP issued notice to the taxpayer seeking information for all the products when the Authority ordered an inquiry for only one product.<br><br>The Court granted an interim relief to the taxpayer for non-submission of data for all the products in the light of procedural lapse at the behest of the DGAP. The DGAP should have inquired about other products only subsequent to the ruling of the Authority on the complained product. | ***Reckitt Benckiser India Private Limited v. Union of India, 2019-VIL-349-DEL*** |

### 2. Issue vis-à-vis refund

| Issue | Order | Reference |
|---|---|---|
| Grant of interest on delay in refund of tax paid on export goods | The taxpayer exported certain goods on payment of IGST and claimed refund of the same. No provisional refund was granted to the taxpayer within a period of 7 days from date of filing of refund as prescribed in the Central Goods and Services Tax Rules, 2017 ('CGST Rules'). The taxpayer sought interest on delay in grant of provisional refund.<br><br>The Court held that it is a settled position of law that provisions relating to interest on delayed refund are beneficial and non-discriminatory. Further, the authorities did not give any reasonable explanation for delay in grant of provisional refund. Thus, even though there was no specific provision for grant of interest for delay in granting provisional refund, the High Court held that the department is liable to pay simple interest at the rate of nine percent per annum on such delayed refund.<br><br>***NITYA Comments**: The department often delays grant of refund (specifically in case of refund of output tax on export of goods / services, inverted duty refund etc.). The taxpayers should seek interest in such cases (Please also refer to our detailed update **NITYA's Outlook \| Issue 5** dated* | ***Saraf Natural Stone v. Union of India, 2019-VIL-351-GUJ*** followed in ***Willowood Chemical Private Limited v. Union of India, 2019-VIL-360-GUJ*** |

| | | |
|---|---|---|
| | ***December 12, 2018*** *on this issue).* | |
| Validity of claim of refund of IGST wherein duty drawback at higher rate was also claimed | In the instant case, the revenue rejected the refund claim of the taxpayer on the ground that the taxpayer claimed duty drawback at higher rate, relying upon ***Circular No. 37/2018-Customs dated October 9, 2018*** ('Circular 37').<br><br>The Court held that Circular 37 do not have any legal force as it runs contrary to the statutory provisions. Further, Circular 37 is merely instructions or guidance to the concerned department. Thus, the taxpayer is entitled to claim the refund of IGST.<br><br>***NITYA Comments:*** *In our view, the ruling is correct since there is no restriction under the GST law barring simultaneous availment of refund at output stage and higher rate of drawback. Second proviso to Section 54 of the Central Goods and Services Tax Act, 2017 ('CGST Act') denies refund of input stage when drawback has been claimed but does not restrict refund of output stage. Hence, refund of output stage should be allowed in such cases.* | ***Amit Cotton Industries v. Principal Commissioner of Customs, 2019-VIL-315-GUJ*** |

## 3. Input Tax Credit

| Issue | Order | Reference |
|---|---|---|
| Power of officer to issue notice for recovery of wrongly availed or utilized transitional credit | In the instant case, proceedings were initiated against the taxpayer under Section 73 of the Bihar Goods and Services Tax Act, 2017 for wrongful availment and utilization of transitional credit.<br><br>The Court held that availment of credit is a positive act and unless such credit is used for reducing the tax liability, it cannot be said to be a case of either availment or utilization. Mere reflection of transitional credit in the electronic credit ledger, would fall outside the ambit of the term 'availment.'<br><br>***NITYA Comments:*** *The High Court has incorrectly interpreted the term 'availment' and has treated the same at par with 'utilization'. The transitional credit is reflected in the electronic credit ledger only because the taxpayer first avails it in the transitional form.* | ***Commercial Steel Engineering Corporation v. State of Bihar, 2019-VIL-348-PAT*** |

| | | |
|---|---|---|
| | *Hence, the reason adopted by the High Court for inapplicability of Section 73 of the CGST Act is incorrect.*<br><br>*It is pertinent to note that the definition of 'input tax credit' does not include transitional credit within its ambit. Thus, Section 73 of the CGST Act (which provides for recovery of ITC wrongly availed or utilized) is inapplicable for transitional credit.* | |
| Time limit for availment of input tax credit for Financial Year 2017-18 | The Press Release dated October 18, 2018 provided that the time limit to avail input tax credit for Financial Year ('FY') 2017-18 is October 25, 2018 i.e. the due date of filing of return in GSTR-3B for the month of September.<br><br>The High Court observed that GSTR-3B is not a return in lieu of return in GSTR-3. Further, the Court noted that the 'return' under Section 39 is GSTR-3 and not GSTR-3B.<br><br>***NITYA Comments:*** *Please refer to* ***'NITYA's Outlook \| Issue 2'*** *dated* ***July 12, 2019*** *for our detailed update on this issue.* | ***AAP and Co. v. Union of India, 2019-VIL-314-GUJ*** |

## 4. Relevant writs pending

**Constitutional validity of retrospective disallowance of carried forward credit of Education Cess etc.**

The CGST (Amendment) Act, 2018 retrospectively amended Section 140 of the CGST Act which disallowed the transition and carry forward of the Education Cess ('EC') and Secondary and Higher Secondary Education Cess ('SHEC') in the GST regime.

In the case of ***Grasim Industries Limited, v. Union of India, 2019-VIL-322-GUJ,*** the petitioner contended that EC and SHEC qualified as CENVAT credit under the Cenvat Credit Rules, 2004 ('Credit Rules') and that Section 140(1) (pre-amended) referred to 'CENVAT credit' in accordance with the Credit Rules. Therefore, such credit was eligible for transition into the GST regime and such right cannot be taken away by retrospective amendment. The Court admitted the challenge and the issue is pending for final disposal.

***NITYA Comments:*** *In this case, in addition to challenging the retrospective amendment, the petitioner should also have pointed out that even after the amendment, EC and SHEC have been excluded from 'eligible duties and taxes' which is not an expression used in Section 140(1) of the CGST Act (Please refer to our detailed update* ***NITYA's Outlook \| Issue 15*** *dated* ***April 18, 2019*** *on this issue).*

……

## PART B: NATIONAL ANTI-PROFITEERING AUTHORITY ('NAA') ORDERS

### 1. Anti-Profiteering provisions not applicable where pre-GST price not available

| Reference | Facts | NAA's Order |
|---|---|---|
| ***Signature Builders Private Limited, 2019-VIL-39-NAA*** | **Nature of business:** Real Estate Developer<br><br>**Complaint:** The sale price of flat was fixed by Haryana government before July 1, 2017 under Affordable Housing Scheme. The supplier should have reduced the price post-introduction of GST as benefit of ITC became available. | **Profiteering:** No<br><br>**Reasoning:** The flat was booked post-GST and construction also started thereafter. The price was also agreed post-GST. Since the project was not executed before July 1, 2017, comparison for ITC available pre-GST and post-GST cannot be made. |

### 2. No profiteering where reversal of ITC more than excess realization

| Reference | Facts | NAA's Order |
|---|---|---|
| ***Apollo Hospitals Enterprise Limited, 2019-VIL-37-NAA*** | **Nature of business:** Pharmaceuticals<br><br>**Complaint:** There was a reduction in rate of tax on July 27, 2018. The taxpayer neither reduced the price of the goods nor passed on the benefit of rate reduction to the consumer. | **Profiteering:** No<br><br>**Reasoning:** The exemption from payment of GST, resulted in ITC reversals on closing stock lying with the taxpayer. The amount of reversal was higher than increase in price of the goods. |

### 3. Base price must be reduced in commensurate to reduction in GST rate

| Reference | Facts | NAA's Order |
|---|---|---|
| ***Unicharm India Private Limited, 2019-VIL-37-NAA,*** *and* ***Bhutani International Medicos, 2019-VIL-34-NAA*** | **Nature of business:** Pharmaceuticals<br><br>**Complaint:** There was a reduction in rate of tax on July 27, 2018. The taxpayer neither reduced the price of the goods nor passed on the benefit of rate reduction to the consumer. | **Profiteering:** Yes<br><br>**Reasoning:** The reduction in MRP was not commensurate to the reduction in rate of GST. Also, the DGAP's position of only considering the positive realization and ignoring negative realization is correct because benefit has to be seen separately for each customer. |

| | | |
|---|---|---|
| ***Adarsh Marbles, 2019-VIL-36-NAA*** | **Nature of business:** Trader<br><br>**Complaint:** There was a reduction in rate of tax on November 14, 2017. The taxpayer neither reduced price of the goods nor passed on the benefit of rate reduction to the consumer. | **Profiteering:** Yes<br><br>**Reasoning:** The base price (after discount) was increased post reduction of rate of GST. Basis above, NAA held that the taxpayer resorted to profiteering. |

***NITYA Comments:***

*In our view, the net realisation (amount gained and lost due to change in rate) should be considered product wise since it is impractical for the taxpayers to have uniform prices or MRP's across the customers and geographies. If there is no net gain to the taxpayer, the taxpayer should not be considered to have profiteered.*

*Also, in several rulings, the NAA held that discounts should not be considered for determining profiteering (Refer:* ***Peps Industries Private Limited, 2019-VIL-16-NAA*** *highlighted in our* ***NITYA's Insight | Legal Precedents' Series_ Issue 7 (Writs, NAA and AAR) dated April 23, 2019****). NAA should be consistent in its approach and should not consider increase in net price owing to reduction in discounts as profiteering.*

……

## PART C: ADVANCE RULINGS

### 1. Taxability

| Applicant | Relevant facts and observations of AAR |
|---|---|
| ***Cliantha Research Limited, 2019, 2019-VIL-175-AAR (MAH)*** | The Applicant was providing clinical research and support services to its foreign clients. It conducted research on formulations / drugs provided by foreign clients. Thereafter, the Applicant submitted a report covering test results and analysis of tests and recovered consideration in foreign exchange. The issue under consideration was whether clinical research services provided to foreign clients qualifies as export of services or not.<br><br>The Authority for Advance Ruling ('AAR') observed that the goods / formulations play a pivotal role in conducting research which were provided by foreign clients. Hence, as per Section 13(3)(a) of the Integrated Goods and Services Tax Act ('IGST Act') (applicable where service provided in respect of goods provided by the recipient), place of supply of services will be India. Basis this, the AAR held that the said services do not qualify to be export of service and exigible to GST.<br><br>***NITYA Comments:*** *The ruling is incorrect as it does not correctly interpret the expression 'in respect of goods'. The expression means 'on' and Section 13(3) of the IGST Act should apply only when the services are provided on goods and not by using the goods. We have highlighted the same in our update* ***'NITYA's Insight \| Issue 36 \| Judgement Update \| Rendition of scientific research services does not qualify as export of service'*** *dated July 22, 2019.* |
| ***Bilcare Limited, 2019-VIL-184-AAR (MAH)*** | The Applicant was providing various packaging, storage and distribution solutions for pharmaceutical products to foreign clients. The question before the AAR was whether such services qualifies as intra-state supply or inter-state supply.<br><br>The AAR observed that since the Applicant was located in taxable territory and recipient was outside India, Section 13 of IGST Act will apply. Section 13(3) of the IGST Act applies where service is provided in respect of goods provided by the service recipient as per which place of supply is the place of performance of service. Applying the said provision, the AAR held that the place of supply shall be in India. The AAR further held that since the place of supply and the service provider were in the same State, CGST and SGST shall be payable. |
| ***Borbheta Estate Private Limited, 2019-VIL-181-AAR (WB)*** | The Applicant executed lease agreement with individuals as well as with corporate entity for renting of dwelling units for residential purposes. The issue under consideration was whether renting of dwelling unit to commercial entity is exempt under GST.<br><br>The AAR observed that exemption under ***Notification No. 12/2017- CGST (Rate) dated June 28, 2019*** is available when dwelling unit is used for residential purpose. There is no distinction as to whether property has been let out to an |

| | |
|---|---|
| | individual or a commercial entity. Accordingly, the AAR held that the Applicant is not liable to pay GST on letting out residential dwelling to commercial entity. |
| ***E-DP Marketing Private Limited, 2019-VIL-189-AAR (MP)*** | The Applicant was engaged in sale of various edible oils on CIF basis. The issue under consideration was leviability of GST on ocean freight under RCM.<br><br>The AAR relied on ***Notification No. 10/2017- IGST(Rate) dated June 28, 2017*** whereby service of transportation of goods by vessel from outside India to the customs station of clearance in India, is covered under RCM. Basis this, the AAR held that the Applicant (the importer) is liable to pay IGST on ocean freight. The AAR also observed that the fact that the value of transportation charges is included in CIF value on which import duties (including IGST) are paid, will not affect taxability of such service under GST law.<br><br>***NITYA Comments:*** *This ruling is incorrect and GST is not payable on ocean freight on vessel in case of CIF imports, since Section 5(3) of the IGST Act can fasten the liability on recipient of supply (and importer of goods is not the recipient of service in case of CIF imports). Please refer to our detailed comments on the issue under the head 'GST on ocean freight' in our* ***NITYA's Insight \| Legal Precedents' Series_ Issue 9 (Writs, NAA and AAR)*** *dated* ***June 21, 2019****.* |
| ***Greentech Mega Food Park Private Limited, 2019-VIL-205-AAR (RAJ)*** | The Applicant was a special purpose vehicle responsible for development and establishment of food park. The Applicant intended to execute a lease agreement for a period of 99 years. The question before the AAR was whether lease for 99 years would qualify as sale of immovable property and will be outside the purview of GST law.<br><br>The AAR observed that in case of transfer of property through sale deed, the buyer becomes absolute owner of the property (which is not applicable in case of lease). The AAR observed that the length of lease does not change the nature of activity from lease to sale. Basis above, the AAR held that leasing is covered under Clause 2 of Schedule II of the CGST Act and exigible to GST at the rate of 18 percent. |
| ***Daimler Financial Services India Private Limited, 2019-VIL-208-AAR (TN)*** | The Applicant was a non-banking financial institution providing leasing and finance services. The Applicant entered into MoU with Mercedes Benz ('MB') to provide retail loan at concessional rate to customers purchasing MB vehicles from authorised dealers. As per the agreement, MB will pay part of interest amount as subvention, to the Applicant. The question before the AAR was whether subvention is covered under the ambit of GST or not.<br><br>The AAR relied on MOU between the Applicant and MB and observed that the MOU makes Applicant preferred financier of MB vehicles and requires the Applicant to perform services like better customer luxury experience, structured insurance products offerings with claims processing within minimum turnaround time, tailor made products, quick loan approvals, maintain customer relation etc. Basis above, the AAR held that the activity of the Applicant shall be considered as 'agreeing to do an act' and exigible to GST. |

| | |
|---|---|
| | ***NITYA Comments:*** *The ruling is incorrect to the extent it does not correctly characterize the transaction. In this case, MB was bearing a part of interest cost on behalf of its customers which was clear from loan documents. The Applicant undertook various activities to facilitate provision of loan to vehicle buyers and not to serve MB. Hence, being interest income, the amount should be exempt from GST irrespective of the fact that same is received from MB (third person) and not the person taking loan.* |
| ***S.B. Reshellers Private Limited, 2019-VIL-198-AAR (MAH)*** | The Applicant was a manufacturer of sugar mill rollers. It also converted the old sugar mill roller / beams or shafts into ready to use roller and resized the new shaft as per customer requirement.<br><br>**Issue 1:** The question before the AAR was whether the activity of converting bare shafts / beams into ready to use sugar mill roller, will be treated as supply of goods or supply of services.<br><br>The AAR observed that after completion of process, a new product comes into existence. Therefore, the activity will not be considered as supply of job-work service and will be treated as supply of goods.<br><br>**Issue 2:** The question before the AAR was whether cost of shaft / beam as supplied by customer, is includible in the assessable value for computing GST.<br><br>The AAR observed that in the given case, price is not sole consideration for the supply and as per Rule 27 of CGST Rules, cost of shaft / beam supplied by customer will form part of assessable value.<br><br>***NITYA Comments:*** *The ruling is incorrect on both the points. Firstly, the activity of conversion of raw material into finished goods should be considered as 'processing' of goods and covered under 'job-work' only. Further, even if the AAR was of the view that the activity is not job-work, the activity should have been characterized as 'manufacturing services' covered under SAC 9988. Without any transfer of property in goods, the activity cannot qualify as supply of goods.*<br><br>*In another Advance Ruling in the case of* ***Ratan Projects & Engineering Co Private Limited, 2019-VIL-91-AAR****, the AAR held that the inputs need not necessarily return in the form in which they were originally sent. The final product involving consumption of the original inputs having been returned to the principal, shall suffice the requirement of job work procedure under Section 143 of the CGST Act. Please refer to our* ***Insight - Legal Precedents' Series_ Issue 7 (Writs, NAA and AAR)*** *shared in this respect. This ruling was not referred by the AAR in the case in hand.* |

## 2. Classification

| Applicant | Relevant facts and observations of AAR |
|---|---|
| ***HYVA India Private Limited, 2019-VIL-186-AAR (MAH)*** | The Applicant was engaged in manufacture of hydraulic cylinder and valve. The issue under consideration was regarding classification of hydraulic kit (comprising of hydraulic cylinder and wet kit) under Heading 8412 as parts of engines and motors or under Heading 8708 as parts and accessories of motor vehicles.<br><br>The AAR observed that since the product is covered under Heading 8412, the same will be excluded from Heading 8708 by virtue of Section Note 2 to Section XVII covering Chapter 87. Thus, hydraulic systems will be covered under Heading 8412 and exigible to GST rate of 18 percent. |
| ***Imperial Motor Stores, 2019-VIL-217-AAR (MAH)*** | The Applicant was distributor of automotive dashboard instruments, clusters & sensors mounted on front end of motor vehicles. The question before the AAR was whether clusters are classifiable under Heading 8708 or under Heading 9026 / 9029.<br><br>The AAR held that various instruments fitted together, though individually classified under Chapter 90, are not jointly covered under any Heading of Chapter 90. Basis this, the AAR held that instrument cluster is classifiable under Heading 8708 as parts of motor vehicles.<br><br>***NITYA Comments:*** *The ruling is incorrect since the same does not consider Note 3 to Chapter 90 which covers multi-functional machine under Chapter 90 only. Hence, instrument cluster merit classification under Chapter 90 only.* |
| ***Nexture Technologies Private Limited, 2019-VIL-225-AAR (MAH)***<br>*(argued by NITYA)* | The Applicant was engaged in manufacture of goods such as plastic handles for motor vehicles, bracket housing, glove box locking etc. The issue under consideration was whether above-mentioned goods are classifiable under Heading 3926 or Heading 8708.<br><br>The AAR observed that the goods qualify as 'parts of general use of plastic' as defined under Explanatory Notes to Chapter 39. Such goods are specifically excluded from Section Note 2 to Section XVII. Hence, the goods shall be classifiable under Heading 3926 and exigible to GST rate at 18 percent. |
| ***NITYA Comments:*** *We have highlighted the detailed reasoning for classification of parts of automobiles in our update* ***NITYA's Outlook \| Issue 28 \| Classification of parts & accessories of motor vehicles, dated August 14, 2019****.* | |

## 3. Input Tax Credit (ITC) and related issues

| Applicant | Relevant facts and observations of AAR |
|---|---|
| ***Konkan LNG Private Limited, 2019-VIL-196-AAR (MAH)*** | The Applicant was engaged in regassification of LNG. Notably, LNG was supplied to plant through jetty and captive jetty was situated in sea. The existing break water wall adjacent to jetty, was constructed. The question before the AAR was eligibility of ITC on construction of breakwater wall.<br><br>The AAR observed that in order to qualify as part of regassification plant, the Applicant should have evidenced that the plant cannot function without the breakwater wall. The Applicant was not able to evidence the same. In light of the same, the AAR held that breakwater wall is a civil structure on which ITC will be restricted under Section 17(5) of the CGST Act.<br><br>***NITYA Comments:*** *This ruling is important to the extent that it acknowledges that a civil structure can be an integral part of plant and machinery on which ITC is eligible if the taxpayer establishes the same. Hence, ITC on civil structure component in cooling towers, ETPs, STP etc. can be explored on the ground that the civil structure component qualifies as part of plant and machinery.* |
| ***Golden Tobacco Limited, 2019-VIL-185-AAR (MAH)*** | The Applicant was manufacturer of cigarettes. It intended to offer various promotional schemes such as supply of additional quantity with regular packs without recovering extra consideration from distributors / customers.<br><br>**Issue 1:** The question before the AAR was whether supply of additional quantity with regular packs, liable to GST.<br><br>The AAR held that supply of additional quantity with regular packs shall be treated as supply of two goods for single price and rate of GST would depend on the fact whether it takes the character of a composite supply or a mixed supply.<br><br>**Issue 2:** The second question before the AAR was whether ITC shall be available for extra packets of cigarettes. The AAR answered affirmatively and held that extra packets of cigarettes will not be treated as free samples / exempt supplies and will qualify for ITC.<br><br>***NITYA Comments:*** *The ruling is correct and also supported by* ***Circular No. 92/11/2019-GST dated March 7, 2019*** *(Refer:* ***NITYA's Insight \| Issue 13 \| Clarifications on GST treatment of sales promotion schemes*** *dated* ***March 13, 2019*** *for detailed update on the Circular).* |
| ***Sanofi India Limited, 2019-VIL-176-AAR (MAH)*** | The Applicant was a manufacturer of pharmaceuticals products. To promote its brand, the Applicant offered promotional schemes such as Shubh Labh Loyalty Program ('Scheme') and distributed various goods with its name embossed on it. The question before the AAR was whether ITC on expenses incurred towards such promotional activities is admissible or not. |

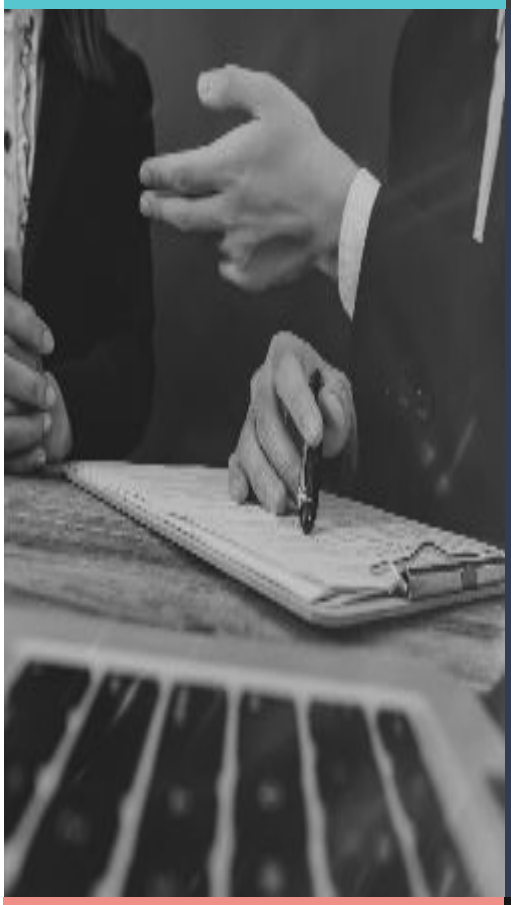
| | |
|---|---|
| | The AAR answered the above in negative and observed that the Applicant will be considered to have been giving gifts to the extent of such free goods. Hence, ITC will not be available in terms of Section 17(5)(h) of the CGST Act.<br><br>***NITYA Comments:*** *The ruling is incorrect since the same does not consider the fact that the goods were provided by the Applicant as a contractual obligation (as agreed by it in the Scheme). Hence, the goods will not qualify as gifts or free samples and credit will be available on the same.* |
| ***All Rajasthan Corrugated Board and Box Manufacturers Association, 2019-VIL-207-AAR (RAJ)*** | The Applicant was an association, engaged in the upliftment and technological advancement of Corrugation Industry. It conducted various conferences and exhibition for its members. The Applicant charged registration fee and offered various facilities such as technical seminars, access to exhibition, accommodation, lunch and dinner, airport pick and drop etc. to the delegates. The Applicant also collected fee from members to showcase their products.<br><br>The AAR held as under:<br><br>• The services provided by the Applicant will be a composite supply, with classification under SAC 998596 as *'Events, exhibitions, conventions and trade shows organizations and assistance services'*. Hence, the Applicant will be liable to pay GST on such service under forward charge.<br><br>• The services offered to the vendors to participate in the trade fair and showcase their products, will be brand promotion service and not sponsorship service (covered under SAC 998397). Hence, the Applicant will be liable to pay GST on such service under forward charge.<br><br>• The Applicant will be eligible to avail credit on food and beverages and rent-a-cab service since it will use such inward supplies as an element of outward supply of event organization which is a composite supply.<br><br>***NITYA Comments:*** *The ruling is correct. Notably, in another ruling in the case of* ***Grasshopper Production, 2018-VIL-216-AAR****, the AAR held that where event management services are provided to a registered person, the place of supply of such services shall be the location of recipient. It is notable that this AAR allowed credit on food and beverage service and rent-a-cab service availed for organizing the event. Reading the rulings together, the taxpayers can consider engaging an event management company for organizing its events to get full credit on all event related expenses.* |
| ***Chowgule Industries Private Limited, 2019-VIL-213-AAR (GOA)*** | The Applicant was an authorised dealer of an automobile company as well as undertaking servicing of the vehicles. It purchased demo vehicles for providing trial run to the customers whose value was capitalised in the books of account. The issue under consideration was whether it can claim ITC on purchase of demo cars or not. |

| | |
|---|---|
| | The AAR answered in positive and observed that demo car is an indispensable tool for promoting the sales. Hence, such cars are used in the course or furtherance of business and held that ITC on demo cars is admissible.<br><br>***NITYA comments:*** *The ruling has correctly allowed credit on demo cars, though it does not consider the restriction of availment of credit on motor vehicle. The restriction will not apply in this case since demo cars are subsequently sold by the car dealers, as discussed in the advance ruling in the case of* ***AM Motors, 2018-VIL-197-AAR*** *highlighted in our update* ***NITYA's Insight \| Legal Precedents' Series_ Issue 2 (Advance Rulings)*** *dated* ***January 23, 2019****).* |
| ***Chowgule and Company Private Limited, 2019-VIL-214-AAR (GOA)*** | The Applicant proposed to execute a contract with foreign client for conversion of iron ore into pellets where the client supplied iron ore. The Applicant exported pellets to the foreign clients. The following issues were under consideration:<br><br>• In case IGST is paid on import of iron ore, whether ITC of such IGST will be admissible; and<br>• Whether refund of unutilised ITC will be available.<br><br>The AAR observed that since the imported goods are used in furtherance of business, ITC will be admissible.<br><br>The AAR further observed that the activity undertaken by Applicant, qualifies as export of service. However, as per Section 54 of the CGST Act, refund of unutilised ITC is not allowed where exported goods attract export duty. The AAR held that since iron ore pellets attract export duty (which is presently Nil), refund of unutilized ITC shall not be available.<br><br>***NITYA comments:*** *The ruling is incorrect to the extent that in this case, the Applicant was making export of job-work service and not goods. The restriction under Section 54 apply where goods are being supplied and such goods attract export duty. Hence, the ruling is incorrect to the extent it disallows refund of ITC relating to export of service.* |

## 4. Intermediary

| Applicant | Relevant facts and observations of AAR |
|---|---|
| ***Mayank Jain, 2019-VIL-220-AAR (MAH)*** | The Applicant was rendering marketing and intelligence services to regional centres, approved and recognised by USA Government. The question before the AAR was whether marketing services under the Foreign Immigration Advisor to the Consultant Manager, constitutes a supply of 'Support service' or 'Intermediary service'. Similar question was posed in respect of handholding services to be supplied by the Applicant under the Foreign Immigration Advisor Agreement. |

| | |
|---|---|
| | The AAR observed that the Applicant's services are not confined to marketing the project but it is acting as a facilitator between the consultant and the investor. Further, in respect of handholding services, the Applicant undertakes all the activities commencing from filling up the various documents up to advising on obtaining permanent residence in USA. Basis above, the AAR held that these services comes under the ambit of 'intermediary service' and not 'support services'.<br><br>***NITYA comments:*** *The ruling is incorrect since the primary service in this case was that of an immigration consulting service and not intermediary service. The facilitation of investment and filling of forms was only incidental to the primary objective of providing end to end solution of immigration consulting. Thus, the service should have been categorized as support service only.* |




**Call us**
+91 11 41091200-02

**Mail us**
updates@nityatax.com
info@nityatax.com

**Send us a postcard**
NITYA Tax Associates,
B-3/58, 3rd Floor,
Safdarjung Enclave,
New Delhi-110029
www.nityatax.com