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tax associates

# **NITYA | Indirect Tax Bulletin**

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# Index

<b>LEGAL PRECEDENTS</b> .....	<b>3</b>
<b>PART A: SUPREME COURT ORDERS</b> .....	<b>3</b>
1. Classification of 'seat parts' .....	3
<b>PART B: ADVANCE RULINGS</b> .....	<b>3</b>
1. GST on Supply of Vouchers .....	3
2. GST on transfer of business as 'Going Concern' .....	4
3. GST on recovery of subsidized canteen expenses from employees .....	4
4. Qualification as Restaurant Service .....	5
<b>OTHER UPDATES</b> .....	<b>6</b>
<b>PART A: RECENT NOTIFICATIONS</b> .....	<b>6</b>
1. Extension of time limit for annual updation of Import Export Code.....	6
<b>RECENT NEWS</b> .....	<b>7</b>
1. Tribunals with high pendency abolished; Bill passed in monsoon session reduces tribunals from 36 to 15 .....	7
2. Exporters to get new duty refund scheme this week.....	7
3. GST Council focus on pruning exemptions, fixing anomalies .....	7

# LEGAL PRECEDENTS

## PART A: SUPREME COURT ORDERS

### 1. Classification of 'seat parts'

The Respondent imported parts of seats and classified it under Heading 9401 (covering seats and part thereof) of the First Schedule to the Customs Tariff Act, 1975 ('CTA'). The revenue objected to the classification and proposed classification under Heading 8708. The Respondent preferred an appeal before the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT').

The CESTAT observed that the Respondent was importing parts of seats specifically covered in Heading 9401 by name. For a product to be covered under Heading 8708, goods must satisfy 3 conditions cumulatively viz. goods are not specifically excluded by Note 2, goods are suitable for use solely or principally with articles of Chapter 86 to 88 and goods are not specifically included elsewhere by nomenclature. Since seat parts are specifically covered by name in Heading 9401, they will not merit classification under Heading 8708.

The revenue preferred an appeal before the Supreme Court which dismissed it on merits, upholding the CESTAT's order.

***CCE v. Shiroki Auto Components, Civil Appeal No 1623 of 2021***

*NITYA Comments: The Supreme Court's dismissal order is first decision after decision of Larger Bench of the Supreme Court in the case of **Westinghouse Saxby Farmer Limited v. CCE, 2021-VIL-33-SC-CE** and lays emphasis on third test (coverage of goods by nomenclature in other Headings). This test was not discussed in *Westinghouse (supra)* case.*

## PART B: ADVANCE RULINGS

### 1. GST on Supply of Vouchers

The Applicant was engaged in rendering marketing services. It purchased vouchers from third party and supplied it to customers who in turn distributed them. Vouchers included Gift Vouchers, Cash Back Vouchers and E-Vouchers with multiple redemption options.

The Applicant sought advance ruling from the Authority for Advance Ruling ('AAR') on whether activity of providing vouchers is taxable or not and time of supply thereof.

The AAR observed that instruments issued by the Applicant squarely qualify as 'vouchers' under Section 2(118) of the Central Goods & Services Tax Act, 2017 ('CGST Act'). It held that such instruments do not qualify as 'money' being not used at this stage as consideration for settling an obligation. It will assume character of money when used towards consideration. Further, these instruments do not qualify as actionable claim as they are not debt and expires after given time frame. Basis this, the AAR held that the transaction amounts to supply of goods under Section 7(1)(a) of CGST Act and attracts 18%

GST under residual entry at **S. No. 453 of Schedule III to Notification No. 1/2017-Central Tax dated June 28, 2017.**

**Premier Sales Promotion Private Limited, 2021-VIL-283-AAR**

***NITYA Comments:** This ruling is incorrect as the AAR ignored the fact that Vouchers are pre-paid instruments and hence money. The fact that marketing company procured vouchers for its customers does not alter nature of vouchers. We discussed this issue in detail in our update [NITYA I Indirect Tax Bulletin I April 2021 I Week 2.](#)*

## **2. GST on transfer of business as 'Going Concern'**

The Applicant was engaged in provision of Cable Operation services. It entered into Business Transfer Agreement ('BTA') with purchaser operating similar business. *Vide* BTA, the Applicant sold, transferred and conveyed entire cable operation business including all rights, titles, interest, local cable operators, assets etc. on going concern basis for lumpsum consideration. However, the Applicant did not transfer employees and past liabilities (liabilities arising out of business transactions entered in past).

The Applicant sought advance ruling on whether it is entitled to GST exemption on such transfer of business as going concern in terms of S. No. 2 of **Notification No. 12/2017-CT dated June 28, 2017**, namely 'Services by way of transfer of a going concern as a whole or an independent part thereof'.

The AAR observed that there is transfer of business as a 'going concern' when the transferred business activity is capable of running independently for foreseeable future. Further, liabilities are mandatorily required to be transferred so as to qualify transfer to be going concern. Basis the above, the AAR held that GST exemption is not available on this transaction.

**SCV Sky Vision, 2021-VIL-294-AAR**

***NITYA Comments:** This ruling is incorrect as it failed to consider that non-transfer of past liabilities will not affect ability to continue transferred business as 'going concern'. There is ample jurisprudence on this issue that there is no requirement to transfer all assets and liabilities to qualify transfer as 'going concern' which was ignored while rendering this ruling.*

## **3. GST on recovery of subsidized canteen expenses from employees**

The Applicant had a canteen at its premises. The Applicant procured canteen services from a contractor and provided it to its employees at subsidized rate.

The Applicant sought advance ruling on whether provision of food to employees at subsidized cost qualifies to be supply or not.

The AAR observed that to the extent of recovery of canteen expenses from employees, the Applicant paid such amount to contractor on behalf of employees. Therefore, such activity does not qualify as supply. Hence, the Applicant is not liable to pay GST.

**Dakshina Kannada Co-Operative Milk Producers, 2021-VIL-285-AAR**

*NITYA Comments: This ruling is incorrect since contractor was providing services wholly to the Applicant. In turn, the Applicant was providing services to its employees at subsidized cost. Thus, the Applicant was required to pay GST on amount recovered from its employees.*

#### 4. Qualification as Restaurant Service

The Appellant was engaged in business of baking and selling of bakery products viz. cakes, artisan cakes, pastries, pizza, patties etc. While majority of products were prepared in workshops nearby outlets, customers had option of customization of products at outlets. The customers had an option to either eat products in outlets itself or to take away. Outlets were providing self-service facility where customers opted to eat in outlets.

The Appellant sought advance ruling on whether its activity will qualify as 'Restaurant Service'. The AAR held that supply qualifies as composite supply of restaurant service under S. No. 6(b) of Schedule II to the CGST Act as the Appellant was supplying items of food to customers as part of service by allowing eating at outlets.

Aggrieved by the AAR, the revenue filed an appeal before the Appellate Authority for Advance Ruling ('AAAR') on the ground that service provided by the Appellant does not qualify as 'Restaurant Service'.

The AAAR observed that natural meaning of term 'Restaurant' implies a place where meals are prepared and served to customer. The supplies by the Appellant are in nature of 'take away' as most of the items were not prepared in the outlet. Hence, the Appellant's establishment cannot be considered as 'Restaurant'. Accordingly, the AAAR reversed order of the AAR and held that supply by the Appellant will not qualify as 'Restaurant Service'.

**Pioneer Bakers, 2021-VIL-36-AAAR**

*NITYA Comments: This ruling is incorrect to the extent that the Appellant was serving food in Outlets. There is no condition of cooking of food for an Outlet to qualify as restaurant. Since the Appellant was offering place to customers to sit and eat food, it provided ambiance to customers eating food at Outlets. Hence, to the extent of food served in Outlets, the Appellant was providing restaurant service.*

# OTHER UPDATES

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## PART A: RECENT NOTIFICATIONS

### 1. **Extension of time limit for annual updation of Import Export Code**

The Directorate General of Foreign Trade ('DGFT') recently introduced Para 2.05 of FTP which mandates Importers / Exporters to update Import Export Code ('IEC') / acknowledge that there is no amendment in IEC till June 30 of each year. The DGFT has extended time limit to **August 31, 2021**. No late fee will be charged for modification of IEC done till **August 31, 2021**.

***Notification No. 16/2015-20 dated August 9, 2021***

## RECENT NEWS

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1. **Tribunals with high pendency abolished; Bill passed in monsoon session reduces tribunals from 36 to 15**

<https://economictimes.indiatimes.com/news/india/tribunals-with-high-pendency-abolished/articleshow/85282187.cms?from=mdr>

2. **Exporters to get new duty refund scheme this week**

<https://timesofindia.indiatimes.com/business/india-business/exporters-to-get-new-duty-refund-scheme-this-week/articleshow/85358436.cms>

3. **GST Council focus on pruning exemptions, fixing anomalies**

<https://www.livemint.com/economy/gst-council-to-look-at-pruning-exemption-list-fix-anomalies-revenue-secretary-11628670428056.html>

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