IL And FS Education And Technology Services Ltd

GST - Information and Communication Technology (ICT) @ School Project - Odisha Madhyamik Shiksha Mission (OMSM) mandated Odisha Knowledge Corporation Limited (OKCL) to implement ICT project in 4000 government and government aided higher secondary schools across the State of Odisha - Appellant was successful bidder and was awarded tender for implementation of the project - contract period is of five years and in terms of which the entire infrastructure (supplied and installed) would be transferred to school and mass education department at zero transfer value - appellant had claimed exemption/Nil rate under Entry no. 72 of the notification 12/2017-CTR but the same was denied by the AAR on the ground that the recipient of the service viz. OKCL is a body corporate and cannot be regarded as Government; that the supply undertaken is in the nature of composite supply; that the service provided is not exclusively in the nature of training programme; that though the source of funding for the service is the state government and central government, yet as per the contract the payment responsibility is vested on M/s OKCL - appeal to AAAR.

Held: Appellant has failed to produce any documentary evidence as to how the provision of service to M/s OKCL qualifies to be a provision of service to the Central Government or State Government or Union Territory administration - even if some percentage of shares are owned by the Government of Odisha in M/s OKCL, the company cannot be construed as Government, therefore, Authority fully agrees with the findings arrived at by the AAR - having failed to meet the primary requirement of the condition of the notification i.e. the supply has to be a supply of service provided to the Central Government, State Government or Union Territory Administration, Appellate authority refrains from discussing other aspects of the notification - AAR order upheld and appeal rejected: AAAR

- Appeal rejected: AAAR

National Aluminium Company Ltd

GST - Against the Advance Ruling, both the appellant assessee and Revenue are in appeal before the Appellate Authority - applicant assessee has requested that the AAR order be modified and they be allowed Input Tax credit on inputs and input services used by them for maintenance of their township, security services and horticulture meant for township - Revenue is in appeal against allowing of the Input Tax credit on the services utilized for maintenance of Guest house, transit house and Trainee hostel and for allowing credit of the services used for plantation and gardening within the plant area including the mining area and

the premises of other establishments like administrative building, guest house, transit house and training hostel.
Held:
+ It is settled law that to claim Input tax credit, an input service must be integrally connected with the business of manufacturing the final product - Cost of an input service forming part of the cost of final product alone cannot be a condition to allow the benefit of Input tax credit - accordingly, services availed in relation to plantation and gardening within the plant area including mining area and the premises of other business establishments will qualify for input tax credit - moreover, creation and maintenance of green area/zone inside plant/mining/office premises is a business necessity for controlling pollution as well as atmospheric temperature and also a requirement for preventing soil erosion - as the aforesaid are mandated in various laws in which the appellant assessee conducts its business such as the Forest Conservation Act, Environment Protection Act etc., such activities are integral to business activity and hence can be treated as activities in course or furtherance of business, hence Revenue appeal to this extent is not sustainable and is rejected - Bombay High Court decision in Coca Cola India Pvt. Ltd. relied upon: AAAR
+ Insofar as appeal of assessee is concerned, it is clarified by the CBIC vide its Press Release dated 10.10.2017 that perquisites are not subjected to GST and, therefore, since perquisites are outside the scope of GST, input tax credit shall not be available to the assessee in respect of tax paid on goods and services procured by it for management, repair, renovation, alteration or maintenance services (including watch and ward services, security services, Plantation/gardening/landscaping services etc.) pertaining to residential accommodation for its employees in its township/colony - Even if it is argued that perquisites do fall within the scope of GST, the benefit of Input Tax credit still cannot be allowed as any activity for the comfort, convenience and welfare of its employees cannot be treated as having been done in course or furtherance of business- Bombay High Court decision in Manikgarh Cement [2010-TIOL-720-HC-MUM-ST] relied upon: AAAR
- Assessee appeal dismissed/Revenue appeal partially allowed: AAAR

Merit Hospitality (Dated: November 01, 2018)- Maharashtra

GST - Appellant has entered into a contract with a company called, say "B Ltd." and "B Ltd." is having its unit in SEZ area (Special Economic Zone) - Supply of food is done by Appellant to the employees of "B Ltd." and the payment for the same is made by the employees of "B Ltd." to the appellant directly - Appellant had sought a ruling as to whether such supply can be considered as supply to SEZ area and hence no GST would be applicable - The Authority for Advance Ruling had held that the question cannot be answered on the ground that there is lack of clarity on the issue in absence of adequate information or details - appeal before Appellate authority.

Held - From the provisions of section 16(1)(b) of the IGST Act, 2017, it is crystal clear that the supply made by the appellant to the employees of the unit located in SEZ cannot be construed as Zero-rated supply by any stretch of imagination as the employees can neither be treated as SEZ developer nor as SEZ unit - GST will, therefore, be applicable as per the classification of the services determined in terms of the scheme of classification of services as provided under Annexure A' to the notification 11/2017-CTR - appellant is presuming and putting a pre-emptive notion before the Appellate authority that they are running the restaurant' in the SEZ area and then asking the authority to decide upon the GST rate applicable on such activities -it is apparent that the food is being cooked at one place and being distributed to various different locations of the companies with whom they have entered into a contract - Thus, this event is not covered under the definition of Restaurant service' - appellant's claim that it is running Restaurant services' in the SEZ area is not tenable and hence the GST rate of 5% envisaged by appellant is not correct: AAAR

Fermi Solar Farms Pvt Ltd (Dated: September 4, 2018)- Maharashtra

GST - Condonation of delay in filing appeal against order of AAR dated 03.03.2018 - Appeal is required to be filed within a period of 30 days from the date of communication of the AAR order and this period can be further extended upto a period of 30 more days -appellate authority was constituted through notification no. MGST-1018/C.R.38/Taxation-1 dated 10.05.2018 and the appellant applied through appeal dated 06.06.2018 - as appellant had filed

letters within 30 days of communication of the Advance Ruling to the Commissioners of Central Tax/State Tax, Chief Commissioner of Central Tax, Mumbai Zone, and it was only because the appellate authority was not formed that he could not file an appeal and also because the appeal was filed within one month from the formation of the AAAR, the delay is condoned: AAAR

GST - AAR had held that in view of the agreements tendered in support of the transaction which revealed that the same is for setting up and operation of a solar photovoltaic plant which is in the nature of a Works Contract in terms of s.2(119) of CGST Act, it should be taxable @18% - As regards two other questions on which ruling was sought, the AAR had held that since the applicant had not produced any document/agreement showing the terms and conditions, it would be difficult to determine whether 'when other parts and components are supplied by contractor', whether they would be entitled to the concessional rate of tax of 5% as parts of solar power generation system and also whether the concessional rate would be available to sub-contractors - Appeal to AAAR.

Held: Agreements tendered in support are in the nature of a 'Works contract' in terms of clause 119 of section 2 of the CGST Act, 2017 - Schedule II treats 'Works contract' as supply of services and depending upon the nature of supply, intra-state or inter-state, the rate of tax would be governed by entry no. 3(ii) of Notification 8/2017-ITR, 11/2017-CTR etc. - rate of tax would be 18% under the IGST Act and @9% each under the CGST/MGST Act aggregating to 18% - as regards the other two questions on which ruling is sought, as the appellant has still not produced any document/agreement, the situation remains the same as it was before the AAR; moreover, AAAR can decide on issues already decided by the AAR and there being no decision rendered by AAR, AAAR too cannot give any decision in appeal: AAAR

Global Reach Education Services Pvt Ltd (Date: July 24, 2018)- West Bengal

GST - Definition of "intermediary" us 2(13) of IGST Act is not the same as that ur 2(f) of the POPS Rules, 2012 - Under GST an "intermediary" is an entity who arrangesfacilitates for the supply of services of another entity, which may include ancillary services, whereas under POPS, 2012, the intermediary arrangesfacilitates for provisions of services of the 'main service' provider -

Fee paid to the appellant was not tied to the promotional activities or expenses incurred to promote Courses of Australian Catholic University (ACU) but as a percentage of fees paid by the students who got admitted to ACU - In other words, no consideration was paid in spite of incurring expenses by the appellants for promoting activities of ACU, if no student joined ACU - services of the Appellant are not 'Export of Services' under the GST Act and are exigible to tax - appeal dismissed West Bengal Appellate Authority for Advance Ruling

Loyalty Solutions And Research Pvt Ltd

GST - The applicant under a reward point based loyalty programme, is providing certain services to its clients /partner which is based on issuance of reward points, also known as payback points by the applicant to end customers - For managing this loyalty programme, applicant is getting Management fee and/ or service charge fee - Applicant had sought a ruling as to whether this amount of issuance fee retained/forfeited by applicant would amount to consideration for actionable claims and subject to GST - AAR had held that t he value of points forfeited of the applicant on which money had been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period would amount to consideration received in lieu of services being provided by applicant to its clients and, therefore, would qualify as "supply of services" in terms of Section 7 of the Act and would be within the scope of levy of GST and consequently be chargeable to GST - appeal to AAAR.

Held: Consideration for the unredeemed payback points has already flowed from the partners - After validity period, the same has become appellant's Revenue by virtue of the contract for servicing of the loyalty scheme including the points ibid, executed between the partners and the appellants - Even if it is admitted that there is a provisioning of service by the appellant to the end-customers, there cannot be any such service or actionable claim against the payback points not redeemed by them against anyone - Advance Ruling upheld and appeal dismissed: AAAR

Esprit India Pvt Ltd

GST -Appellant had sought advance ruling on the following questions viz. Taxability of stated services provided by Espirit India to its associate concern in Hong Kong EDCFE; whether the said services are covered under Export of Service having zero rated taxability; whether Espirit India is eligible for seeking refund of GST for the taxes paid on input services or goods or both - AAR had held that questions asked by the appellant were out of the scope of section 97(2) of the CGST Act and the questions could not be taken up by the AAR due to lack of jurisdiction - appeal to AAAR.

Held: AAR has rightly identified the SAC description with rate of tax while answering the first question and rightly declined answering the questions 2 and 3

raised by the applicant/appellant as being outside the purview of section 97(2) of the Act - Advance Ruling does not suffer from any infirmity or illegality and same is upheld - Appeal dismissed: AAAR