

NATIONAL WORKSHOP FOR HIGH COURT
JUSTICES
ON
THE REGIME OF GST



PRESENTATION BY

JUSTICE AKJ NAMBIAR
HIGH COURT OF KERALA

CLASSIFICATION ISSUES
&
THE COMPOSITE/MIXED SUPPLY
CONUNDRUM



LET COMMON SENSE BE OUR GUIDE

TAX BASICS

- ∞ A taxing statute must specify the NATURE, the SUBJECT, the MEASURE and the RATE of the tax.
- ∞ GST: is a tax on the SUPPLY of goods/service by a TAXABLE PERSON and is levied on the PRICE at the RATE specified in the tariff.
- ∞ The classification of the goods/service for taxation is under the CTA which is aligned to the Harmonized System of Nomenclature (HSN)
- ∞ It is therefore necessary to understand the principles informing the classification of goods/services under the CTA

RULES FOR INTERPRETATION OF THE HSN

- ❧ Contained in the General Rules read with Section/Chapter/Sub-heading notes in HSN
- ❧ Coding is at 6 Digit level internationally and 8 Digit level nationally; Rates are prescribed nationally
- ❧ Scheme: Production Principle – Raw materials are placed in the beginning, intermediate products in the middle and fully produced goods at the end
- ❧ In India, we refer to the schedule to the CTA; Chapters 1 to 98 deal with Goods
- ❧ Services are dealt with in Chapter 99 of CTA

❧ Classification to be determined first in terms of headings read with corresponding section or chapter note



❧ Reference to article in a heading covers article whether incomplete or unfinished provided it has essential characteristic of finished article when presented

❧ Finished article presented unassembled/disassembled to be classified in same heading as assembled article

❧ Heading references to materials or substances includes mixtures or combination of such materials/substances

- ☞ Reference to goods of any material/substance includes goods consisting wholly or partly of such materials/substances
- ☞ Goods prima facie classifiable under two or more headings – opt for the heading that provides the most specific description
- ☞ Alternatively, classify according to ingredient/material/component or article that gives the mixture/composite goods their essential character
- ☞ If goods cannot be classified by any of the above methods, then classify in heading that occurs last among those that equally merit consideration

- ❧ If goods cannot be classified under any of the headings based on above tests, they have to be classified under the heading appropriate to the goods to which they are most akin
- ❧ Classification of containers/packages:
 - ❧ in the case of those that cannot be re-used, the classification must be under the heading of the article for which they are intended
 - ❧ in the case of those intended for repetitive use, they are to be classified separately from the material that they hold
 - ❧ if the container gives the article its essential character, then the goods are to be classified under the heading for the container

- ❧ Classification of Services is under Chapter 99 CTA and is under five broad sections
- ❧ S.5 : Construction services
- ❧ S.6: Distributive trade, accommodation & food services
- ❧ S.7: Financial and related services
- ❧ S.8: Business & Production services
- ❧ S.9: Community, Social & Personal services
- ❧ Words used in the tariff are to be understood in “Trade Parlance”. End Use is not generally relevant except when tariff description of goods requires so and classification relates to function of the product

THE CONCEPT OF SUPPLY

- ❧ Taxable event in GST is “Supply” (S.7); includes sale, transfer, barter, exchange, licence, rental, lease or disposal made:-
 - ❧ Of goods or services or both
 - ❧ For a consideration
 - ❧ In the course or furtherance of business
 - ❧ Has to be a taxable supply by taxable person in taxable territory
- ❧ Concepts of Deemed Supply (Schedule I); Declared Supply (Schedule II) and Negative List of Supplies (Schedule III – not taxable)

COMPOSITE & MIXED SUPPLY

- ∞ Composite Supply: S.2 (30) – supply by taxable person to recipient ~~of~~ two or more taxable supplies of goods or services or both or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is the principal supply.
- ∞ Eg: Transportation of goods undertaken along with packing & insurance; Hotel accommodation with complimentary breakfast
- ∞ Treated as supply of one service/goods that provides the bundle with its essential character –the principal supply- and the tax rate is that applicable to the principal supply

COMPOSITE & MIXED SUPPLY

- ∞ Mixed Supply: (S.2 (74)) – two or more individual supplies of goods/services or any combination therewith, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.
- ∞ Essentially: If the supply of two or more goods/services/combination is naturally bundled then it is a composite service, otherwise it is a mixed supply
- ∞ Tax implication: Mixed supplies are charged at the highest of the rates applicable for the individual goods/services
- ∞ Eg. Hamper of dry fruits, sweets, chocolates, aerated drinks and fruits supplied for a single price

CASES ON COMPOSITE & MIXED SUPPLY

- ❧ *Torrent Power Ltd v UOI – 2020 (34) GSTL 385 (Guj-DB)* – Whether charges such as application fee, meter rent, testing fee etc collected in connection with transmission/distribution of electricity to consumers liable to GST? Held: Since charges were collected as authorised by the Electricity Act & Rules, supply had to be seen as a composite supply comprising of principal supply of electricity which was exempt and other incidental/ancillary services.
- ❧ *In Re: HP Sales India (P) Ltd – 2020 (38) GSTL 505 (AAAR, Maharashtra)* – Supply of Electro Ink along with other consumables like blanket, photo imaging plate, binary ink developer & other machinery products – Held: there is no principal supply and hence it is only a mixed supply.
- ❧ *In Re: Sandvik Asia (P) Ltd – 2019 SCC Online Raj AAR-GST II* – where after sales support services were under an agreement that showed separate supply of parts and services, Held: it was a mixed supply

END OF PRESENTATION

Thank you for your patience