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DISPUTE RESOLUTION AND ARBITRATION

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DISPUTE RESOLUTION AND ARBITRATION UPDATE

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RECENT JUDGEMENTS

Jindal Steel & Power Ltd. v. State Trading Corporation of India & Ors

FAO (OS) (COMM) 61/ 2020

Background facts

- The parties to the present appeal are signatories to an Associateship Agreement as per which disputes arising thereunder are to be adjudicated by way of Arbitration as per the rules of Indian Council of Arbitration (**ICA**).
- Subsequent to the execution of the aforesaid Agreement, disputes arose between the parties and thereafter, a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (**Act**) was filed before Delhi High Court (**HC**).
- On April 29, 2020 an Order was passed, by way of which ad-interim reliefs prayed for in aforesaid petition were rejected. The aforesaid Order was challenged by Appellant by present Appeal.

Issue at hand

- Can an appeal against a Section 9 decision rejecting an application of interim relief be filed since the arbitration clause specified an ICA institutional arbitration?

Findings of the Court

- In lieu of an urgency in the matter, Appellant requested that a retired Judge, who is also on panel of the ICA, be appointed as an Arbitrator. The Respondent on the other hand portrayed its willingness to submit to jurisdiction of ICA and stated that appointments of an Arbitrator be left open at discretion of ICA as per its rules.
- HC set out the main objectives of the Act – i.e. to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration – to ensure that the arbitral tribunal remains within the limits of its jurisdiction.

- Placing its reliance on the underlying principle of the Act which is to strive for efficient and expeditious disposal of disputes between the parties by a forum of their own choice, considering urgency of the matter as well as the fact that ICA takes unduly long time in appointing the arbitrators, and for the efficient/ expeditious disposal of disputes between parties by a forum of their choice, HC appointed a retired judge as the Arbitrator and further issued guidelines to be adhered to during the course of the arbitral proceedings.

Aberdeen Asia Pacific including Japan Equity Fund v. DCIT (International Taxation) – 1, Mumbai

WRIT PETITION NO. 2796 OF 2019

Background facts

- Aberdeen Asia Pacific including Japan Equity Fund (**Petitioner**) is a sub-fund of a USA based Limited Liability Company i.e. Aberdeen Institutional Commingled Funds LLC (**AICFL**), based in Delaware, USA.
- AICFL which was originally set up as trust on December 09, 1996 as Aberdeen Delaware Business Trust and was converted on April 19, 2010 into a LLC in accordance with the Trust Act and the LLC Act of Delaware, which provide that when a trust is converted into a LLC, for purposes of law, conversion from a trust to a LLC would not constitute creation of a new entity.
- Prior to the conversion the petitioner as a sub-trust had incurred and accumulated losses under the head 'capital gains' to the tune of approx. INR 5.85 crores from AY 2009-11. After conversion, AICFL carried forward these losses under Section 74 of Income Tax Act, 1961 (**Act**). On April 16, 2012 it had filed an application before Authority for Advance Rulings (**AAR**) to determine whether such carry forward of losses was permissible in light of the conversion/re-organization.
- On February 02, 2018 AAR held that Section 70 of the Act limits a claim of carry forward of loss to an assessee who actually incurs such losses, and that since AICFL LLC was not the entity which could be assessed in India and had never filed any income tax returns in India, it could not be permitted to carry forward and set off the losses incurred by AICFL Trust. It was of the view that LLC and Trust were separate taxable entities. Thereafter Assessing Officer (**AO**) issued a notice under Section 148 of the act for escapement of income for AY 2011-12, in view of the order of AAR. Later, upon petitioner's request, the AO forwarded a copy of the reasons for re-opening of the assessment. Thereafter the Petitioner submitted its objections to the reasons which were not accepted by the AO. In the meanwhile, against the order of the AAR, AICFL LLC filed a Writ Petition[1] before Bombay High Court (**HC**).
- By the judgment dated March 08, 2019, HC dismissed the Writ Petition, but on the substantive issue it held that in accordance with the principles of private international law, the status of an entity incorporated abroad has to be determined even in India according to the law of the country where entity was incorporated. It held that in terms of law of Delaware, USA, AICFL both as Trust and as LLC continues to be same person, which is acceptable in India. Therefore, gain and loss earned by it in its earlier avatar would in law not be denied only because of change in status from Trust to LLC.
- Despite the aforesaid ruling of HC, Revenue mechanically commenced re-assessment proceedings against the three sub-funds. Challenging the same, the three sub-funds of AIFCL filed Writ Petitions[2] before HC, common order of which is summarized hereinunder.

Issues at hand

- Whether AICFL LLC could carry forward losses of AICF Trust in accordance with Section 74 of the Act, considering conversion of AICFL Trust to LLC?
- Whether any alternate remedy was available to Petitioner and other sub-funds?

Our view

Despite the Agreement being very clear and Respondent also being quite vocal about the appointment of an arbitrator by ICA itself, High Court went over and beyond to appoint an Arbitrator. In our opinion, this is a classic case of judicial overreach and Court's intervention in functioning of an established institution would only undermine the authority of such institutions which, in turn, sets wrong precedent for circumventing procedures in institutional arbitrations.

[1] WP/9358/2019
[2] WP/2796/19

Findings of the Court

- HC referred to the ruling of the Supreme Court in the matter of *Technip SA Ltd*[3], wherein it was held that questions as to the status of a corporation must be decided according to the laws of its domicile or incorporation state, subject to certain exceptions including the exception of domestic public policy.
- However, Court also considered that in its earlier Order they had clarified that the decision would not impact case of sub-funds to claim benefit of carry forward and set off losses. Therefore, any gain or losses by sub-funds in their earlier avatar would not be denied only because of change in status from sub-trust of Trust to series of LLC.
- Further it observed that Revenue had previously taken stand that AICFL is not entitled to carry forward losses as it has not incurred such losses and neither is it registered as a taxpayer in India, and that it is sub-funds which would be entitled to carry forward losses, if otherwise eligible.
- HC held that reopening of assessment by the Revenue was only since the petitioner had gone under re-organization. Basis the earlier order passed by the Court, the reasons for reopening were held to be erroneous and, accordingly, quashed.

Our view

This is a welcome judgment since it gives significant clarity on the treatment of tax statutes of other nations in line with private international law principles and also lays down the ground for the litigants to approach a High Court even when there is efficacious remedy available under a statute.

Ramnath & Co v. Commissioner of Income Tax

(2020) SCC ONLINE SC 484

Background facts

- Appellants had been engaged in providing necessary information to certain foreign buyers of frozen marine products for deciding on purchases of said products and, in return, appellants received service charges from the foreign enterprises/buyers. The Appellant had filed their ITR for the AY 1993-94 on October 29, 1993 and had claimed 50% deduction of approximately INR 22 lakhs from total taxable income under Section 80-O r/w Clause (iii) of Explanation of this Section of the Income Tax Act,1961 (**Act**). The said deduction was in relation to amount received by it towards service charges received from foreign enterprises. The Assessing Officer (**AO**) vide its order dated March 28, 1996 disallowed this deduction stating that services rendered were 'services rendered in India' and not the 'services rendered from India' and, therefore, service charges received by Appellant from foreign enterprises did not qualify for deduction under Section 80-O of the Act.
- The order was challenged by the appellant before Appellate Authority. The Authority accepted the Appellant's reliance on *EPW Da Costa*[4] and *Capt. KC Saigal*[5] set aside the order passed by AO and held that the services given by the appellant were from India and clearly within the realms of Explanation (iii) of Section 80-O of the Act.
- Aggrieved by order of Appellate Authority, Revenue challenged this order before **ITAT** in the year 1997.[6] ITAT vide its order dated November 19, 2001 dismissed Revenue's appeal. Tribunal while relying on the case of *Godrej & Boyce Mfg Co*[7], chalked out the difference between 'services rendered in India' and 'services rendered from India'. It held that the services were of the specialized nature and were necessarily rendered from India and allowed Appellant's claim.
- Revenue challenged the ITAT order before High Court of Kerala (**HC**), which vide its order dated June 09, 2016 allowed the appeal and disallowed the claim of Appellant. HC stated that Appellant had received sales commission only and nothing else, and therefore deduction under Section 80-O of the Act cannot be granted. According to the court, a mere foreign receipt does not entitles an assessee to claim deduction under Section 80-0.
- The HC, while differentiating the phrases rendered and rendering, said that the services have to be rendered in India but performed on foreign soil in order to claim deduction under Section 80-O. Also, HC held that reliance of Appellant on Circular No 700 dated March 23, 1995 issued by **CBDT** was highly misplaced.
- The said order was challenged before the Supreme Court (**SC**). The SC while clubbing all the similar matters had upheld the order of HC and disallowed claim under Section 80-O of the act.

[3] (2005) 5 SCC 464

[4] (1980) 121 ITR 751(Delhi)
[5] (1195) 54 ITD 488(Delhi)
[6] 86/Cochin/1997
[7] (1993) 203 ITR 947(Bom)

Issues at hand

- Whether the services rendered by the appellant can be said to be covered under Section 80-O of the Act?
- Whether the Appellant is eligible for the deduction under Section 80-O of the Act?

Findings of the Court

- The court held that an enquiry is required to be made by AO and for the purpose of such imperative enquiry, requisite material ought to have been placed by the assessee to co-relate foreign exchange receipt with information/service referable to Section 80-O. Evidently, such an enquiry by AO could not be made as no such concrete material was placed on record by appellant to show requisite correlation.
- SC further said that until the stage of finding out eligibility to claim deduction is passed, the ambit and scope of the provision for the purpose of its applicability cannot be expanded or widened and remains subject to strict interpretation. Only once eligibility is decided in favor of an assessee, the provisions for claiming such deduction could be construed liberally.
- The Court also noted the dictum of Continental Construction[8] that it is duty of revenue and right of assessee to see that consideration paid under the contract legitimately attributable to such information and services is apportioned, and assessee is given the benefit of deduction available under section to the extent of such consideration
- Court noticed that in the case at hand, all the clauses of agreements read together make it absolutely clear that appellant was merely a procuring agent and it was his responsibility to ensure that proper goods are supplied in proper packing to the satisfaction of the principal and no specific or scientific services were ever rendered by it.
- The SC held that for bringing any particular foreign exchange receipt within the ambit of Section 80-O for deduction, it must be a consideration attributable to information and service contemplated by Section 80-O, and in case of a contract involving multiple or manifold activities and obligations, every consideration received therein in foreign exchange will not ipso facto fall within the ambit of Section 80-O.

Our view

The Supreme Court has clarified the position on deduction under Section 80-O through this judgment. Accordingly, words such as "expert information and advice", "analysis", "technical guidance" cannot be read out of context and de hors the purpose of an agreement in which such expressions are worded. Moreover, not only the service must be rendered from India to foreign enterprise, but the foreign exchange receipt must also be attributable to such special services as mentioned in the section and the nature of such service should be as delineated in Section 80-O of the Act in order to qualify for this deduction.

Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) (d) Thr. LRS & Ors.

CIVIL APPEAL NO. 9519 OF 2019 ARISING OUT OF SLP (CIVIL) NO. 11618 OF 2017

Background facts

- The Plaintiffs sold the suit property to Respondent No.1 vide registered Sale Deed.
- Respondent No. 1 made part payments towards sale consideration to the Plaintiffs and subsequently sold the suit property to Respondent Nos. 2 and 3 vide registered Sale Deed.
- Thereafter, Plaintiffs filed suit before Trial Court, against Respondents, for inter alia cancellation of sale deed on the ground that sale consideration had not been paid in entirety by Respondent No. 1.
- Respondent Nos. 2 and 3 filed an Application under Order VII Rule 11 (a) and (d) of Code of Civil Procedure, 1908 (**CPC**) for rejection of plaint, as same was barred by limitation. Trial Court allowed this application and held that the suit was barred by limitation. Aggrieved, Plaintiffs filed First Appeal before High Court of Gujarat (**HC**) against the order of Trial Court. HC upheld the order of Trial Court and dismissed the appeal.
- The Plaintiff filed Civil Appeal before Supreme Court (**SC**) against the impugned judgement and order passed by HC.

Issues at hand

- Whether non-payment of part of sale consideration is a ground for cancellation of registered sale deed?
- What is object of Order VII Rule 11 of CPC?

[8] (1992) 195 ITR 81 (SC)

Findings of the Court

- SC held that the object of Order VII Rule 11 CPC is that if in a suit, no cause of action is disclosed, or suit is barred by limitation, Court would not permit plaintiff to unnecessarily protract proceedings in the suit with the intent of putting an end to such sham litigation to prevent further wastage of judicial time.[9]
- SC also held that with regard to Order VII Rule 14 CPC, documents filed along with plaint are required to be taken into consideration for deciding the application under Order VII Rule 11 (a) and also that law cannot permit clever drafting which creates illusions of a cause of action. Further, the plaint should be nipped in the bud, so that bogus litigation will end at the earliest stage.
- SC held that at such a stage, pleas taken by defendant in written statement and application for rejection of plaint on merits would be irrelevant and cannot be adverted to or taken into consideration. It said that power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint or after issuing summons to defendant or before conclusion of the trial.
- SC held that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues.
- SC held that plaint is liable to be rejected under Order VII Rule 11 (d) of CPC as the Plaintiffs have failed to discharge the onus of proof that suit was filed within the period of limitation.
- SC held that the non-payment of a part of the sale price would not affect validity of sale. Once title in property has already passed, even if balance sale consideration is not paid, sale could not be invalidated on this ground. The Plaintiffs may have other remedies in law for recovery of the balance consideration but cannot be granted the relief of cancellation of the registered Sale Deed.

Our view

This judgment is an interesting interplay between the limitation for challenge to 'sale' of property under Transfer of Property Act 1882 and challenge to such 'sale' for non-payment of part consideration, if within the period of limitation, in view of the definition of 'sale' under the Act.

The SC held that the object of Order VII Rule 11 of CPC needs to be strictly complied with and reiterated that any suit with no cause of action being properly disclosed or the suit being barred by limitation needs to be dismissed, to put an end to the sham litigation, so that further judicial time is not wasted .

Mohd Inam v. Sanjay Kumar Singhal & Ors

2020 SCC ONLINE SC 540

Background facts

- The father of Appellant was tenant of suit premises since 1965 and Respondents are the landlords of the same premises. Respondents moved an application before Rent Controller and Eviction Officer contending therein that Appellant father had sub-let the premises to some outsiders, who were not family members of tenant, thus prayed for declaration of vacancy under Section 16(1)(b) of U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972. (**Act**)
- Application of landlord was allowed, and Rent Control Inspector was appointed to inspect premises. The report stated that Rashid Ahmed, who was tenant, was not present in the premises at the time of inspection and Inspector was informed by occupants that he had gone to his village. The report stated that there were several persons residing in premises and they comprised of four separate families.
- Rashid Ahmed objected to inspection report that was filed stating that he and his brother and their families were residing in the premises as tenants. He further stated that tenancy was in his name and there was no other person who was residing outside his family. He, therefore, resisted declaring the suit premises as vacant. Rent Controller and Eviction Officer, passing final order under Section 16 of the Act, declared suit premises 'vacant'. Order was challenged before District Court (**DC**), by a Revision Petition and said Petition was allowed and set aside the order of Rent Controller and Eviction Officer.
- Aggrieved by the order, Respondents approached UP High Court (**HC**), under Article 227 of Indian Constitution. HC allowed the Petition and set aside the order passed by DC on the grounds that it had committed illegality in entertaining Revision Petition filed against vacancy order as well as the final order. Aggrieved by the order passed by HC Appellant approached Supreme Court (**SC**).

Issues at hand

- Whether the HC rightly exercised its jurisdiction under Article 227 of the Constitution of India?
- What is the scope of "occupied by any person who is not a member of his family"?

[9] 1986 Supp. SCC 315

Findings of the Court

- SC held that HC had not only misread the law but also misread facts of the case. An interlocutory order which had not been appealed from, either because no appeal lay or even though an appeal lay, an appeal was not taken, can still be challenged in an appeal from a final decree or order.
- SC held that the revisional power under Article 227 of Indian Constitution does not entitle HC to interfere with finding of the fact recorded by first appellate court/first appellate authority because on re-appreciation of evidence, its view is different from court/authority. SC further held that consideration or examination of evidence is confined to find out as to whether finding of facts recorded by court/authority is according to law and does not suffer from any error of law.
- It was held that revisional powers conferred upon District Judge under said the Act are almost analogous with revisional powers of HC that have been interpreted earlier by SC and said principles can be aptly made applicable to revisional powers of District Judge under the Act. It was also held by that if said principles are applied to facts of present case, it could be seen that learned District Judge was fully justified in interfering with order passed by Rent Controller and Eviction Officer.
- After relying on numerous judgments, the SC held that it is a well settled principle of law that in guise of exercising jurisdiction under Article 227 of Constitution of India, HC cannot convert itself into a court of appeal. It is equally well settled that the supervisory jurisdiction extends to keeping subordinate tribunals within limits of their authority and seeing that they obey the law.
- SC held that the approach of HC in exercising the jurisdiction under Article 227 of Constitution of India was totally erroneous and exercise of his power by the District Judge under Section 18 of the Act was contrary to law laid down and was totally on a perverse reading of evidence.
- On second issue, it was held that a perusal of inspection report clearly established that original tenant was residing in tenanted premises along with his son, brother's son and their families. As such, inspection report clearly established that no person who was not a member of tenant's family was allowed to occupy premises in his own right. Therefore, finding of the Rent Controller and Eviction Officer that landlord had proved case under clause (b) of sub- section (1) of Section 12 of the Act was contrary to the law as interpreted by SC. It was held that the finding as recorded by the said authority was on misreading or ignorance of evidence on record.
- SC allowed the Appeal and the order passed by HC was set aside.

Our view

The Supreme Court, in its supervisory jurisdiction, rightly analyzed the High Court's powers under Article 227. This Judgement once again puts a check upon HC's power of revision. The purpose of revision is to enable revision court to satisfy itself as to correctness, legality or propriety of any finding, sentence or order recorded or passed and as to regularity of any proceedings of subordinate court. While doing said exercise, HC should not defeat the purpose of revisional jurisdiction by going beyond its ambit and should rightly and properly interpret its powers and jurisdiction to deliver natural and speedy justice.

ID Fresh Foods (India) Pvt Ltd

CASE NO KAR ADRG 38/2020

Background facts

- ID Fresh Food (India) Pvt Ltd (**Applicants**) filed an application for Advance Ruling under Section 97 of Central Goods and Service Tax Act, 2017 (**CGST Act**) and Karnataka Goods and Services Act, 2017 (**KGST Act**) read with Rules thereof.
- Applicant is a food products company involved in preparation and supply of wide range of ready to cook, fresh foods including idli & dosa batter, whole wheat parotta, Malabar parotta, etc. Applicant contended that product merits classification under Chapter heading 1905, under the product description of 'Khakhra, Plain Chapatti or Roti'.
- The applicant, quoting the Notification No. 1/2017 Central Tax (Rate) dated June 28, 2017, as amended by Notification No. 34/2017 Central Tax (Rate) dated October 13, 2017 (**Notification**), stated that a new entry no. 99A has been inserted ('Khakhra, Plain Chapatti and Roti'), without defining said description.
- The applicant further claimed the applicability of Custom Tariff Act, 1975 and explanatory notes to arrive at the classification of the product.
- The Applicant contended that the section IV – chapter 10 and 11 of Custom Rules deals with the 'Prepared Food Stuffs' in which cereals such as wheat flour. Also, according to the applicant company a combined reading of general rules of interpretations and explanatory notes with respect to Chapter 19 of Custom Rules, its products would fall under heading number '1905 – Bread, pastry, cakes, biscuits and other baker's wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, Sealing wafers, rice paper and similar products.'

- Accordingly, Applicant contended that its products such as Parota and Malabar Parota merits classification under heading 1905.

Issue at hand

- Whether the preparation of Whole Wheat Parota and Malabar (refined wheat flour) Parota be classified under Chapter heading 1905, attracting GST at rate of 5%?

Findings of the Court

- AAR held that that it could be easily inferred from description from Tariff heading 1905 that Chapter 19 covers preparations of flour, generally used for food, which are made from products of Chapter 11. The impugned products having description 'Parota' do not have any specific entry in Custom Tariff Act, 1985/GST Tariff. AAR held that since products covered under heading 1905 are already prepared or completely cooked products and no further process is required to be done on them for consumption and hence, they are ready to use food preparations unlike Parotas in instant case. Therefore, it cannot be classified under heading no 1905.
- Accordingly, to classify applicant's products, court referred to chapter 21 entry no 2106 which covers Miscellaneous Edible Preparations. The court held that 5% GST slab is only applicable if the following conditions are met:
  - If the product/good falls under heading no 1905 or 2106
  - They should be either a 'Khakhra, Plain Chapatti or Roti'.
- Referring to the Rule 3(c) of General Rules of interpretation of the Custom Tariff Act and Harmonized Numbering System it held that in the instant case the first condition can be said to be fulfilled and the product can be classified under entry no 2106 as per the Coding and Commodity Description System. As far as second condition is concerned it observed that the products which are described as 'parotta/s' do not find its mention in either of entries or the Notification. Thus, it held that the benefit of entry no. 99A of the Schedule-I to the Notification is not applicable to the instant case and hence chargeable at 18% GST instead of 5%.

Our view

With this judgment the unclassified products such as 'Parotas' have been classified and can be said to have fond their place in Tariff chapters/headings the battle regarding its charging rate may still go on.

We are of the view that entry No. 99A to the Notification should have been extended to parotas as it doesn't require any further processing of food apart from just heating, and it is just a form of roti/chapati.

NCR Pearson Inc.

KAR ADRG 37/2020

Background facts

- Applicant is an American company whose business division, Pearson VUE, is engaged in provision of computer-based test administrative solutions (**Tests**) to its clients like educational institutes.
- The Applicant offers three types of tests on behalf of its clients to test-takers in India:
  - **Type 1 Test**
    These are self-administered tests which are solely digital in nature. The candidate has to register and appear for tests online without any human interaction. The scores are also provided instantly by the electronic software based on an algorithm developed by Applicant.
  - **Type 2 Test**
    The pre-test registration and fee payment procedure remains the same as in Type 1 test. The difference is that the test-taker must go to a test centre, where he/she will be assigned a computer to give their test and will also be supervised by an invigilator. Once the test is completed, scores will be provided instantly by a computer-based algorithm on electronic software. Additionally, entire test process is also recorded and reviewed by a test security officer to validate any issues that may have arisen during the test.
  - **Type 3 Test**
    There tests are a mixture of multiple-choice questions as well as essay-based questions. The candidates create their profile, schedule their appointment and remit payment using a registration centre. The test process remains similar to the type 2 tests. At the end of the test, the test-taker will be able to see the final score pertaining to the multiple-choice questions and an indicative score for essay-based question marked by algorithm. The essay-based questions are sent to USA for human-evaluation. In case the difference in score for a single essay question between the human and algorithm scoring is more than 1 point, then the essay-based question is sent to an expert evaluator for assessment. Once entire scoring activity is completed then the test-taker is sent an e-mail with a URL to assess their scores.

- All three tests are priced differently. The test content is the intellectual property of the client and is supplied by the client to the Applicant who acts as an intermediary between the client and the test-taker. The material supplied by the client is embedded in Applicant's software, which is then accessed by test-takers from any location around the world. It is also Applicants responsibility to facilitate entire testing process.
- In India, especially, Applicant entered into arrangements with third-party service providers including a subsidiary of Applicant, to act their authorized test centres. These centres provide secure test centre services to Applicant for delivery of tests including verification, invigilation, etc.
- With regards to the Type 1 test, it is clear that the same service falls under the category of online information and database access or retrieval services (**OIDAR**) as defined under Section 2(17) of Integrated Goods and Service Tax Act, 2017 (**IGST Act**). The Applicant sought advance ruling for the other two tests.

Issues at hand

- Whether the service provided for Type 2 and 3 tests can be classified as OIDAR services?
- If they do not qualify as OIDAR, whether Applicant would be liable to pay IGST in supply of said services to test-takers being non-taxable online recipients (**NTOR**) in India?

Findings of the Court

- With regards to Applicants' reliance on the guidelines agreed by the VAT committee of European Commission dated February 28, 2017 wherein it has been stated that "where such individual supply made to the customer requires human intervention on the side of the supplier, it should be seen as involving more than just minimal human intervention", the AAR held that the interpretation of the Applicant was too literal. In this case, the Applicant manages the human intervention aspect of the supplier, which is focused on whole environment and not the specific needs of the individual test-taker.
- AAR observed that provision of taking tests online at test centres are naturally bundled activities and are supplied in conjunction with each other in ordinary course of business and therefore can be termed as Composite supply under Section 2(30) of CGST Act. Since the objective here is to take online tests, principal supply would be an OIDAR supply.
- The test takers become NTOR in terms of Section 2(16) of IGST Act and such service provider is under an obligation under Section 14 of IGST to take GST registration, as such supply from outside India would be and Import of Services under Sections 2(11) and 7(4) of the IGST Act.
- Type 2 tests conducted by the Applicant Company qualifies as an OIDAR service.
- Since Type 3 tests are not OIDAR services, there will not be any liability on the supplier located outside India. The court also held that if the transaction itself is exempt, there is no liability on the recipient of service. Such a supply is not only exempt at the hands of the supplier but also the recipient by virtue of Sr. No. 10 of the Notification No. 09/2017-IGST (R) dated June 28, 2017.

Our view

Edu-tech and e-learning have emerged as of the flourishing sectors in the Covid slowdown. This decision clarifies the requirement of GST registration for OIDAR services and naturally bundled activities for companies engaged in providing online exams and tests via electronic software. Such clarity will help boost stakeholder confidence at a time when such service providers are experiencing significant surge in demand.

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