



**The Institute of
Cost Accountants
of India (ICAI)**

Goods & Services Tax (GST) Certification Course

Disclaimer

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The presentation has been prepared to provide an overview of the applicable law pertaining to the subject matter. For detailed insight and for better understanding, its is advised to refer to relevant provisions in the Act and the related rules & notifications.

Advance Ruling under GST



What is Advance Ruling?

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- “Any advice, information or undertaking provided by a tax authority to a specific tax payer or a group of tax payers concerning their tax situation and on which they are entitled to rely” – as per OECD Report, 2004
- It is a written interpretation of tax laws, issued by tax authorities upon request, on clarification of certain tax matters. It is often requested when the taxpayer is confused and uncertain about certain provisions.
- Advance Ruling provisions are there both under Direct Tax laws and Indirect Taxes laws (pre-GST and GST era).
- Advance ruling can be obtained for a proposed transaction as well as a transaction already undertaken by the appellant. The effect, however, is prospective in nature.

Some terminologies

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- “Advance ruling” means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an applicant on matters or on questions specified in Sec 97(2) or Sec 100(1) or Sec 101C of the Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. *Sec 95(a) of CGST Act*
- “Applicant” means any person registered or desirous of obtaining registration under the Act. *Sec 95(c) of CGST Act*
- “Application” means an application made to the Authority u/s 97(1) of the Act. *Sec 95(d) of CGST Act*
- “Authority” means the Authority for Advance Ruling referred to in Section 96 of the Act. *Sec 95(e) of CGST Act*
- “Appellate Authority” means the Appellate Authority for Advance Ruling referred to in Section 99 of the Act. *Sec 95(b) of CGST Act*
- “National Appellate Authority” means the National Appellate Authority for Advance Ruling referred to in Section 101A of the Act. *Sec 95(f) of CGST Act*

Jurisdiction of the Authority

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- The Authority for Advance Ruling (AAR) constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory. *Sec 96 of CGST Act*
- The Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory. *Sec 99 of CGST Act*
- The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling. *Rule 103 of CGST Rules*

Advance Ruling

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- *U/s 97(2) of CGST Act*, Advance Ruling can be sought for the following questions:
 - Classification of goods or services or both
 - Applicability of a Notification issued under the Act
 - Determination of time and value of supply of goods or services or both
 - Admissibility of Input Tax Credit of tax paid or deemed to have been paid
 - Determination of tax liability to pay tax on any goods or services or both;
 - Clarification on registration requirements of the applicant
 - whether any particular thing done by the applicant amounts to or results in a supply of goods or services or both.

Classification of goods or services or both

- Determining the nature of supply – goods/ services/ Composite supply/ Mixed supply/ Works contract?
- Impact of wrong classification
- Pre-GST classification & Post-GST Classification issues

Applicability of a Notification

- Impact of each Notification
- Granting exemption from registration
- Conditional waiver of taxes/ reduced taxes
- Date of applicability of each notification & its effect on compliance

Determination of time and value of supply of goods or services or both

- Identifying the time of supply – inherent conflicts in recording of transactions in the books of accounts
- Identifying the supplies on which tax liability arises under reverse charge u/s 9(3) and u/s 9(4)
- Evaluating the parties involved – related or unrelated person, distinct person
- Determining whether price would be the sole consideration for supply
- Ascertaining Value of Supply as per Sec 15 of CGST Act or applicability of Chapter IV of CGST Rules

Admissibility of Input Tax Credit of tax paid or deemed to have been paid

- Identifying eligibility of ITC based on Registration
- Identifying eligibility of ITC based on Supply
- Blocked Credit/ Proportionate Credit/ Reversal of Credit
- Impact of Notification on ITC eligibility
- Correlation with pricing & Anti-Profiteering provisions

Determination of tax liability to pay tax on any goods or services or both

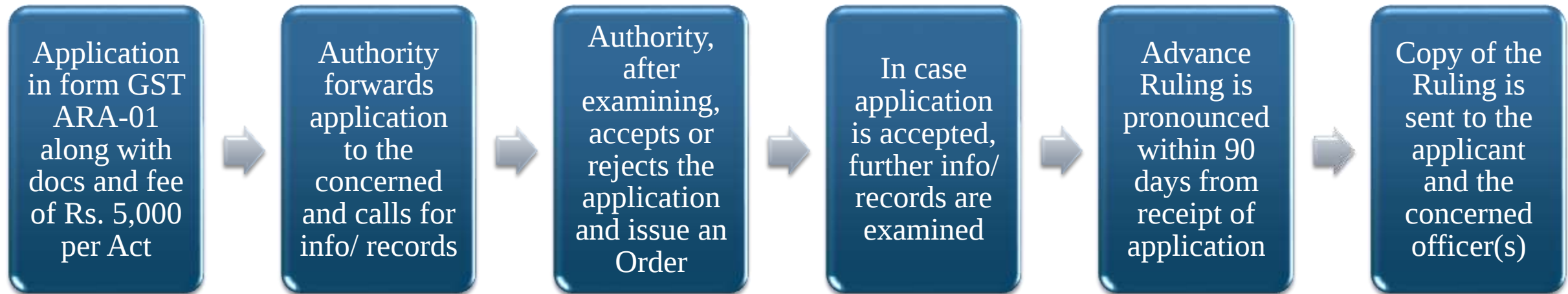
- Ascertaining Tax Liability based on Registration
- Time of Supply/ Value of Supply
- Eligibility of ITC to be adjusted against tax liability

Clarification on registration requirements of the applicant

- Registration requirement – Chapter VI of CGST Act
- Exemptions from taking registration, which were subsequently notified
- Issues related to Casual Taxable Person/ Non-Resident Taxable Person
- Compliances based on type of Registration

Procedure for Advance Ruling – Sec 98

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- The Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of the Act. *1st proviso to Sec 98(2) of CGST Act*
- No application shall be rejected unless an opportunity of hearing has been given to the applicant. *2nd proviso to Sec 98(2) of CGST Act*
- Where the application is rejected, the reasons for such rejection shall be specified in the Order. *3rd proviso to Sec 98(2) of CGST Act*
- Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question. *Sec 98(5) of CGST Act*

Appeal to the Appellate Authority

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- The concerned officer(s) or the applicant, aggrieved by any advance ruling by AAR, may appeal to the Appellate Authority for Advance Ruling (AAAR). *Sec 100(1) of CGST Act*
- Appeal to be filed within a period of 30 days from the date on which the ruling sought to be appealed against is communicated. *Sec 100(2) of CGST Act*
- Appellate Authority may extend the 30 days period by another period not exceeding 30 days in case of any sufficient cause preventing the appellant to act. *Proviso to Sec 100(2) of CGST Act.*
- Appeal to be filed by
 - Applicant - In form GST ARA-02 accompanied by fee of Rs. 10,000 per Act
 - Department – In form GST ARA-03 (without any fee)

Appeal to Appellate Authority

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- Order confirming or modifying the ruling appealed against or referred to shall be passed within 90 days from the date of filing of the appeal or a reference to the deadlock at the AAR level. *Sec 101(2) of CGST Act*
- Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference*. *Sec 101(3) of CGST Act*
- A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members shall be sent to the applicant, the concerned officer(s) and to the Authority after such pronouncement. *Sec 101(4) of CGST Act*

National Appellate Authority – Sec 101A

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- To be constituted on the recommendations of the Council.
- National Appellate Authority shall consist of
 - A President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than 5 years,
 - Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least 15 years of service in Group A.
 - Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of VAT or the Additional Commissioner of State tax with at least 3 years of experience in the administration of an existing law or the State GST Act or in the field of finance and taxation.
- The President shall be appointed by the Government after consultation with the Chief Justice of India or his nominee.
- The Technical Member (Centre) and Technical Member (State) shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

National Appellate Authority – Sec 101A

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- The President shall hold office for a term of 3 years from the date on which he enters upon his office, or until he attains the age of 70 years, whichever is earlier and shall also be eligible for reappointment.
- The Technical Member(s) shall hold office for a term of 5 years from the date on which he enters upon his office, or until he attains the age of 65 years, whichever is earlier and shall also be eligible for reappointment.
- Subject to the provisions of Article 220 of the Constitution, the President or the members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.

Appeal before NAAAR – Sec 101B

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- Where conflicting Advance Rulings are given by the AAAR of two or more States or Union territories, or where Advance Rulings couldn't be obtained due to difference of opinion, any officer from the concerned State, authorised by the Commissioner, or an applicant may prefer an appeal to National Appellate Authority.
- Appeal to be filed
 - In case of taxpayer, within 30 days from the date on which the ruling sought to be appealed against is communicated to the applicants or the concerned officer(s).
 - In case of department, within 90 days from the date on which the ruling has been communicated.
- The NAAAR may extend the timeline by another 30 days.

- National Appellate Authority, after giving an opportunity to be heard, shall pass such order as it thinks fit, confirming or modifying the rulings appealed against.
- If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.
- The order shall be passed, as far as possible, within 90 days from the date of filing of the appeal.
- Copy of the Advance Ruling pronounced by the National Appellate Authority shall be sent to the applicant, the authorised officer(s), the Board, the Chief Commissioner and to the Authority or Appellate Authority, as the case may be.

Rectification of Advance Ruling

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- The Authority, the Appellate Authority or the National Appellate Authority may amend any order passed by it, so as to rectify any error apparent on the face of the record. Such amendment can be done on its own accord, or if brought to notice by the concerned officer(s) or the applicant within a period of 6 months from the date of the order. *Sec 102 of CGST Act*
- No rectification, which has the effect of enhancing the tax liability or reducing admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard. *Proviso to Sec 102 of CGST Act*

Applicability of Advance Ruling

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- *U/s 103(1) of CGST Act*, the advance ruling pronounced by the Authority or the Appellate Authority shall be binding only
 - On the applicant who had sought it in respect of any matter referred to for advance ruling
 - On the concerned officer or the jurisdictional officer in respect of the applicant.
- *U/s 103(1A) of CGST Act*, The Advance Ruling pronounced by National Appellate Authority shall be binding on
 - the applicant who sought the Advance Ruling, and all registered persons under the same PAN number.
 - the concerned officers and the jurisdictional officers in respect of the said applicant(s)
- The advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed. *Sec 103(2) of CGST Act*

Applicability of Advance Ruling

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- Where the Authority, the Appellate Authority or the National Appellate Authority finds that advance ruling pronounced has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by Order, declare such ruling to be void *ab-initio*. *Sec 104(1) of CGST Act*
- No order shall be passed unless an opportunity of being heard has been given to the applicant or the appellant. *Proviso to Sec 104(1) of CGST Act*
- Copy of the order made shall be sent to the applicant and the concerned officer(s). *Sec 104(2) of CGST Act*

- For the purpose of exercising its powers regarding
 - discovery and inspection
 - enforcing the attendance of any person and examining him on oath
 - issuing commissions and compelling production of books of account and other records,the Authority, Appellate Authority or the National Appellate Authority shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908. *Sec 105(1) of CGST Act*
- The Authority, the Appellate Authority or the National Appellate Authority shall be deemed to be a Civil Court and every proceeding before the Authority, the Appellate Authority or the National Appellate Authority shall be deemed to be a judicial proceedings. *Sec 105(2) of CGST Act*
- The Authority, the Appellate Authority or the National Appellate Authority shall, subject to the provisions of the Act, have power to regulate its own procedure. *Sec 106 of CGST Act*

Case Studies



Issue

XYZ Limited, provides canteen facilities (on chargeable basis) to its employees through 3rd party canteen contractor at its factory. The provision of canteen service is mandatory for XYZ Limited u/s 46 of the Factories Act, 1948. Is GST applicable on the amount recovered by the company from its employees?

Case Law

In the matter of Amneal Pharmaceutical Pvt. Limited, The Gujarat AAR held that the activity comes under scope of supply as defined in Sec 7(1) of CGST Act. The AAR concluded that recovery of amount from employees on account of 3rd party canteen services provided by the Company, even though obligatory under the Factories Act, 1948 would come under the definition of 'outward supply' as defined in Section 2(83) of the CGST Act, 2017 and therefore, taxable as a supply under GST.

Services to other offices

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Issue

A Limited, having its Corporate Office at Mumbai provides shared services to its offices spread across various States. Whether centralised activities performed by employees at the Corporate Office for offices located in other states be treated as Supply in terms of CGST Act?

Case Law

In the matter of Columbia Asia Hospitals Pvt. Limited, the Karnataka AAR held that services of employees at the Corporate Office, in so far as they benefit other offices, the same cannot be treated as 'employee-employer relationship' and hence shall be treated as taxable supplies from the Corporate Office to the said office(s). The AAR Order was appealed but the same was upheld by the Karnataka AAAR.

Export of Service

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Issue

A company situated in India provides back office support services (like invoicing, payment processing, co-ordinating, arranging transportation, liasioning etc.) between the overseas client and its customers/ suppliers in India. It receives the fee in USD. Can the services qualify as 'Export of Services' under IGST Act?

Case Law

In the matter of Vservglobal Pvt. Limited, the Maharashtra AAR ruled that the applicant falls in the definition of 'intermediary' and hence the services doesn't qualify for 'Export of Services'. This view was upheld by the Maharashtra AAAR on an appeal filed by the applicant.

Intermediary

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Education guide	Defines the term "intermediary", lays down 3 factors – nature and value; separation of value; identity and title, for determination of intermediary transaction	Law
AAR (ST) GoDaddy	GoDaddy India was providing various marketing related activities to GpDaddy US, on its own account. AAR ruled that it is not in the nature of intermediary services	+ve ruling
AAR- GST VSERVEG L-OBAL	Vservglobal India was providing back office administrative and accounting service to Vidhuka Overseas. AAR ruled out that the services are in nature of intermediary	-ve ruling
Circular 107/26/2019 -GST	Circular withdrawn (intermediary), and 3) mix of both services	Law
AAAR- GST Asahi Kasei	Asahi Kasei India have 2 agreements with Asahi Japan, i.e., one for providing services like accounting, research, etc., and another for marketing services. AAR MH ruled that they are not in nature of intermediary. But revenue filed appeal, and AAAR ruled that these are in nature of mixed supplies but determination of POS is out of scope of AAR	Open ruling
AAR-GST Mayank Jain	Mayank Jain was providing two kinds of service to consultant manager – one of soliciting potential investors in India; and another of handholding services. Consideration of applicant was dependent upon successful investment by customer. AAR ruled that the services are in nature of intermediary	-ve ruling

Issue

X Bakery purchases food products from dealers and sells the same in pre-packed condition at its shop. The shop also has provision to consume the food on its premises. Can the services offered by X Bakery be termed as restaurant services?

Case Law

In the matter of Square One Homemade Treats, the Kerala AAR noted that, in a restaurant, food & drinks are prepared and are served to customers. Whereas in the present case, already cooked food is served from the counter and only giving a mere facility to customers to consume such foods in premises does not suffice enough to make it a restaurant service. Hence such service offered cannot be termed as restaurant services.

Classification

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Issue

Supply of UPS along with battery supplied under a single contract at a combined single price – to be considered as Composite Supply or Mixed supply?

Case Law

In the matter of Switching Avo Electro Power Ltd., it was contended that UPS cannot function without battery because it is an integral part of UPS. Hence, it is naturally bundled and such supply should be treated as a Composite supply and not as a Mixed supply. The AAAR West Bengal held that when UPS is supplied with in-built batteries, the same may be treated as Composite Supplies. Mere supplying 2 items together cannot be termed as naturally bundled. The storage battery has multiple uses and can be put to different uses. Therefore, when battery is supplied with UPS at a combined single price, it is a Mixed Supply.

Issue

P Limited intends to enter into a franchise agreement whereby it will give rights to use its trademark, brand name and other proprietary knowledge (Intellectual Property) to sell its food items. The fee received by P Limited is to be classified under 1) licensing services for the right to use trademarks and franchises (SAC Code 997336) or 2) Other professional, technical and business services – trademarks and franchises (SAC Code 998396)?

Case Law

In the matter of Tea Post Pvt. Limited, the Gujarat AAR gave a clear distinction between what constitutes licensing and what constitutes franchising and how to differentiate between them. In the above instance, the fee received by is to be classified under SAC Code 998396.

Licensing vs. Franchising

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Licensing	Franchising
Licensing refers to an arrangement between licensor and licensee where the latter acquires the right to use intellectual property or manufacture the licensor's products in exchange of royalty	Franchising refers to an arrangement between franchiser and franchisee where the latter will use the brand name or business model and enjoy the ownership of a business on behalf of the franchiser as an independent branch in lieu of a fee
Licensing is generally for products and goods	Franchising is used more in service industry.
The ownership remains with the licensor.	The processes are closely controlled by franchisor.
The licensee is governed by the licensor's terms of use as prescribed in the licensing agreement for the licensed product. Licensor, however, has no autonomy over the business of the licensee	Franchisor exercises enormous control over the business of the franchisee in terms of quality of service provided, marketing & selling strategies, etc.
Licensing is governed by a licensing agreement, which involves a onetime transfer of property or rights for a fee. There is no technical support or assistance provided by the licensor in most cases.	Franchising is governed by an elaborate agreement specifying the responsibilities & duties of both the parties involved. The franchisor assists in setting up the service provider with adequate skill & knowledge to emanate its brand to the customers
Licensing does not require registration	Registration is a must in the case of franchising.

Issue

Z Limited received a single contract from B Limited for supply and installation of UPS at their Mumbai office. The supply of UPS was done by the Mumbai branch of Z Limited and once the supply was concluded, the installation was done by the Delhi branch of Z Limited. Invoices were raised accordingly. Does the activity done by Z Limited constitute Works Contract or Composite Supply ?

Case Law

In the matter of Vertiv Energy Pvt. Ltd, the Maharashtra AAR opined that the activity falls into the definition of Composite Supply u/s 2(30) of the CGST Act. The same was appealed and the AAAR, Maharashtra modified the AAR ruling and held that that supplies under question do not satisfy those essential conditions stipulated for the Composite Supply. Supply of installation service is after the transfer of ownership of the UPS and hence the same is neither a works contract nor a composite contract.

Issue

A and B are co-owners of commercial properties. The total rent received for the FY is Rs. 30 lacs which is divided equally between A and B. What is the registration requirement here?

Case Law

In the matter of Sri Rabi Shankar Tah, the WB AAR held that where an immovable property, which is jointly owned, is let out and the rental income received is separately ascertainable and assessed for income tax individually at hand of each co-owner, such co-owners cannot be treated as an association of persons (AOP). Further, in the case of Elambrancheri Khaldoon, the AAR, Kerala held that GST registration limit for co-owners of a property to be checked individually.

Input Tax Credit

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Issue

Determination of GST liability/ eligibility of Input Tax Credit in respect of goods distributed free of cost under CSR expenses?

Case Law

In the matter of Polycab Wires Pvt. Limited, the AAR Kerala ruled that ITC shall not be available as per Sec 17(5)(h) of the Act. However, in the case of Essel Propack Limited vs. Commissioner of CGST, Bhiwandi, it was held that CSR can be considered as input services. The point to ponder – 1) Can this activity fall under Point No. 1 under Schedule I of the Act? 2) Can goods distributed free under CSR obligation be termed as disposed off by way of gift or free sample?

Input Tax Credit

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Issue

Restaurant & sweetshop operating from same premises (separate parts) and under same GSTIN. What will be the rate of items sold through sweetshop? Will it be same as restaurant services i.e. 5% without ITC or rate as applicable to individual items sold thereof?

Case Law

In the matter of Aravali Polyart Pvt. Limited, the Uttarakhand AAR held that the sweetshop is an extension of the restaurant and GST to be charged accordingly. Appeal was filed with the AAAR who observed that food to customer in the restaurant or takeaway falls under Composite Supply whereas goods supplied to customers through sweetshop is to be treated as supply of goods and to be charged accordingly.

Thank You

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CALM
&
FOLLOW
THE RULES**