



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव

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DIN NO. :

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| (क) | फाइल संख्या / File No. | GAPPL/ADC/GSTP/1165/2022 / 1963 - 69 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date | AHM-CGST-002-APP-ADC-05/2023-24 and 28.04.2023 |
| (ग) | पारित किया गया / Passed By | श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals) |
| (घ) | जारी करने की दिनांक / Date of issue | 02.05.2023 |
| (ङ) | Arising out of Order-In-Original No. GST/D-VI/O&A/44/ASTRAL/AM/2021-22 dated 21.01.2022 passed by The Assistant Commissioner, CGST, Division - VI (S G Highway West), Ahmedabad North Commissionerate | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | M/s Astral Limited (GSTIN-24AABCA2951N1ZO) 207/1, Astral House, Opposite Satyam Corporate Square, Behind Rajpath Club, Off S G Highway, Ahmedabad, Gujarat-380059 |

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| (A) | इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way. |
| (i) | National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017. |
| (ii) | State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017 |
| (iii) | Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand. |
| (B) | Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online. |
| | Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - |
| (i) | (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed. |
| (ii) | The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later. |
| (C) | उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in . |



ORDER-IN-APPEAL**BRIEF FACTS OF THE CASE:**

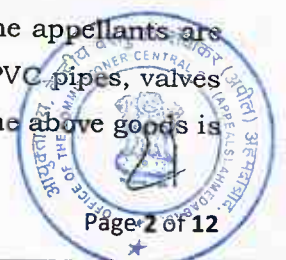
M/s. Astral Poly Technik Limited (Legal Name : Astral Limited) 207/1, Astral House, Opposite Satyam Corporate House, B/H Rajpath Club, Off S G Highway, Ahmedabad : 380 059 (hereinafter referred to as the "appellant") has filed the present appeal on 07.04.2022 against Order-in-Original No. GST/D-VI/O&A/44/Astral/AM/2021-22 dated 21-01-2022 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST & C.Ex, Division-VI, Ahmedabad North Commissionerate (hereinafter referred to as the "adjudicating authority/the respondent") for non-payment of GST by the Head Office on the salary expenses incurred by the appellant while providing services to Branch Offices.

2. Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AABCA2951N1ZO, are engaged in manufacturing of manufacturing and supply of UPVC / CPVC pipes, Valves / Cocks , Fittings like elbow, coupler, bush, hub, tee etc. The appellants have their head office in Ahmedabad, Gujarat and branches across India. The goods manufactured by the appellants in their Gujarat Unit are supplied to units outside the State of Gujarat on payment of applicable GST. The employees of the appellants are hired by them for various departments based on their qualification and experience. The appellants entered into an agreement with their prospective employees, which outlines the respective obligations for both the appellants and their employees. During the course of audit conducted for the period from Jul 2017 to March 2018, financial records of the appellants were scrutinized and it was observed by the audit that appellant had incurred expenses on activities relating to Admin & HR, Accounts & Finance, Information Technology, Logistics, Purchase, Branding etc and has provided these service from their Head Office to their branches registered outside Gujarat, and hence, the audit party proposing the demand of IGST amounting to Rs. 38,65,557/- under section 74(1) of the CGST Act, 2017 (the Act) read with Section 20 of the IGST Act, 2017 alongwith interest under Section 50(1) of the Act read with Section 20 of the IGST Act, 2017, and imposed a penalty under Section 74(1) of the Act read with the provisions of Section 122(2)(b) of the Act read with section 20 of the IGT Act, 2017.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on 07.04.2022, on the following grounds:

I. The impugned order is a vague, non-est and perverse as it merely reproduces the allegations in the Show Cause Notice without any independent scrutiny. Thus, it deserves to be quashed and set aside.

The appellant submit that the adjudicating authority has failed to substantiate any findings of its own and has merely reproduced the allegations raised in the Show Cause Notice. The adjudicating authority failed to appreciate that the appellants are engaged in manufacturing and supplying of goods such as UPVC/CPVC pipes, valves / cocks, fittings like elbow, coupler, bush, hub, tee etc. The cost of the above goods is



determined after taking into account all the costs and expenses they have incurred in manufacturing the goods. While finalizing the cost of specific products, the appellants factors in the cost incurred towards salary, remuneration, office rent, over head expenses etc and thus the final price is determined. The aforesaid facts was elaborately dealt with by the appellant in reply to the SCN, however, no particular findings by the adjudicating authority. No independent reasons were accorded in the impugned order for confirming the tax demand with interest and penalty. In support of this, they placed reliance upon in the case of

- *Cyril Lasardo (Dead) V/s Juliana Maria Lasarado 2004 (7) SCC 431*
- *Asst. Commr. of Commercial Tax Department Vs. Shukla & Brothers reported at 2010 (254) ELT 6 (SC) = 2011 (22) STR 105 (SC); and*
- *Bidhannagar (Salt Lake) Welfare Association Vs. Central Valuation Board & Ors – 2007 (6) SCC 668*

They further submitted that on the basis of above, the impugned order is a vague and non-speaking order and is thus, liable to be quashed and set aside.

II. Impugned Order failed to appreciate that the employees of the Appellants are employed for carrying out duties under the employment contract for appellants as a legal entity as a whole & not for a specific location based on physical presence.

The appellants' head office is the supplier, had booked expenses for all the branches. Thus, on the basis of turnover of head office of the appellants as compared to total turnover of the supplier, the IGT liability has to be crystallized. Impugned order confirms the tax demand on the ground that the appellants are supplying services to their branches outside the State of Gujarat. They submit that above understanding of the adjudicating authority is erroneous. The employment relationship between the employee and employer exists with a single legal entity as whole and is not confined to the location of registered person from where the said employee renders service. When an employee renders any service to other registered persons i.e distinct persons of the same legal entity, the nature of activity still assumes the character of services by an employee to the employer in the course of or in relation to his employment as he is an employee for the legal entity as a whole and not for any registered person. The adjudicating authority in the impugned order has grossly erred in considering the remunerations paid to the Key Managerial Personnel as base for "supply" under Section 7(1)(c) of CGST Act read with clause (2) of Schedule I to Section 7 of the CGST Act. The Section 7 of the CGST Act, defined Supply.

As per the inclusive definition, supply includes, all forms of supply of goods or services or both such as sale, transfer, barter, exchanges, license, rental, lease or disposal made or agreed to be mad for a consideration by a persons in the course or furtherance of the business. It includes import of services and activities specified in Schedule I made without a consideration.

A prima facie view would apparently suggest that the activities carried out by employees from the Head Office for accounting and other administrative functions with respect to other units, would amount to supply of services between distinct persons without



consideration as per Entry I of Schedule I. However, as stated above, an employee is employed for carrying out duties under the employment contract for the legal entity as a whole & not for a specific location based on physical presence and therefore by virtue of specific relaxation provided in Entry I of Schedule III of the CGST Act, which states that "Services by an employee to the employer in the course of or in relation to his employment" shall not be treated as supply of service. For this, they placed reliance on the judgment in the case of

- M/s. Tech Mahindra Ltd., Milind Kulkarni Vs Commissioner of Central Excise, Pune -I - 2016 (44) S.T.R. 71 (Tri. Mumbai);
- Agencia Commercial International Ltd Vs. Custodian of Branches of Banco Nacional Ultramarino 1982 AIR 1268 of H'ble Supreme Court;
- M/s. Torrent Pharmaceuticals Limited Vs Commissioner of Service Tax, Ahmedabad - 2015 (39) S.T.R. 97 (Tri. Ahmd.)

Therefore, the services rendered by the employees towards various functions like Admin & HR, Accounts & Finance, Information Technology, Logistics, Purchase, Branding etc. which benefit the other units of the entity, still remain the character of "services by and employee to the employer in the course of or in relation to his employment" and shall not be treated as supply of service as per Entry I of Schedule III and thus impugned order has been passed on a completely wrong premise and understanding. For this, they rely on the judgment in case of *M/s Wipro Enterprises (P) Ltd. Vs State of Karnataka, WP No. 52272 / 2016, wherein the HC considered the following questions -*

- (I) *Whether the branches of same corporate body acquire independent legal personality on being separately registered as dealers for the purpose of the Act?*
- (II) *Whether supply of goods from one unit / branch to another of the very same company amounts to sale for the purpose of levy of tax under the Act?"*

After detailed discussion, the H'ble High Court answered both the questions in negative observing the intention of the legislature in employing the particular expressions. Thus, the writ petitions were allowed in favor of the assesseees.

In view of the above discussions, the appellant submits that GST shall not be applicable on the said activities as the same is not a supply of service and the Impugned Order deserves to be quashed and set aside on this ground.

III. The Adjudicating Authority grossly erred in not extending the benefit of 2nd proviso to Rule 28 of CGST Rules to the appellants. The appellants ought to be given the benefit of the same.

In the present case, the department had observed in the SCN that provisions of Rule 27-30 of the CGST Rules are not applicable, as the open market value and the cost of goods or services of like kind or quality is not available. Thus, the department has resorted to Rule 31, which states the value of supply shall be determined using reasonable means consistent with the principles and the general provisions of Section 15 of the CGST Act. The impugned order, SCN and the Final Audit Report clarified that the appellant had



distributed the common expenses made by these departments from the Head Office Gujarat GSTIN to all distinct persons (i.e registered places / state / branches) by issuing the invoices and discharged the tax liability accordingly. Such an act of cross charging the common expenses by the appellant to its distinct person is done, except the salary expenses incurred is not considered in the valuation, being above explanation that an employee is employed for carrying out duties under the employment contract for the legal entity as a whole & not for a specific location based on physical presence.

Therefore by virtue of specific relaxation provided in **Entry I of Schedule III** of the CGST Act, which states that **“Services by an employee to the employer in the course of or in relation to his employment” shall not be treated as supply of service.** Hence, being salary out of scope of supply, the salary expenses were excluded from the valuation while distributing the common expenses. In reply to the SCN, the appellant had contended in detail that they ought to be given the benefit of 2nd proviso to Rule 28 of the CGST Rules, 2017. Rule 28 of the CGST Rules is reproduced herein below :

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent-

The value of the supply of goods or services or both between distinct person as specified in sub-section (4) and (5) of Section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

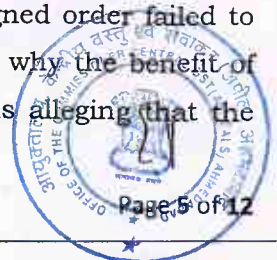
- (a) *be the open market value of such supply;*
- (b) *if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
- (c) *if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

(Emphasis supplied)

The appellant submitted that they are not providing any services to their branches. The goods which manufactured in Gujarat are being supplied to the branches on payment of applicable GST. The recipient units are also entitled to avail the credit of the taxes paid by the appellants. Thus, the benefit of 2nd proviso to Rule 28 of CGST Rules ought to be given to the appellant as the recipient unit is eligible to avail full ITC. Thus, the department has wrongly denied the benefit of Rule 28 of CGST Rules to the appellants and directly resorted to Rule 31 of CGST Rules and the adjudicating authority in the impugned order failed to take note of the above contention and given any specific findings as to why the benefit of 2nd proviso is not being extended to them. Further, the department is alleging that the



appellant have supplied services to their units situated outside the State of Gujarat. The above transactions amounts to supply of services. In this regard, it is to submit that they are engaged in manufacturing and supplying of UPVC/CPVC pipes, valves/ cocks, fittings like elbow, coupler, bush, hub, tee etc. The goods which are manufactured in Gujarat are being supplied to the branches on payment of applicable GST. The recipient units are also entitled to avail the credit of the taxes paid (Input Tax Credit) paid by the appellants. Since there is no mechanism for determining the value of supply is specified in the Rules, the value declared by the appellants in the invoice raised by them on their branches ought to be considered the open market value, especially when the recipient branch is eligible to avail full ITC, in terms of 2nd proviso to the Rule 28 of CGST Rules, and denying the benefit of this proviso to the appellant would go against the intent of the legislature.

IV. Impugned order failed to appreciate that even if the services are provided by Head Office to branches and the same are termed as 'supply' under GST law, the said services are continuous and interest cannot be charged or penalty cannot be imposed.

In the present case, the impugned order has confirmed the demand of tax of Rs. 38,65,557/- towards IGST along with interest and penalty under the applicable provisions of CGST Act, 2017. The appellant submitted that the services fall within the ambit of "supply" under Section 7 of the CGST Act, 2017 and thus supply will still merit to be termed as continuous supply under Section 2(33) of the CGST Act, 2017. As per Section 2(33) of the CGST Act, 2017, it can be construed that continuous supply of services means a supply of services which is :

- provided, or agreed to be provided, continuously or on recurrent basis,
- under a contract
- for a period exceeding three months with periodic payment obligations and
- includes supply of such services as the Govt. may, subject to such conditions, as it may be, by notification, specify.

They further contended that Section 31(2) of the CGST Act, 2017 provides that a registered person supplying the taxable services shall, before or after the provision of service but within a prescribed period, issue tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed. Rule 47 of the CGST Rules, 2017 provides for the time limit for issuing tax invoice. It provides that the invoice referred to in Rule 46, in the case of taxable supply of services, shall be issued within a period of thirty days (30) from the date of supply of Service. Section 31(5) of the CGST Act, provided that subject to provisions of clause (d) of sub-section (3), in case of continuous supply of services –

- a. *where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;*
- b. *where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service received the payment;*
- c. *where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.*



They further rely on the provisions of Section 13(1) & 13(2) of the CGST Act, 2017 which stipulates the time of supply of services. Since the nature of services provided by the HO is recurrent in present case and to other units are in nature of continuous supply of services. In such a case, time of supply will arise when the invoice is raised. Therefore, even if, department considered the services were supplied by the appellants to the branch units, then also appellant is not liable to pay interest and penalty and thus, the impugned order has wrongly confirmed the liability of interest and penalty, which is liable to be dropped.

V. Without prejudice to the above, there was no malafide intention to evade the payment of taxes on the part of the appellants, and hence there arises no question of payment of interest and penalty under Section 50 and Section 74 of the CGST Act, 2017.

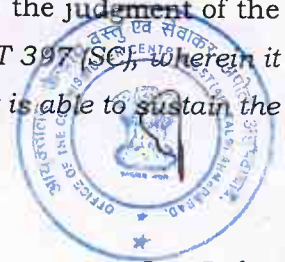
The SCN had proposed the demand of IGST of Rs. 38,65,557/- along with interest and penalty under CGST Act by invoking provisions of Section 74 of the CGST Act, 2017 on the ground that the appellants have willfully suppressed and misstated the relevant facts with intent to evade payment of duty. The adjudicating authority has confirmed IGST amount Rs. 38,65,557/- along with interest and penalty without any substantiation. The appellants have always responded to the department with all the relevant information and documents which have been sought for from the appellants. So, the proviso to Section 74 (1) cannot invoked.

The sole basis of entire demand proposed in the SCN as well as impugned order is that the Head Office of the Appellants, which is the supplier in the instant case, had booked expenses for all the branches. Thus, on the basis of the turnover of the Head Officer of the appellants as compared to the total turnover of the supplier, the IGST liability has to be crystallized. Impugned order has not given any specific findings on the submissions of the appellants and merely reproduced the allegations raised in the SCN. Hence, there is no question of any suppression or fraud. The appellant submitted that in the case of *bonafide* belief, no penalty is imposable. For this they placed reliance on the judgment of

- i) *the H'ble Supreme Court in the case of M/s. Hindustan Steel Ltd Vs State of Orissa – AIR 1970 (SC) 253;*
- ii) *the H'ble CESTAT in the case of Kellner Pharmaceuticals Ltd Vs. CCE – 1985 (20 ELT 80;*
- iii) *the H'ble Supreme Court in the case of M/s. Cement Marketing Co. of India Ltd Vs. Assistant Commissioner of Sales Tax – 1980(6) ELT 295 (SC)*

Penalty not imposable when demand is not sustainable.

For the reasons given in the foregoing paragraphs, the demand of tax in the present case is not sustainable in law. Once the demand is found non-sustainable, the question of imposition of penalty does not arise. For this they placed reliance on the judgment of the H'ble Supreme Court in case of *CCE Vs. H M M Limited – 1995 (76) ELT 397 (SC)*, wherein it was held that the question of penalty would arise only if the department is able to sustain the demand of tax.



In view of the above, the appellant submit that the impugned order deserve to be quashed and set aside. Once there is no demand of tax, the question of payment of interest and imposition of penalty does not arise.

PERSONAL HEARING :

4. Personal hearing in the present appeal was held on 15.11.2022, Shri. Jigar Shah, Mr. Amrish Pandey, Mr. Mayur Joshi and Mr. Anil Khushlani (Astral Limited), Authorised Representatives, appeared in person on behalf of the appellant in the present appeal. During P.H. they submitted the set of documents dated 15.11.2022 and re-iterated that they have nothing more to add to it.

As per the additional submissions dated 15.11.2022 submitted before the appellate authority, the appellants submitted the extracts of Section 2(33), Section 7, Section 13, Section 25, Section 31, of CGST Act 2017, Schedule-III of CGST Act 2017, Rules 28 to 31 of CGST Rules 2017 and further they placed their reliance on the judgment of various Courts, Tribunals & Advance Authority of Rulings (AAR) in the case of

- *Arcelormittal Nippon Steel India Ltd Vs AC 2021 (12) TMI 227 – Gujarat High Court;*
- *Tech Mahindra Ltd Vs CCE – 2016 (9) TMI 191 CESTAT Mumbai;*
- *Wipro Enterprises (P) Ltd Vs. CCT – 2020 (2) TMI 1157 Karnataka High Court;*
- *In Re: B G Shirke Construction Technology Pvt Ltd – 2021(9) TMI 949 – AAR Maharashtra;*
- *In Re : Cummins India Limited – 2022 (1) TMI 660- AAR Maharashtra.*

DISCUSSION AND FINDINGS:

5. I have gone through the facts of the case, written submissions made by the 'appellant' in appeal memorandum and additional submission made on 15.11.2022. I find that the main issue to be decided in the instant case is (i) whether the appellants are liable to pay IGST on the supply of services under the provisions of Section 7(1)(c) of CGST Act, 2017 read with Schedule I, from their Head Offices to their branch office by incurring expenses on their behalf (ii) whether the valuation is applicable under the second proviso to the Rule 28 of the CGST Rules, 2017 instead of Rule 31 of the CGST Rules, 2017.

5.1 I have carefully gone through the facts of the case available on records and submissions made by the 'appellant' in the appeal Memorandum. I find that from the impugned order of the adjudicating authority and the submissions of the appellant, that the appellant and respondent both are not disputing the fact that the appellant is liable to pay IGST on the supply of services under the provisions of Section 7(1) (c) of the CGST Act, 2017 read with Schedule-I, from their Head Offices to their branch offices by incurring expenses on their behalf. Further, the Relevant extracts of the Section 7 of the CGST Act, 2017 and Schedule-I and Schedule- III, are re-produced as under:



“Section 7. Scope of supply. -(1) For the purposes of this Act, the expression “supply” includes-

- (a)
- (b)
- (c) The activities specified in **Schedule I**, made or agreed to be made without a consideration;
.....”

SCHEDULE-I

[See Section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

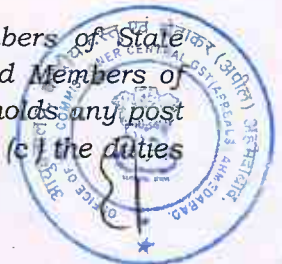
- “1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- 2. Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business:
Provided that gift not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
- 3. Supply of goods –
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to received such goods on behalf of the principal.
- 4. Import of services by a person from a related person or from any of his other establishments outside India, in the course of furtherance of business.”

SCHEDULE-III

[See Section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

- 1. Services by an employee to the employer in the course of or in relation to his employment.
- 2. Services by any court or Tribunal established under any law for the time being in force.
- 3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities; (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or (c) the duties performed by any person
- 4.
- 5.
- 6.
- 7.
- 8.”



From the submissions and from the above, I find that the appellant and the respondent both are in agreement with the fact that the activities done by the appellant is within the ambit of Section-7(1)(c) read with Schedule-I of the CGST Act, 2017 and not under the ambit of Section-7(1)(c) read with Schedule-III of the CGST Act, 2017. I uphold the order of adjudicating authority to the extent that the supply made by the appellant to their branch offices are within the ambit of the Section-7(1)(c) read with the Entry 2 of Schedule-I of the CGST Act, 2017.

6. Further, from the submission, I find that some invoices which have been issued by the appellants from their Head Office to their branch offices, I find that the appellant have issued invoices to their branch offices which are distinct persons and the recipient units are also entitled to avail full Input Tax Credit of the taxes paid by the appellant as they have registered with separate GSTINs. In this regard, I find that the second proviso to the Rule 28 of the CGST Rules, 2018 is squarely applicable in this case instead of Rule 31 of the CGST Rules, 2018 for the valuation purpose as discussed by the adjudicating authority in the impugned order. For this, I refer to the Rule 30, Rule-31 & Rule 28 of the CGST Rules, 2017:

“Rule-30. Value of supply of goods or services or both based on cost:- Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.”

“Rule-31. Residual method for determination of value of supply of goods or services or both: Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

PROVIDED that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.”

“Rule-28: Value of supply of goods or services or both between distinct or related persons, other than through an agent.- The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of Section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) be the open market value of such supply;
- (b) If the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) If the value is not determinable under clause (a) of (b), be the value as determined by the application of rule 30 or rule 31, in that order:



Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

In the instant case, I find that the appellant i.e the supplier, has mentioned GST paid i.e IGST @18% to their branch offices i.e the recipient, in the following invoices (showing Annexure-01 as distribution of common expenses) issued from their Head Office (GSTIN : 24AABCA2951N1ZD):

| Recipient's /Branch Office's GSTIN | Invoice No. & Date | Particulars | Value /Amount (in Rs.) | IGST @18% (In Rs.) | Total Value (in Rs.) |
|------------------------------------|--------------------------|--|------------------------|--------------------|----------------------|
| 07AABCA2951N1ZK | COM/1819/001, 30.09.2019 | Business Support Services – (Distribution of Common Expenses as per Annexure-01) | 11932586 | 2147865 | 14080451 |
| 08AABCA2951N2ZH | COM/1819/002, 30.09.2019 | “---DO---“ | 10443947 | 1879910 | 12323857 |
| 09AABCA2951N1ZG | COM/1819/003, 30.09.2019 | “---DO---“ | 33056416 | 5950155 | 39006571 |
| 23AABCA2951N1ZQ | COM/1819/004, 30.09.2019 | “---DO---“ | 6998079 | 1259654 | 8257733 |
| 27AABCA2951N1ZI | COM/1819/005, 30.09.2019 | “---DO---“ | 6187361 | 1113725 | 7301086 |
| 33AABCA2951N1ZP | COM/1819/006, 30.09.2019 | “---DO---“ | 48321737 | 8697913 | 57019650 |
| 36AABCA2951N1ZJ | COM/1819/007, 30.09.2019 | “---DO---“ | 9537182 | 1716693 | 11253875 |
| 37AABCA2951N1ZH | COM/1819/008, 30.09.2019 | “---DO---“ | 8665717 | 1559829 | 10225546 |

(Annexure-01 statement showing distribution of common expenses for the period 2017-18, 2018-19 and 2019-20 such as Advertisement Exps, AGM expenses, Architects meet exps, branding exps, consultancy charges, dealers meet exps, direct-sitting fees, exhibition exps, investor meet exps, legal exps,, maint. Exps-software, plumbers meet exps, professional fees, sales promotion exps, membership fees, sales promotion exps., etc.,)

6.1 From the above and as per second proviso to the Rule 28 of the CGST Rules, 2018, I find that the appellant have issued invoices to their branch offices with GST / IGST and the recipient units i.e the branch offices in the instant case, are entitled to avail full input tax credit, accordingly i.e the recipient units are eligible to take full input tax credit being a distinct persons and having separate GSTIN and when they are entitled and eligible for full input tax credit, the value declared in the invoices by the appellant should be deemed to be the open market value of the goods or services as per 2nd proviso to Rule 28 of the CGST Rules, 2017.

6.2 In view of the above, I am of the considered opinion that the Rule 31 of CGST Rules, 2017 for valuation is applicable where the value of supply of goods or services or both



cannot be determined under rules 27 to 30. However, in the present case as discussed in foregoing paras, the appellant has issued invoices to their branch offices with GST / IGST and the recipient units i.e branch offices are entitled to avail full input tax credit having separate GSTIN and being a distinct persons, the value declared in the said invoices shall be considered which is as per the second proviso to the Rule 28 of the CGST Rules, 2017 instead of valuation as per the Rule 31 of the CGST Rules, 2017. In view of the above, I find that the impugned order of the adjudicating authority to the above extent is not correct and proper.


7. From the ongoing paras, I uphold that the supply in the instant case is within the ambit of Section 7(1)(c) of the CGST Act, 2017 read with Entry No. 2 of Schedule I. I also hold that the valuation shall be done under 2nd proviso of the Rule 28 of the CGST Rules, 2017 instead of the Rule 31 of CGST Rules, 2017 and impugned order of adjudicating authority is not correct and proper to that extent. Hence, I order that the invoice value shall be taken as deemed to be the open market value and tax shall be calculated accordingly under the second proviso to the Rule 28 of the CGST Rules, 2017.

8. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not correct, legal and proper and as per law to the above extent. Accordingly, I allow the appeal of the "*Appellant*" to the above extent.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।
The appeal filed by the appellant stands disposed of in above terms.


(Mihir G Rayka)

Additional Commissioner (Appeals)
Date: .04.2023

Attested

(Tejas J Mistry)
Superintendent,
Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To

M/s. Astral Poly Technik Limited
(Legal Name : Astral Limited)
207/1, Astral House, Opposite Satyam Corporate House, B/H Rajpath Club,
Off S G Highway, Ahmedabad : 380 059

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Ahmedabad North Commissioerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-VI, A'bad North.
5. The Additional Commissioner, Central Tax (System), A'bad North.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File.
8. P.A. File.

