

### **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 arranges/facilitates for the supply of services of another entity, which may include ancillary services, whereas under POPS, 2012, the intermediary arranges/facilitates 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