

GST APPLICABILITY OF TRANSACTIONS BETWEEN DISTINCT PERSONS



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The indirect taxation of services has always posed a greater challenge as compared to that of taxation of goods for the basic reason of services being intangible in nature and therefore difficult to measure. Amongst several critical issues faced by trade and industry, the taxation of the supply of services between Distinct Persons ranks as one of the foremost.

The concept of Distinct Person embodied in the GST law is laid down in sub-section (4) of Section 25 of the Central Goods and Service Tax Act, 2017 (CGST) in terms of which, a person who has obtained or is required to obtain more than one registration in a State or Union Territory in respect of an establishment, has an establishment in another State or Union Territory, then such establishment shall be treated as establishments of distinct persons. Consequently, any supply of goods and/or services between such Distinct Persons is liable to GST. Clause 2 of Schedule I appended to the CGST Act clarifies that supply of goods or services or both between Distinct Persons as specified in sub-section (4) of Section 25 of the CGST Act, when made in the course or furtherance of business even if made without consideration will be treated as supply liable to GST.

As to what would constitute supply made in the course or furtherance of business has not been clarified. This has resulted in much ambiguity that has led assesseees to approach the forum for Advance Ruling. In the case of Columbia Asia Hospitals Pvt Ltd reported in [2018(15) GSTL 722 (A.A.R.- GST)], it was ruled that services of accounting, IT etc provided from the corporate office to units located in other states would amount to supply as per Clause 2 of Schedule I appended to the CGST Act. This ruling was subsequently upheld by the Appellate Authority for Advance Ruling reported in [2019(20) GSTL 763]. The aspect as to whether or not such accounting and

IT services would get covered within the scope of being in the course or furtherance of business was not brought to the attention of the Authority.

It is a matter of settled principle that taxation is always on an economic activity. By providing accounting and other services to the establishments located in other states, the corporate office does not undertake any economic activity. Further, from the facts, it becomes clear that the applicant is not engaged in the business of providing accounting, IT and other services. Therefore, the provision of these services cannot be said to have been made in the course or furtherance of business. This principle has been upheld in the case of Jotun India Pvt Ltd [2019(29) GSTL 778 (A.A.R.-GST)], wherein it was ruled by the Authority for Advance Ruling that recovery of portion of parental medical insurance premium from employees cannot be treated as an activity done in the course of business or furtherance of business in as much as no service of health insurance was provided by the applicant to the employees. It follows therefrom that supply of services between establishments of Distinct Persons will be subject to GST only when made in the course or furtherance of business. The accounting, IT, HR and other functions provided by a corporate office to a branch office are essentially for the purpose of recording business activities, through an IT enabled infrastructure, dealing with matters relating to employees and to comply with certain legal and regulatory requirements, which, in no way makes these activities fall within the ambit of activity carried out in the course or furtherance of business.

The GST Council may therefore take up the matter so as to carve out an exception to services of accounting, IT and the like between Distinct Persons to the effect that these will not constitute supply in the course or furtherance of business and consequently not liable to GST.