

EY Tax Alert

HC rules fuel provided free of cost by service recipient is includable in value of supply of GTA service

Executive summary

This Tax Alert summarizes a recent judgement of the Division Bench of Chhattisgarh High Court (HC)¹. The issue involved was whether the fuel provided by the service recipient on free of cost (FOC) basis is to be added in value of supply of services provided by goods transport agency (GTA).

Assessee is engaged in transportation of goods, wherein fuel is provided by the recipient as per contractual arrangement. It sought advance ruling to determine value of supply of GTA services provided to such recipient.

The Authority for Advance Ruling (AAR) ruled that FOC fuel will be included in the value of GTA services. Aggrieved, assessee filed an appeal before Appellate Authority for Advance Ruling (AAAR).

Since there was difference of opinion between the members (State and Centre) of AAAR, no advance ruling was rendered. Assessee, being remediless, filed writ petition before the HC.

HC observed that fuel is an integral part used in providing transportation service and is essential for GTA service provider. Without fuel, the entire business of GTA cannot survive.

Further, the expenses to fill the diesel in vehicle in furtherance of supply of service in normal condition is to be incurred by GTA and it is his liability to fulfill such supply. The provision of Section 15(2)(b) of the Central Goods and Services Tax Act, 2017 (CGST Act) takes within its sweep the value of expenses which is incurred by recipient. Therefore, even by agreement between the GTA and service recipient, this statutory liability cannot be sidelined.

Thus, HC held that fuel provided free of cost by the service recipient would be included in value of supply of GTA services.

¹ 2023-VIL-764-CHG

Background

- ▶ Assessee, a goods transport agency (GTA), entered into an agreement to provide vehicle along with driver for transportation of goods to service recipient.
- As per agreement, service recipient is responsible to provide fuel on free of cost (FOC) basis.
- ▶ Assessee sought advance ruling on whether the fuel provided by the service recipient on FOC basis is to be added in value of supply of GTA services.
- ▶ The Authority for Advance Ruling (AAR) passed an order stating FOC fuel will be included in the value of GTA service. Aggrieved, assessee filed an appeal before the Appellate Authority for Advance Ruling (AAAR).
- ▶ Section 101(3) of the Central Goods and Services Tax Act, 2017 (CGST Act) provides that no advance ruling would be issued in respect of question under appeal or reference where the members of the Appellate Authority differ on any points.

Since there was a difference of opinion between the members (State and Centre) of AAAR, no ruling was rendered.

- ▶ Assessee, being remediless, filed writ petition before the Chhattisgarh High Court (HC).

Assessee's contentions

- ▶ GTA is defined as any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.²
- Where the diesel is supplied free basis the agreement, it would not be an issue to be determined to levy the tax.
- ▶ Section 7(1) of CGST Act provides that supply include all forms of supply of goods or services made or agreed to be made for a consideration by a person in the course or furtherance of business.
- The expression "agreed to be made" indicates that the mandate of the Act is to see what are the services which are being agreed between the parties.³
- ▶ Perusal of Section 15(1) would indicate that the value of supply shall be the transaction value, which is the price actually paid or payable and the words 'said supply' in conjunction with the phrase 'price actually paid or payable' is directly relatable to such supply agreed to be made.
- ▶ When the agreement has been entered between the parties, the same cannot be ignored while examining the tax liability.

Reliance was placed on the SC ruling in case of Bhayana Builders⁴ wherein while examining the valuation provision under service tax, it was held that free supplies made by the service recipient cannot be added to the taxable value of the service provider.

- ▶ As per section 15(2)(b) of the Model GST law, free supply was includable for the purpose of valuation. However, in the final GST law, the provision of free supply by the service recipient was excluded.
- There is a conscious omission by the Legislature to include value of free supply by recipient to evaluate the entire supply.
- ▶ Circular No. 47/21/2018-GST dated 8 June 2018 provides that free supply is not to be added for the purpose of valuation.

Revenue's contentions

- ▶ The language used in Section 15(2)(b) of the CGST Act "*any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both*" would include supply of diesel and in the instant case, the assessee tried to by-pass the object of legislation.
- ▶ The vehicle cannot ply without diesel which is an important component and therefore, the contract cannot override the plain language of GST.

HC Ruling

- ▶ HC referred to the SC's rulings which identified essential elements of taxation⁵ as:
 - i) *The taxable event;*
 - ii) *The person on whom the levy is imposed;*
 - iii) *The rate at which the levy is imposed; and*
 - iv) *The measure or the value to which the rate will be applied.*
- ▶ The entire GTA business and its survival is premised and interdependent on the vehicles and fuel used for transportation of goods.
- ▶ The obvious factor would be the vehicle cannot run without fuel. Therefore, the design of the entire activity of GTA is based on supply of fuel to the respective vehicles.
- ▶ If the GTA has stitched up to provide service by obtaining fuel on FOC basis by contract with recipient company, this phenomenon would transcend the activity which reflects a broader shift in name of contract and therefore, the revenue has power to remove the lid to find out the object and purpose.

² Notification No. 12/2017- Central Tax (Rate) dated 28 June 2017

³ (2018) 4 SCC 669

⁴ (2018) 3 SCC 782

⁵ 1985 (Supp) SCC 205, (1999) 8 SCC 667

- Referring to the rulings quoted by the assessee, HC noted that a careful reading of the aforesaid proposition would show that the nature of services rendered in those cases were different. In the case of GTA, the centrality of the object revolves around the service provided by GTA which is fully based on supply of fuel.
- The nature of business would be the decisive factor and if such consideration is shifted by entering into agreement, it would be encroaching upon turf of GTA.
- The parties by agreement cannot over-ride the statutory provisions in relation to matter of tariff.⁶
- The expenses to fill the diesel in vehicle in furtherance of supply of service in normal condition is to be incurred by the GTA and it is his liability to fulfill such supply. The statutory provision of Section 15(2)(b) takes within its sweep the value of expenses which is incurred by recipient. Therefore, even by agreement between the GTA and service recipient, this statutory liability cannot be sidelined.
- Fuel is an integral part used in providing transportation service and is essential for GTA service provider. Without fuel, the entire business of GTA cannot survive. Therefore, fuel cannot be bifurcated to overcome a tax liability.
- The Circular referred by assessee is confined to specified subject matter and would not be of any help considering the nature of business.
- Thus, HC held that fuel provided free of cost by the service recipient would be included in value of supply of GTA services.

Comments

- a. The ruling is likely to have an adverse impact on the businesses wherein provision of free of cost supplies by the service recipient is a prevalent practice.
- b. The taxpayers may have to evaluate the implication of the ruling since it could result in additional tax burden where the recipient is not eligible to claim the input tax credit.

⁶ (2020) 5 SCC 185

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