
GST Update No. 80th on taxability of Leadership And Managerial services between group companies

Applicability of GST in case of services provided by the employees of head office to its branch offices is still one of the contentious issue as pronounced by Karnataka AAR in the case of ***M/s Columbia Asia Hospitals Private Ltd.*** and now In the latest instance, in the case of ***M/s BG Shirke Construction Technology Private Limited*** which supplies managerial and leadership services to its branch office and group companies, which are distinct and related persons, respectively, and receives fixed monthly charges from each of them. Now the key questions on which ruling was sought were whether the managerial and leadership services provided by the registered/corporate office to its group companies can be considered as supply of services and whether lump sum amount charged by the head office will be liable for GST.

The applicant contended that the services provided to Group companies amounts to supply of services between distinct persons and related persons even without consideration as per clause 1 of schedule I of the Act. However, the said activity would not be treated as supply of services by virtue of specific relaxation provided in clause 1 of the schedule III of the Act due to existence of an employer employee relationship.

The term 'employee' cannot be restricted to employment with the registered person merely on account of the location from where he renders his employment services. The relationship of employee is for the whole legal entity. The services rendered to other

distinct persons would still be regarded as a service by the employee to the employer. Reliance was also placed upon Apex Court decision given in the case of ***M/s Agencia Commercial International Ltd.*** wherein it was pronounced by the Hon'ble Supreme court that body corporate and its branches are not distinct persons and similar other case pronounced by different judiciaries in case of ***M/s Transport Corporation of India ,M/s Milind Kulkarni, M/s Franco Indian Pharmaceutical Pvt. Ltd.***

AAR noted that the only reason the applicant feels that such services are not taxable is because they are treating their group companies as well as their site offices as employees. However, the same was not accepted by the authority. The Authority noted that the term '**employee**' as per Cambridge dictionary means a person employed by another, usually for wages or salary.

The authority is of the opinion that the site offices are independent offices separately registered under GST laws. Similarly, the group companies are also separately registered under GST laws since both the site offices as well as group companies cannot be treated as employees to avail the benefit of clause I of schedule III of the Act. Thus, the aforesaid supply of services will get covered under clause 2 of schedule I and therefore be liable for GST on the lumpsum amount. With respect to valuation of the supplies, the transactions should be valued in accordance with rule 28 of the CGST Rules which states that where the recipient is eligible for full ITC, the transaction value adopted is to be accepted for the purpose of valuation.

This ruling appears to be taking a step forward from Karnataka's AAAR ruling in the matter of **Columbia Asia Hospitals Pvt. Ltd.** wherein it was held that activities carried out by the employees from the corporate office for accounting and other administrative functions, with respect to units in other states, should be treated as "supply" and hence are taxable under GST. However, the issue involved in the case of **Columbia Asia Hospitals Pvt. Ltd.** is sub-judice as the same is pending before the Karnataka High Court.

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