

“FULL DAY SEMINAR ON RECEIVED ISSUES IN GST”



**ORGANIZED BY
NASHIK BRANCH OF
WIRC OF ICAI**

PRESENTED BY

 **RAJIV LUTHIA**

AN INVESTMENT IN KNOWLEDGE PAYS THE BEST RETURN

COVERAGE

- **ADVANCE RULING UNDER GST**



12th May, 2018

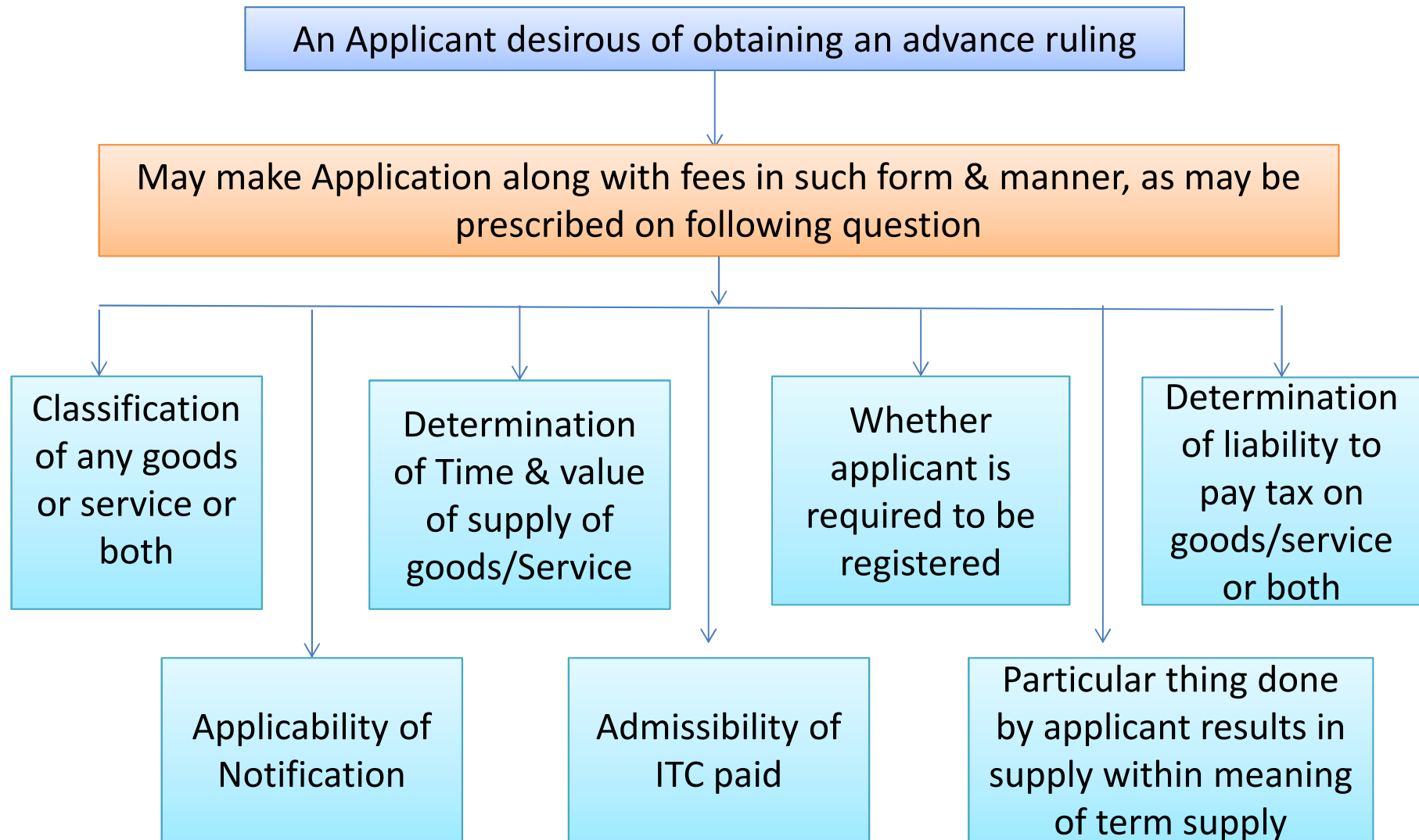


CA Rajiv Luthia

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ADVANCE RULING

Application for Advance Ruling – Sec 97

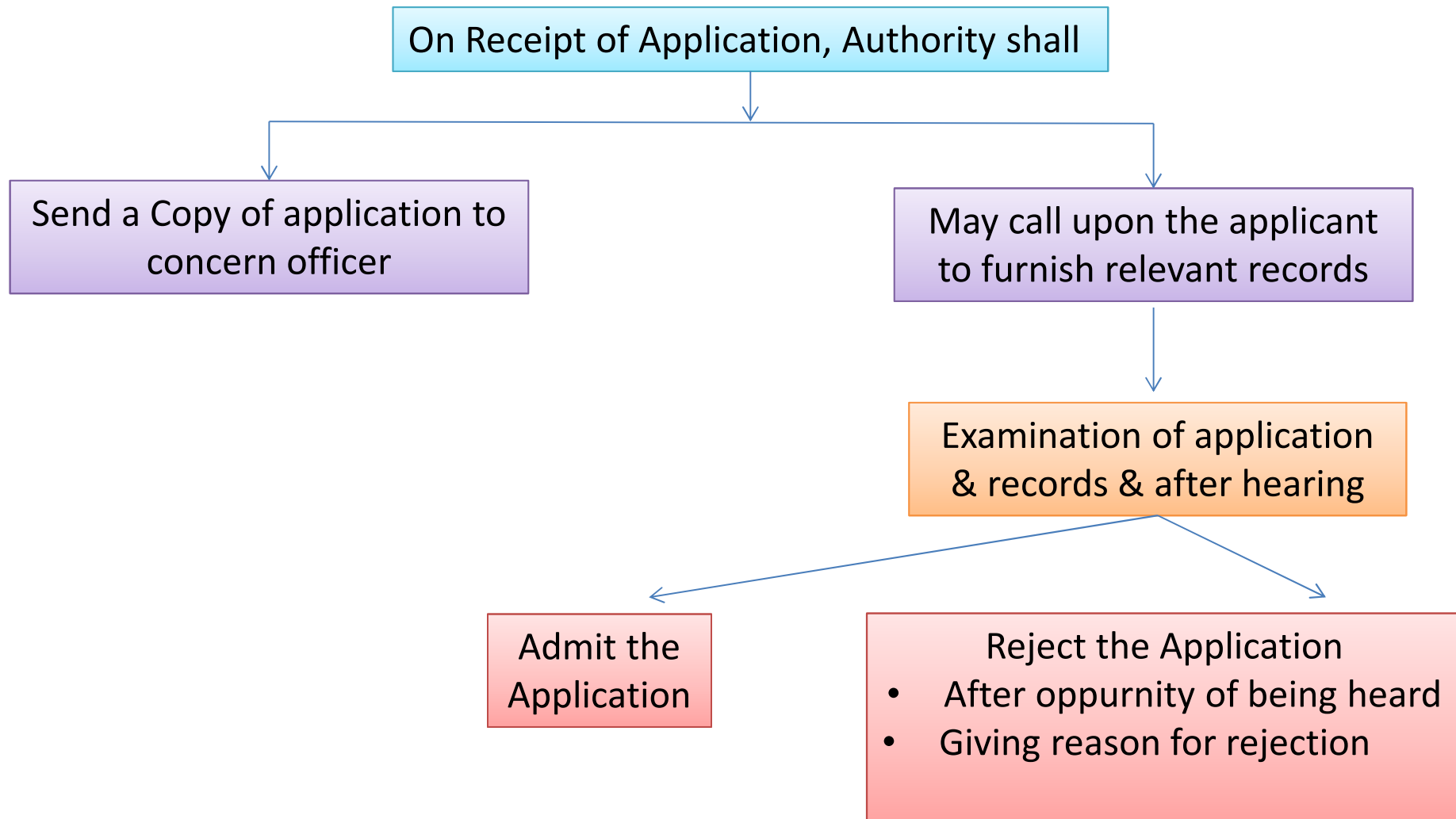


- No AAR for determining “Place of Supply”

Advance Ruling – Section 95(a)

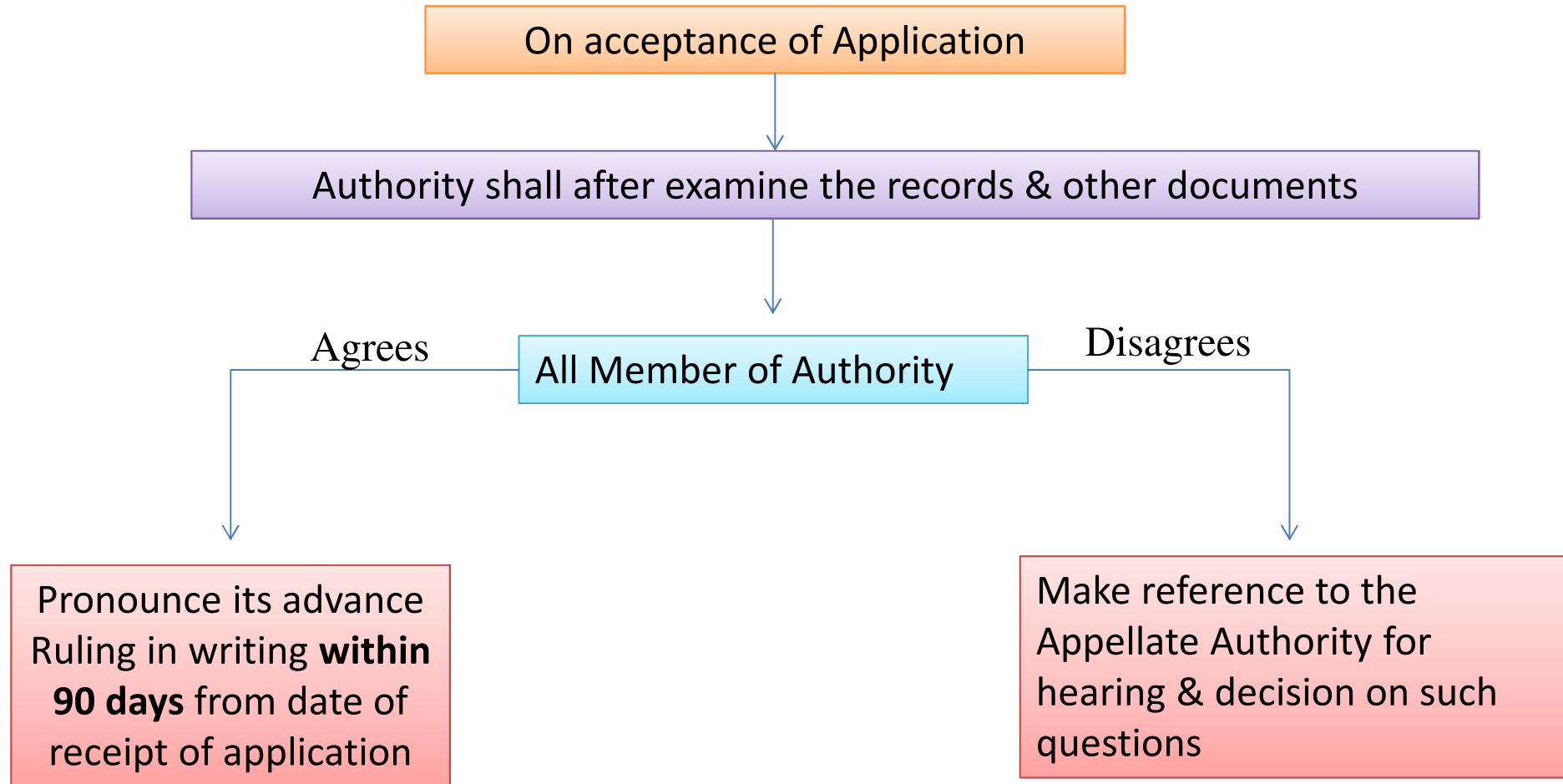
- **“Advance Ruling”** means a decision provided by the Authority or the Appellate Authority to an applicant on matter or on questions specified in section 97(2) or 100(1), in relation to supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Procedure for Advance Ruling – Sec 98



- Authority **shall not admit the application** where the question raised in application is already pending or decided in any proceeding in the case of applicant

Procedure for Advance Ruling – Sec 98



Appeal to Appellate Authority – Sec 100

Applicant/Concern jurisdictional officer aggrieved by pronouncement of Authority

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graph TD; A[Applicant/Concern jurisdictional officer aggrieved by pronouncement of Authority] --> B[May Appeal to Appellate Authority within 30 days from date of ruling sought to be appealed against is communicated]; B --> C[Appeal shall be in such form & accompanied by such fees as may be prescribed];
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May Appeal to Appellate Authority within 30 days from date of ruling sought to be appealed against is communicated

Appeal shall be in such form & accompanied by such fees as may be prescribed

Order of Appellate Authority – Sec 101

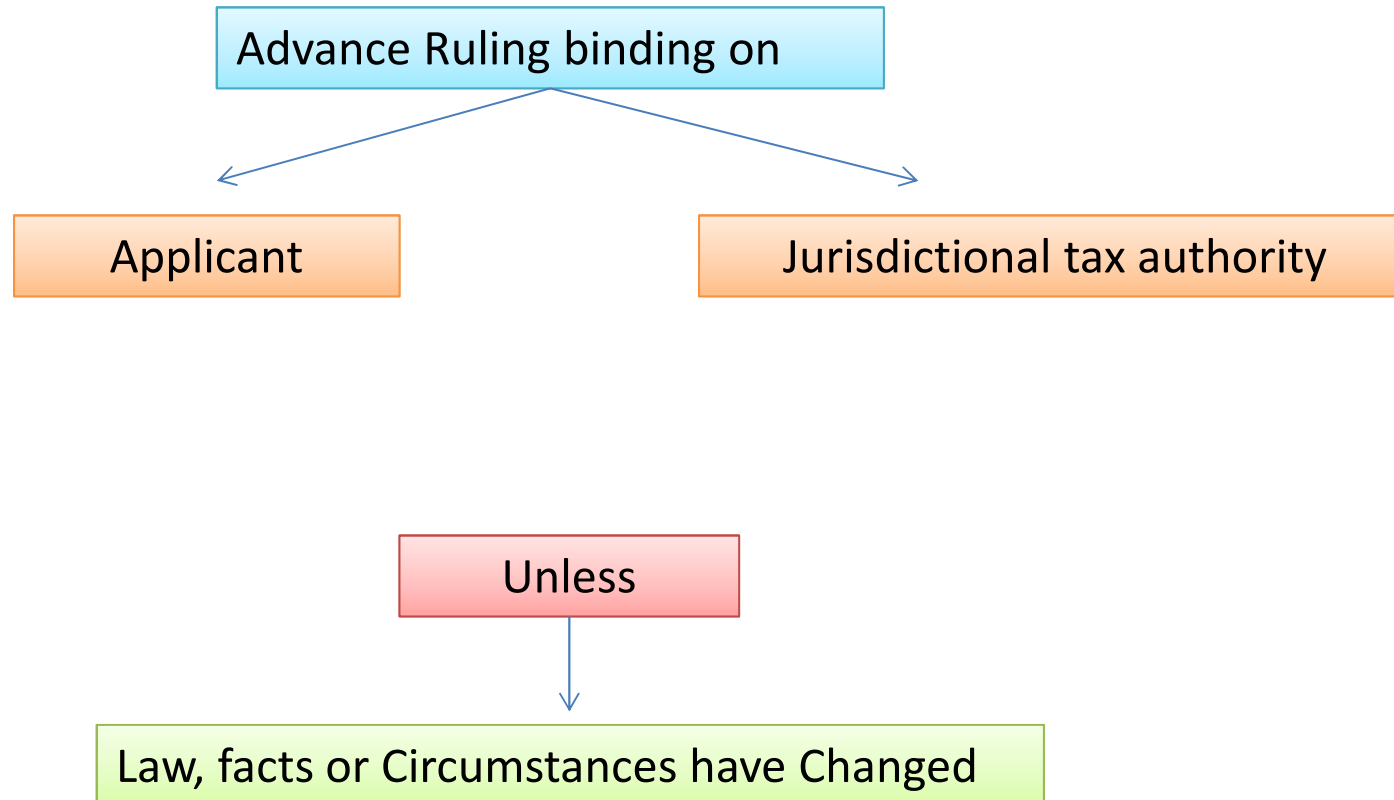
Appellate Authority after giving opportunity of being heard

Pass Such order **within 90 days** as it thinks fit, confirming or modifying the ruling appealed against

Appellate authority may amend any order passed by it **within 6 months** from the date of order , if error is apparently noticed on face of records

- If Member of Appellant Authority differs on any points, it shall deemed that **no advance ruling** can be issued in respect of question appealed against.

Applicability of advance Ruling – Sec 103



Ruling Void *ab initio* – Sec 104

- If Authority/ Appellant Authority finds ruling obtained by the applicant by fraud / misrepresentation / suppression of facts.
- It may by order declare advance ruling as void-ab-initio, after giving an opportunity of being heard
- All provisions of the Act or rules made thereunder shall apply as if such advance ruling had never been made.

FEW IMPORTANT ADVANCE RULINGS IN GST

M/S CALTECH POLYMERS PVT. LTD. – 2018-TIOL-01-AAR-GST, KERALA – order dated 26th March, 2018

➤ ISSUE

- Whether recovery of food expenses from employees for the canteen services provided by company is **outward supplies** ?
- Whether liable to GST ?

M/S CALTECH POLYMERS PVT. LTD. – 2018-TIOL-01-AAR-GST, KERALA

➤ FACTS

- M/s. Caltech Polymers Pvt. Ltd., Kerala are engaged in manufacture and sale of footwear.
- They are providing canteen services exclusively for their employee
- They are incurring the canteen running expenses and are recovering the same from their employees without any profit margin.

M/s Caltech Polymers Pvt. Ltd.

➤ FACTS

- Canteen Service provided to the employee is not being carried out as a business activity.
- As per section 46 of The Factories Act, 1948, any factory employing more than 250 workers is required to provide canteen facility to its employees.

M/s Caltech Polymers Pvt. Ltd.

➤ APPLICANT'S VIEW

- Entry 19 of Notification 25/2012-ST dated 20th June, 2012 **exempts** *service provided in relation to serving of food or beverage by a canteen maintained in a factory covered under the Factories Act, 1948 including a canteen having the facility of Air-conditioning or central air heating at any time during the year.*

Advance Ruling – M/s Caltech Polymers Pvt. Ltd.

➤ APPLICANT'S VIEW

- The said activity does not fall within the scope of “Supply” as the same is not in course or furtherance of its business.
- It is only facilitating the supply of food to the employees, which is a statutory requirement, and they are recovering only the actual expenditure incurred for food supply, without making any profit.

Advance Ruling – M/s Caltech Polymers Pvt. Ltd.

➤ Authority's view

- Section 2(17) - "Business" includes:-
 - (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit:
 - (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- From plane reading of section 2(17), supply of food by the applicant to its employee would fall under definition of Business, as the transaction is incidental or ancillary to main business

M/s Caltech Polymers Pvt. Ltd.

➤ Authority view

- [Schedule II](#) to the [CGST Act, 2017](#) describes the activities to be treated as supply of goods or supply of services.
- As per clause 6 of the said Schedule, the following composite supply is declared as supply of service: *"supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration"*

Advance Ruling – M/s Caltech Polymers Pvt. Ltd.

➤ Authority's view

- Even though there is no profit as claimed by the applicant on the supply of food to its employees, there is "supply" in view of [Section 7\(1\)\(a\)](#) of the [CGST Act, 2017](#)
- Section 2(105) of CGST Act, *“Supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied*
- The applicant would definitely come under the definition of "Supplier" as provided in [sub-section \(105\) of Section 2](#) of the [CGST Act, 2017](#).

M/s Caltech Polymers Pvt. Ltd.

➤ Authority view

- Section 2(31) of CGST Act, 2017 - *“Consideration” in relation to the supply of goods or services or both includes—*
 - *(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*
 - *(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*
- Since, Applicant recovers the cost of food from its employees, there is consideration as defined in [Section 2\(31\)](#) of the [CGST Act, 2017](#).

Advance Ruling – M/s Caltech Polymers Pvt. Ltd.

➤ RULING

- Recovery of food expenses from the employees for the canteen services provided by company would be covered under the definition of 'outward supply' as defined in [Section 2\(83\)](#) of the [CGST Act, 2017](#), and therefore, taxable as a supply of services under GST.

Advance Ruling – M/s Caltech Polymers Pvt. Ltd.

- **Issues**

- Snacks , Tea, Coffee etc. provided to employees during office hours as a general business practice without any consideration
- Umbrellas, Rain Coats etc. provided to employee without any consideration
- Employer & employee are “Related person” in view of section 15(5).
- Schedule I of section 7 treat transaction without consideration as supply of goods/service between related person when made in course or furtherance of business.
- Valuation rules will trigger.

M/s Joint Plant Committee -2018- TIOL-07-AAR- GST, Kolkata, order dated 21st March, 2018

➤ ISSUE

- Whether a person is required to obtain registration, if he is engaged in supplying goods & services that are wholly exempt from tax but person is liable to pay tax under reverse charge mechanism u/s 9(3) ?

Advance Ruling – M/s Joint Plant Committee

➤ FACTS

- M/s Joint Plant Committee, a non profit organization set up by the Central Government under Clause 17 of the Iron & Steel (Control) order.
- The main function of M/s Joint Plant committee is to
 - manage and operate the Steel Development Fund and other funds accumulated under the Iron & Steel (Control) Order, 1956;
 - study and analysis of and maintenance of a comprehensive database on market situation in the Iron & Steel Sector including fluctuation in market price, production, availability and movement of material etc.

Advance Ruling – M/s Joint Plant Committee

➤ FACTS

- The main source of appellants income is money given out of Steel Development fund resulting in
 - Interest on deposit and
 - Interest on loan.
- The secondary source of income is
 - the consideration received from sale of journals and periodicals and from
 - Rent received for providing accommodation in its guest houses.

Advance Ruling – M/s Joint Plant Committee

➤ APPLICANTS VIEW

- Its income is exempt under section 10(23C) (IV) of the Income Tax Act, 1961.
- The nature and type of charitable institutions and/or organizations registered under section 12AA of the IT Act and the charitable institutions and/or organizations registered under section 10(23C)(iv) of the IT Act are same and identical, and, therefore, all its supplies of services should come under serial no. 1 of the Notification No. 12/2017 – Central Tax (Rate) & are therefore exempt.

Advance Ruling – M/s Joint Plant Committee

➤ AUTHORITYS VIEW

- Exemption under serial no. 1 of Notification 12-2017 CT[®] (R) for Services is granted for charitable activities within the meaning of definition clause (r) of the said notifications
- The following activities are covered in said notification
 - activities relating to public health of specific categories,
 - advancement of religion, spirituality or yoga,
 - advancement of educational programmes or skill development relating to specific categories and
 - preservation of environment, including watershed, forests and wildlife

Advance Ruling – M/s Joint Plant Committee

➤ AUTHORITY VIEW POINT

- None of the applicant's services are cover under this clause. Serial no. 1 of the Exemption Notifications for Services is, therefore, not applicable.
- Serial Number 14 of Notification 12/2017-CT is grants exemption to exemption to accommodation in guest house if declared tariff is below Rs. 1,000/-

Advance Ruling – M/s Joint Plant Committee

➤ AUTHORITY VIEW POINT

- Since applicant provide guest house accommodation at declared tariff below Rs. 1,000/- per day it will be covered by the said exemption notification
- Supply of journal & periodicals are wholly exempt under serial no. 120 of notification 2/2017-CT (R) – Tariff head : 4907

Advance Ruling – M/s Joint Plant Committee

➤ AUTHORITY VIEW POINT

- Applicant main income of interest on deposits, loans or advances is exempt under serial no. 27 of Exemption notification 12/2017
- Therefore, applicants income is wholly exempt under GST, applicant need not register as per section 23(1).

Advance Ruling – M/s Joint Plant Committee

➤ AUTHORITY VIEW

- However, if the applicant is required to pay tax under reverse charges under section 9(3) of CGST Act, 2017, will he require to get registered as per section 24(iii) inspite of fact that his total turnover is exempt under exemption notification?
- Reverse charge is defined under section 2(98) of the GST Act as “liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both u/s 9(3) or 9(4).

Advance Ruling – M/s Joint Plant Committee

➤ RULING

- Person is not required to be obtain registration under the GST if he is **not otherwise** liable to pay tax under reverse charge under section 9(3) of the GST Act.

Advance Ruling – M/s Joint Plant Committee

➤ AUTHORITY VIEW POINT

- Section 24 is not subject to the provisions of Section 23 of the GST Act.
- If a person, therefore, is not liable to be registered for making exclusively exempt supplies but is liable to pay tax under Reverse Charges under Section 9(3) of the GST Act or 5(3) of the IGST Act, **he shall be required to get himself registered** under the GST Act, irrespective of the quantum of the aggregate turnover.

M/s Synthite Industries Ltd 2018-TIOL-02-AAR-GST, KERALA, order dated 26th March, 2018

➤ Issue

- Whether GST is payable on sale of goods procured from outside India & supplied directly to customer located out of India ?

Advance Ruling – M/s Synthite Industries Ltd

➤ Facts

- M/s Synthite Industries Ltd are in the business of trading in spices and spice products.
- **Transaction 1 :**
 - They receives order from a customer in USA for the supply of spice products.
 - They place a corresponding order to a supplier in China for supplying the goods ordered by the customer in USA.
 - The supplier in China, based on the request of the applicant, ship the goods directly to the customer in USA.
 - In other words, the goods do not come to India.
 - The Chinese supplier issues invoice to the applicant, for which, payment will be made by the applicant in due course. Subsequently, the applicant will raise invoice on the customer in USA, and collect the proceeds.

Advance Ruling – M/s Synthite Industries Ltd

➤ Facts

• Transaction 2 :

- They avail storage facility in the form of a presidential warehouse in Netherlands for storing their products and subsequent delivery to their customers in and around Netherlands.
- The storage facility is open to all, and interested entities across the globe can keep their products, by paying applicable storage rent. The applicant is availing a portion of the storage facility as and when required.
- They use the facility for quick and timely delivery of their products to their customers based on demand.
- When an order is received from the customer by the applicant, they can immediately deliver the products from this warehouse and this reduces the freight expenses and delay in delivery.
- These types of transactions are legally permitted and they have obtained necessary permission from Reserve Bank of India.

Advance Ruling – M/s Synthite Industries Ltd

➤ Facts

- Whether on procuring goods from China, in a context where the goods purchased are not brought into India, is GST payable by them?
- On the sale of goods to the company in USA, where goods sold are shipped directly from China to USA without entering India, is GST payable by them?
- On procuring goods from China not against specific export order, in a context when the goods purchased are not brought into India, is GST payable by them
- On the sale of goods from Netherlands warehouse to their end customers in and around Netherlands, without entering India, is GST payable by them?

Advance Ruling – M/s Synthite Industries Ltd

➤ Authority view point

- As per Section 2(10) of the IGST 2017, *“Import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India*
- *As per 7(2) of the IGST Act, 2017, supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-state trade or commerce.*

Advance Ruling – M/s Synthite Industries Ltd

➤ Authority view point

- *Section 5(1) of the IGST Act, 2017 states that, subject to the provisions of sub - section (2), there shall be levied a tax called the integrated goods and services tax in all inter-state supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under Section 15 of the Central Goods and Services Tax Act, and at such rates, not exceeding forty percent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*

***Provided that** the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975, on the value determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962*

Advance Ruling – M/s Synthite Industries Ltd

➤ Authority view point

- The Customs Tariff Act, 1975 was amended by The Taxation Laws Amendment Act, 2017 by introducing section 3(7) of the Customs Tariff Act, 1975 with effect from 01.07.2017 to enable collection of integrated tax on the goods imported
- From a combined reading of the above provisions of the IGST Act, 2017, the Customs Tariff Act, 1975, and the Customs Act, 1962, it is evident that the integrated tax on goods imported into India shall be levied and collected at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 i.e. on the date determined as per provisions of Section 15 of the Customs Act, 1962.

Advance Ruling – M/s Synthite Industries Ltd

➤ Authority view point

- When a question regarding the leviability of IGST on High Sea Sales of imported goods and point of collection thereof was raised before the CBEC, the CBEC vide Circular No. 33/2017-Customs dated 01.08.2017 had clarified that IGST shall be levied & collected only at the time of importation i.e. when import declaration are filed before the customs authority for custom clearance.

Advance Ruling – M/s Synthite Industries Ltd

➤ Ruling

- The goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India.
- The applicant is neither liable to GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in Netherlands, after being procured from China, to customers, in and around Netherlands, as the goods are not imported into India at any point

Advance Ruling – M/s Synthite Industries Ltd

➤ Issue

- Territorial jurisdiction for levy on supply
- “export of goods” – With its grammatical variation & cognate expression, means taking goods out of India to a place out of India

M/s Switching Avo Electro Power Ltd- 2018-TIOL-05-AAR-GST, Kolkata, order dated 21st March, 2018

➤ Issue

- Whether supply of UPS along with the battery is composite supply u/s 2(30) or Mixed Supply u/s 2(74)?

Advance Ruling – M/s Switching Avo Electro Power Ltd

➤ Facts

- Company is engaged in business of supplying Power Solutions, including UPS, Servo Stabiliser, batteries etc.
- They supply UPS & battery separately as well as UPS along with batteries.
- Batteries are classified under Tariff Heads 8506 (Primary cells/ batteries) and 8507 (Electrical accumulators) of the First Schedule of the Tariff Act.
- The basic difference between the two Tariff Heads is the ability of accumulators to be recharged, whereas primary cell batteries cannot be recharged.
- An accumulator is an energy storage device, which accepts energy, stores it and releases it when needed. Rechargeable batteries, flywheel energy storage, capacitors etc. are examples of accumulators. In common usage in an electrical context, an accumulator usually refers to a lead-acid battery.

Advance Ruling – M/s Switching Avo Electro Power Ltd

➤ Facts

- A UPS is classified under Tariff Head 8504.
- It is an electrical apparatus that provides emergency power to a load when the input power source or mains power fails. A UPS differs from an auxiliary or emergency power system or standby generator in that it provides immediate protection from input power interruptions by supplying energy stored in batteries, super capacitors or flywheels. The on-battery runtime of most UPS is relatively short but sufficient to start a standby power source or properly shut down the protected equipment. A UPS is typically used to protect hardware such as computers, data centres, telecommunication equipment or other electrical equipment where an unexpected power disruption could cause injuries or data loss.

Advance Ruling – M/s Switching Avo Electro Power Ltd

➤ Authority View Point

- Section 2(30) of the GST Act defines “Composite Supply” as *“a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply”*.
- Principal Supply is defined under Section 2(90) of the GST Act as *“the supply of goods/services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary”*

Advance Ruling – M/s Switching Avo Electro Power Ltd

➤ Facts

- The UPS serves no purpose if the battery is not supplied or attached. It cannot function as a UPS unless the battery is attached

Advance Ruling – M/s Switching Avo Electro Power Ltd

➤ Authority View Point

- “Mixed supply” is defined under section 2(74) of the GST Act as one where *“two or more individual supplies of goods/services or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply”*

Advance Ruling – M/s Switching Avo Electro Power Ltd

➤ Authority View Point

- Since UPS & batteries can be separately supplied in retail set up. A person can purchase standalone UPS & a battery from different vendors. Therefore, it is obvious that the UPS & battery have separate commercial values as goods & should be taxed under respective tariff heads when supplied separately.
- Even if UPS & batteries are supplied together for a single price under a single contract, still it cannot be termed as composite supply. They are not naturally bundled in ordinary course of business.

Advance Ruling – M/s Switching Avo Electro Power Ltd

➤ RULING

- Supply of UPS & battery is to be considered as Mixed supply as they are supplied under a single contract at a single price.

Kansai Nerolac Paints Ltd. (2018) TIOL 09-AAR Maharashtra, order dated 5th April, 2018

➤ Issue

- Whether accumulated credit by way of KKC appearing in ST Return of ISD as on 30th June, 2017 and carried forward in ECL under GST would be admissible as ITC?

Kansai Nerolac Paints Ltd. (2018) TIOL 09-AAR

Maharashtra, order dated 5th April, 2018

➤ Facts

- The applicant was manufacturer of paints as well as rendering works contract services.
- Applicant was registered as Input Service Distributor and was availing and distributing credit of Service Tax along with KKC.

Kansai Nerolac Paints Ltd. (2018) TIOL 09-AAR

Maharashtra, order dated 5th April, 2018

➤ Applicant View Point

- KKC was levied by Section 161(5) of the Finance Act,2016.
- 122nd amendment to Constitution of India has deleted Entry No.92C of Union List-I in view of implementation of GST. This implies that KKC is subsumed in GST along with Service Tax.
- Section 140(1) of CGST Act allows registered person to carry forward CENVAT balance of his last return in ECL.
- Chapter V of Finance Act,1994 and rules made thereunder including that of refunds, exemptions etc. shall equally apply to levy and collection of KKC.
- Vide Notification No.28/2016-CE (NT) CENVAT credit for KKC was allowed by inserting relevant clause in Rule 3 in CCR,2004.

Kansai Nerolac Paints Ltd. (2018) TIOL 09-AAR

Maharashtra, order dated 5th April, 2018

➤ Department View Point

- Section 140(1) of CGST permits carry forward in GST regime of closing balance of credit in respect of Central Excise, Service Tax, local VAT etc. and definition of input tax as per Section 2(62) does not include any cess.
- KKC was notified by Notification No.28/2016-CE (NT) and the same was allowed to be used as CENVAT Credit for paying liability of KKC only.
- Tax, duty and cess are distinct levy as held in the WP of Cellular Operators Association of India.
- Levy of KKC was in line with SBC.
- CBEC, vide it's FAQ, has clarified that SBC is not integrated into CENVAT Credit chain therefore credit for SBC is not permitted.
- Since SBC & KKC are on same line, the FAQ issued in respect SBC would equally apply to KKC.

Kansai Nerolac Paints Ltd. (2018) TIOL 09-AAR
Maharashtra, order dated 5th April, 2018

➤ **Authority View Point**

- Agreed with departmental view.

**Kansai Nerolac Paints Ltd. (2018) TIOL 09-AAR
Maharashtra, order dated 5th April, 2018**

➤ RULING

- Credit of KKC cannot be carried forward in GST Regime.

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR Karnataka, order dated 21st March, 2018

➤ Issue

- Whether the Hotel Accommodation & Restaurant services provided by the applicant, within the premises of the Hotel to the employees & guests of SEZ units be treated as supplies classifiable as “Zero Rated supplies” in view of Section 16(1)(b) of the IGST Act?

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR

Karnataka, order dated 21st March, 2018

➤ Facts

- The applicant is supplying services of hotel accommodation and restaurant services to the employees and guests of SEZ units through its hotel located at Belgaum, Karnataka.
- The hotel of the applicant is situated outside the SEZ.
- The applicant raises bills for such services on the units located within SEZ wherein the applicant charges CGST & SGST on such supplies.
- The recipient of supplies, i.e. SEZ units, contend that such supplies are covered as “Zero Rated Supplies” and hence liable for GST at NIL rate.

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR

Karnataka, order dated 21st March, 2018

➤ Applicant View Point

- Supplies to SEZ Units are covered under the definition of “Zero Rated Supplies” in view of Section 16(1)(b) of the IGST Act.

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR

Karnataka, order dated 21st March, 2018

➤ **Authority View Point**

- Rule 46 stipulates that invoice shall carry endorsement “Supply to SEZ unit/Developer for authorised operations”
- On combined reading of Section 16(1)(b) & Rule 46, it is clearly evident that supplies of goods / services / both towards **authorised operations only** shall be treated as supplies to SEZ units/developers.
- Place of Supply for hotel accommodation services is location of immovable property in view of Section 12(3)(b).
- Similarly, the Place of Supply for restaurant services is the location of performance in view of Section 12(4).
- Such services cannot be said to have been **“imported or procured”** into SEZ unit/developer.

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR

Karnataka, order dated 21st March, 2018

➤ RULING

- Such supplies provided by the applicant within the hotel premises cannot be treated as supplies of goods or services to SEZ Units.
- Hence such supplies cannot be covered under “Zero Rated” supplies.
- Such supplies are covered as “intra-state” supplies and accordingly liable to GST.

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR

Karnataka, order dated 21st March, 2018

➤ Issues

- Section 16(1)....Supply of goods or services or both to a SEZ Developer / Unit treated as “Zero Rated Supply”.
- Act does not specify any condition related to procurement of goods / services by such SEZ unit for authorised operation in order to be treated as “Zero Rated Supply”.
- Rule 46....Tax invoice to carry additional endorsement related to supply meant for authorised operations.
- Similarly, Rule 89 requires evidence regarding receipt of goods/services for authorised operations while claiming refund in respect of such supplies.
- Can Rules prescribe any condition which the Act has not envisaged?
- The ruling suggests that any service performed outside the SEZ area is not covered within the meaning of “Zero Rated Supply”

Gogte Infra Dev. Corpn. Ltd. (2018) TIOL 29-AAR Karnataka, order dated 21st March, 2018

➤ Issues

- The ruling treats such supplies as “intra-state supplies”.
- However, Section 7(5)(b) of the IGST Act defines such supplies as “inter-state supplies”.
- Further, 1st proviso to Section 8(2) of the IGST Act clearly provides that *“the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit”*

Shreenath Polyplast Pvt. Ltd. (2018) TIOL 26 Gujarat, order dated 19th February, 2018

➤ Issue

- Whether interest charged by Del Credere Agent to buyers of material for short term loan given is exempt from levy of GST under Entry No.27 of Notification No.12/2017-Central Tax (Rate)?

Shreenath Polyplast Pvt. Ltd. (2018) TIOL 26 Gujarat, order dated 19th February, 2018

➤ Facts

- Applicant is Del Credere Agent appointed by supplier of goods.
- Applicant performs dual roles; i) promote sale and take orders for goods supplied directly by principal and ii) guarantee the payment of goods supplied by principal.
- Applicant gets commission from principal on which applicant pays GST.
- On many occasions, the applicant extends short term financing facility to buyers of goods by making payment of sale price to principal on behalf of buyers.
- Such short term loan is repaid by buyers of goods after agreed period along with applicable interest on which buyers deduct TDS.

Shreenath Polyplast Pvt. Ltd. (2018) TIOL 26 Gujarat, order dated 19th February, 2018

➤ Applicant View Point

- Amount charged by applicant from buyers of goods is covered within the meaning of “interest”.
- Such interest charged by the applicant is not for delayed payment of consideration of any underlying supply since the applicant is not supplying any goods to the buyer but it is the principal who is directly supplying the goods.
- Hence such interest is not includible in value of taxable supply as envisaged U/s.15(2)(d).
- The arrangement of short term financing is equivalent to loan hence interest charged by applicant is exempt under Entry No.27 of Notification No.12/2017-CT (R).

Shreenath Polyplast Pvt. Ltd. (2018) TIOL 26 Gujarat, order dated 19th February, 2018

➤ Authority View Point

- Extension of loan by the applicant to the customers is a transaction separate from the transaction of supply of goods by the principal to the customers against consideration wherein the applicant also gets the commission from the principal.
- Interest received by the applicant is consideration towards loan extended to the customers and such interest is not towards the payment of consideration for supply of goods by the principal to the customers which is a separate transaction.

Shreenath Polyplast Pvt. Ltd. (2018) TIOL 26 Gujarat, order dated 19th February, 2018

➤ RULING

- Interest received by the applicant as consideration for extending short term loans to buyers of goods is covered under Entry No.27 of Notification No.12/2017-Central Tax (Rate) and hence exempt from payment of GST.

Shri Sanjeev Sharma – 2018 (4) TMI 1077, New Delhi, order dated 28th march, 2018

➤ Issue

- Whether GST will be applicable on sale of undivided & impartible share of land represented by agreement to sell the Land ?
- Whether GST shall be applicable on sale of Superstructure which is under construction?

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Development and construction of Project

- Post purchase of land/ acquisition of land rights:
 - *a. The applicant shall apply for the requisite approvals.*
 - *b. The applicant plans to get the construction work done by contractors as well as on its own.*
- Following agreements would be entered into by the Applicant:
 - *a. One for sale of undivided and impartible share in land; and*
 - *b. Another agreement for sale of superstructure.*

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➤ Facts

- The applicant plans to engage itself in the development and sale of residential houses, generally floors/ flats in India.

Acquisition of Land

- The proposed modus operandi shall be that the applicant shall either purchase land or it shall enter into collaboration agreements with various land owners whereby the applicant shall acquire the right to develop the property and further sell the units developed thereon.
 - a. In case of purchased land: the applicant shall be entitled to sell all the units developed thereon,*
 - b. In cases of development and sale rights: the applicant shall be entitled to sell the flats/ unit falling to the applicant's share, in terms of the collaboration agreement.*

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- In case where there are two transactions each represented by a separate Agreements i.e.
 - *i. One for sale of undivided and impartible share in land @ say ₹ 100; and*
 - *ii. Another agreement for sale of superstructure @ say ₹ 15*
- Following are the questions on which the applicant is seeking advance ruling:
 - *a) Whether GST will be applicable on the sale of undivided and impartible share of land represented by Agreement to sell the land?*
 - *b) Whether GST shall be applicable on sale of superstructure (which is under construction)?*
 - *c) If yes:-*
 - *i. What will be the value on which tax is payable?*
 - *ii. What would be the applicable rate for charging GST?*

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➤ Applicant View Point

- Sale of land is out of the scope of the definition of Supply under GST, as the same has been prescribed under Entry 5 of Schedule III of the CGST Act, 2017. Consequently, transfer of undivided and impartible share in land would not be leviable to GST.
- From a conjoint reading of Section 7 and Entry 5 of Schedule III of CGST Act, any activity/ transaction which is in the nature of 'sale of land' is not covered within the purview of GST. Consequently, no GST is payable on the transactions resulting in the sale of land.

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- In case of supply of service of construction, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation .– For the purposes of paragraph 2, “total amount” means the sum total of,-

- (a) consideration charged for aforesaid service; and
 - (b) amount charged for transfer of land or undivided share of land, as the case may be.
- Further, even in respect of superstructure, GST should be imposed only on the value of construction on or after the agreement with the buyer i.e. after deducting the value of construction already completed till the date of agreement

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- The applicant has submitted that laws in India recognises “land” and “super-structure” as separate and independent immovable properties. The applicant has referred to provision of General Clauses Act, Indian Contract Act, 1872, Specific Relief Act, Transfer of Property Act, The Indian Evidence Act, Registration Act, Stamp Act, Income Tax Act etc. to claim that land and building are two different assets or immovable property and that land and superstructure can be independently sold and purchased. However, under GST, the valuation of supply of goods and services has to be done in accordance with Section 15 of the CGST Act, 2017
- The supply in this case is a composite supply consisting of three components, namely
 - (i) land on which the complex or building is constructed,
 - (ii) goods which are used in construction activities and
 - (iii) services undertaken by the applicant directly or through other contractors.

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- While admitting that GST cannot be levied on the value of land or value of undivided share of land, the question which needs to be answered is how the value of the said land needs to be ascertained.
- In this case, the measure of tax should be the value of goods and services supplied by excluding the value of land. However, since land cannot be separately sold, a deemed value of land need to be ascertained on which GST would not be payable.
- The applicant wants the value of land to be ascertained by him on the basis of Rule 30 of CGST Rules, 2017, as the said Rules, do not provide any other specific provision to ascertain the value of land for exclusion.

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➤ Authority View Point

- GST Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 - S. No. 3 r/w Paragraph 2, the deemed value of land or undivided share of land has been fixed at one-third of the total amount charged. Hence, in GST, the machinery provisions to ascertain the value of land is available in the notification which has been issued under Sub-Section (5) of Section 15 of the CGST Act, 2017 regarding value of taxable supply
- The said Notification has been issued under Section 15(5) of the CGST Act, 2017 by the Government on the recommendation of the GST Council and hence, no separate Rule was required to be issued. Hence, Paragraph 2 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 is fully authorised by Section 15(5) of the CGST Act, 2017 to provide machinery provisions to ascertain the value of land for exclusion and to measures the value of supply of goods and services for levy of GST.

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➤ RULING

- In the case of supply of services by way of construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier, the GST would be payable on two-third of the total amount consisting of amount charged for transfer of land or undivided share of land, as the case may be, and whole of the consideration charged for the supply of goods and service.
- Hence, the value of land, or the undivided share of land, as the case may be, would be deemed to be one-third of the total amount, which is excluded from the value for the purposes of payment of GST. Even if agreement between the applicant and the buyer is entered after part of the construction is already completed, whole of the consideration would be added for payment of GST.

WITH KNOWLEDGE..... WE KNOW THE WORDS,
BUT WITH EXPERIENCE..... WE KNOW THE MEANING



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