manufactured in India. ITAT had ruled in favour of the assessee and had deleted the Transfer Pricing adjustment by granting a quality adjustment of 10% under Comparable Uncontrolled Price method while benchmarking imports. The High Court remarked that though two products are identical, yet there could be difference of their prices in the open market on account of perception. This factor needed to be considered while calculating the Arm's Length Price. The High Court upheld the order of ITAT and noted that quality adjustment was allowed as per terms of Rule 10B(1)(a)(ii).

GST

LD/68/91, [2019-TIOL-380-AAR-GST (Bengaluru)]
M/s Ascendas Services India Pvt Ltd., 30/09/2019

When the applicant facilitated transportation services to commuters of business park (operated and maintained by the applicant) by issuing bus passes, but the transport agency raised one consolidated invoice on applicant instead of raising bills on individual passengers for transportation services, AAR held that applicant cannot be regarded as 'intermediary' and the value of bus passes distributed by the applicant shall be included in the value of services provided by the applicant.

Facts:

The applicant is in the business of operation and maintenance of International Tech Park, Bangaluru (ITPB). The applicant also facilitates services of transportation to the employees of the tenants of the business park (i.e., commuters). For the provision of transport facilitation service, the applicant has entered into a contract with Bangalore Metropolitan Transport Corporation (BMTC), a public bus transport provider for Bangalore. To facilitate the said service, the applicant receives bus passes from BMTC for distribution. For every 50 bus passes collected by the applicant, BMTC would allot one chartered bus to the applicant, which would provide transportation service between designated bus stops and ITPB. The applicant charges a separate fee in the form of 'facilitation fees' for arranging this facility to commuters and charges GST on the same. At the end of the month, the applicant returns unutilised passes to BMTC and thereafter, on the basis of the actual number of passes utilised, BMTC raises a consolidated invoice in the name of the applicant for the month by charging GST, instead of raising the same in the name of each individual customer. As a facilitator of service, the applicant approaches BMTC in case of any deficiency in the provision of service by BMTC as reported by commuters. Applicant sought present ruling as to whether (i) value of bus passes given by the applicant to the commuters is to be included in the value of facilitation charges in terms of Section 15(2) of CGST Act, 2017 and (ii) whether the supply of service in the hands of the applicant could be classified as merely a supply of facilitation services between BMTC and the commuters?

Ruling:

AAR noted that the applicant is required to settle the bills raised by BMTC, otherwise, BMTC reserves right to stop the services of the chartered buses. The commuters travelling in buses engaged by the applicant shall possess identification cards and monthly passes/casual passes issued by the applicant. In case of non-operation of any route because of reasons attributable to BMTC, the applicant shall be entitled to recover from BMTC pre-determined amount. Also, in case of cessation of services by BMTC without applicant's agreement, the applicant will be entitled to recover cost and expenses incurred in providing alternate transport services until such time BMTC recommences its services or terminates the agreement. Therefore, AAR opined that BMTC is providing services to the applicant and not to the actual passengers. The applicant is in receipt of service and the monthly passes are meant only for identification and calculation of the value of services provided by BMTC to the applicant. The applicant is providing transportation service to actual passengers and is also required to arrange alternate services to the commuters in case BMTC ceases to provide the transport service wholly or in part. The commuters or the companies in ITPB are not a party to the contract between the applicant and BMTC and the applicant is providing services after obtaining the same from BMTC. AAR held that the contention of the applicant that they are acting as an intermediary is incorrect in as much as the applicant is receiving services provided by BMTC and providing services to its clients i.e., commuters and all are principal to the principal in nature and the applicant is neither the agent

of BMTC or the commuter. Therefore, AAR held that the value of supply shall be the total amount charged by the applicant to the commuters. Thus, the value of supply of monthly passes issued by the applicant as well as facilitation and such other amounts which form part of the value of supply as specified under section 15 of CGST Act, 2017 would be the value of services supplied by the applicant to the commuters.

LD/68/92, [2019-TIOL-365-AAR-GST (Bengaluru)], M/s Aquarelle India Private Limited, 30/09/2019

At the time of vacating leased premises, when applicant handed over fixtures fastened by them to such premises, without charging consideration to the lessor, AAR held that such transfer of a business asset by the applicant would be chargeable to GST in terms of entry no. 4(a) of Schedule II to CGST Act, 2017. Further, AAR held that value of such supply shall be determined in terms of Rule 27, 30 or 31 of CGST Rules, 2017.

Facts:

The applicant company took business premises on lease in pre-GST regime, which it wishes to vacate in the near future and intend to hand over possession of the premises to lessor along with the fixtures to the building. These fixtures cannot be dismantled on vacating the premises and would be handed over to lessor in "as is where is" condition, without charging consideration for handed over assets. The applicant submitted that these assets were capitalised in books of accounts as "office equipment, furniture and fittings" before the introduction of GST and no credit of VAT or CENVAT was availed under earlier regime. The applicant filed the present application before AAR, in respect of questions: (i) Whether disposing off assets (for which no ITC was taken in pre-GST regime) fastened to the building on delivering possession to the lessor and without charging consideration for same, shall fall within the ambit of term 'supply' under section 7 of CGST Act, 2017 and chargeable to GST? (ii) if the said transaction is regarded as a taxable supply, then should the value appearing in books as on the date of disposal may be construed as the "open market value" on which GST is to be discharged as per Rule 27 of CGST Rules, 2017.

Ruling:

AAR noted that the assets sought to be transferred by the applicant are capitalised under the head "office equipment, furniture and fittings" and forms the part of assets of applicant business entity. AAR noted that after the transfer, these assets would no longer form part of applicant's business assets. AAR held that in light of entry 4(a) of Schedule II of CGST Act, 2017, said transfer/disposal of business assets by the applicant would constitute 'supply of goods' irrespective of whether the said transfer/disposal is for consideration or not.

As regards submission of applicant that no consideration would be charged for transfer of assets to lessor, AAR held that in terms of Section 2(31)(b) of CGST Act, 2017 the term 'consideration' in relation to supply of goods or services or both would include the monetary value of any act or forbearance by the applicant in response to the supply of goods or services. AAR held that writing off the value of assets in the balance sheet by the applicant is an act related to transfer of property in assets and this monetary value of that act would form consideration in relation to the supply made by the applicant.

As regards the value of supply of fixtures transferred, AAR held that value of supply shall be determined as the open market value of such supply in terms of Rule 27 of CGST Rules, 2017 or value of supply of goods of like kind. If such value is not available, in terms of Rule 30 of CGST Rules, 2017, the value shall be determined as 110% of the book value of such goods in the books of accounts. Otherwise, the value of supply shall be determined as per Rule 31 of CGST Rules, 2017.

Note: It appeared that in this matter, the provisions of Section 7(1A) [as amended retrospectively] were not taken into consideration by the Ld. AAR. The section provides that, where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II. Hence, Schedule II has applicability only in cases where a transaction is regarded as "supply" within provisions of Section 7(1). In the present case, the supply is without consideration and is also not covered under any of the entries mentioned in Schedule I. Hence, this Ruling may need reconsideration.

LD/68/93, [2019-TIOL-346-AAR-GST (Bengaluru)] M/s Humble Mobile Solutions Pvt Ltd., 19/09/2019

When applicant operated e-commerce platform wherein individual drivers were connected to customers and such drivers provided services of driving in vehicles of customers, i.e., service recipients, AAR held applicant e-commerce operator would not be liable to pay tax for supply of services by drivers under section 9(5) of CGST Act, 2017 read with Notification No. 17/2017-CTR.

Facts:

The applicant operates a technology-based e-commerce platform service called "DriverU" which seeks to provide drivers on-demand to the customers who wish to obtain the services of a driver. The drivers are individual and independent service providers, who enlist themselves with DriveU. The drivers are not employees of the applicant and are independent service providers. Also, the applicant doesn't provide driving or transportation services. The mode of transportation is offered by the customer and towards the end of the commute the customers are charged for the services of the driver which is intimated to them over the app or mail and such charges can be paid in cash, directly to the driver or through online payment options to the applicant. Pursuant to payment for the drivers' services through any of the online modes, the applicant remits the proceeds collected from the customers to the respective drivers subject to deduction of TDS under section 194C of Income Tax Act, 1961. Also, applicant charges convenience fees including GST to the drivers for use of the applicant's e-commerce platform. The applicant sought present ruling as to whether, in terms of Section 9(5) of CGST Act, 2017 read with *Notification No. 17/2017-CTR*, the applicant would be liable to pay GST on services supplied through it by third-party service providers i.e., drivers.

Ruling:

AAR noted that the drivers are neither employees of the applicant nor hired by the applicant. They are only listed on the portal of the applicant and are providing their services on principal to principal basis and the consideration for the same is either directly received from the recipients of the service or indirectly through the applicant. Further, the drivers are not supplying services in their vehicles but are driving vehicles belonging to the recipient of services and thus, are not providing "services of transportation of passengers by a radio-taxi, motorcar, maxicab and motorcycle" but are providing manpower services namely "driving a motor vehicle service" which is not covered any services listed under *Notification No. 17/2017-CTR*. Therefore, AAR held that the services provided by the drivers are not covered under *Notification No. 17/2017-CTR* and hence, not covered under section 9(5) of the CGST Act and thus, the applicant is not liable to pay GST on services provided by the drivers. Further, AAR held that the applicant is liable to collect tax under section 52 of CGST Act, 2017 on the net taxable supplies made by the drivers where the consideration with respect to such supplies is to be collected by the applicant.

LD/68/94, [2019-TIOL-323-AAR-GST (Bengaluru)] Carnation Hotels Pvt Ltd., 16/09/2019

Supply of accommodation services supplied to SEZ units for authorised operations is inter-state supply under section 7(5)(b) of IGST Act, 2017 and the same can be treated as zero-rated supplies.

Facts:

The applicant has proposed to operate the hotels and rent out rooms to the employees of the SEZ units. The services rendered by applicant hotels are entirely consumed at premises itself. The applicant submits that in terms of Section 12(3) of IGST Act, 2017, the place of supply of lodging accommodation services is the location of immovable property i.e., hotel. Since the applicant and the hotel are located in the same state, applicant contends that CGST-SGST would be applicable. Whereas services rendered to SEZ unit are treated as interstate supplies and liable to IGST under section 5(1) of IGST Act, 2017 and not under section 9(1) of CGST/SGST Act, though the location of supplier and place of supply are in the same state. Thus, the applicant filed a present application seeking ruling whether accommodation services proposed to be rendered by the applicant to SEZ units are liable to CGST-SGST or IGST and if such services are covered under IGST Act, can these be treated as zero-rated supplies and invoice be raised without charging tax after executing LUT under section 16.

Ruling:

AAR noted that in light of Section 16(1)(b) of IGST Act, 2017 and Rule 46 of CGST Rules, 2017, the supplies of goods or services or both towards authorised operations only shall be treated as supplies to SEZ developer/SEZ unit. Also, AAR noted that in terms of

Circular No. 48/22/2018-GST dated 14.06.2018 it is clarified that services of short-term accommodation, conferencing, banqueting, etc. provided to SEZ developers or SEZ units shall be treated as inter-state supply. Also, AAR noted that as regards whether such supply of services to SEZ units would be treated as zero-rated supply, said circular clarified that subject to provisions of Section 17(5) of CGST Act, 2017, if event management services, hotel, accommodation services, consumables, etc. are received by SEZ developer or SEZ unit for authorised operations, as endorsed by specified officer of the Zone, the benefit of zero-rated supply shall be available in such cases to SEZ supplier. Therefore, in light of said clarifications, AAR held that supply of accommodation services by the applicant to SEZ units would be interstate supply as per Section 7(5)(b) of CGST Act, 2017 and can be treated as 'zero-rated supplies' and invoice can be raised without charging GST after executing LUT.

LD/68/95, [2019-TIOL-318-AAR-GST (Bengaluru)] M/s Elior India Catering LLP, 12/09/2019

When applicant prepared food at the premises of its customer and sold food to employees of the customer by charging consideration to employees, AAR held that such services won't be regarded as 'outdoor catering services' in terms of entry no. 7(v) of *Notification No. 11/2017-CTR*. Such services would be classifiable under entry no. 7(i) as 'supply of food by canteen' and chargeable to 5% GST subject to conditions stipulated in the proviso to the said entry.

Facts:

The applicant is engaged in the business of providing catering services to its clients. In certain cases, the applicant operates its business from client premises, where it undertakes preparation and supply of food exclusively at client's premises in terms of the contractual arrangement entered with the respective clients. In such cases, infrastructure facilities like kitchen space (cooking area), kitchen equipment and utilities such as electricity and water, gas bank area with the pipeline, regulators connections etc. are made available to applicant by the client at their premises. The applicant sources all raw materials and inputs required for preparation of food on regular intervals and make its own arrangements for their transportation to the on-site kitchen area. Accordingly, the applicant is providing catering support services to one M/s Cisco Systems India Private Limited/employees of Cisco, from applicant's kitchen located at Cisco premises. Under cash and carry model for providing catering services to employees of Cisco, applicant serves the food to employees of Cisco over the counter and consideration towards the same is received from the respective employees/individuals who place the order, at the rates provided in the menu. Though the menu is decided in agreement with the employer, invoices are issued under GSTIN of the applicant to individual employees. The applicant sought present ruling as to (i) whether services rendered by the applicant under said cash and carry model are in the nature of 'services provided by canteen' as per sr. no. (7)(i) or 'outdoor catering services' as per sr. no. 7(v) of *Notification No. 11/2017-CT(R)* and (ii) if such services are classifiable as 'services provided by canteen', whether GST will be chargeable at 2.5%.

Ruling:

AAR noted that the materials offered to the employees on menu card are displayed and there is no binding on the part of the employees to purchase the same. Though the menu is decided in consultation with the employer, it has no bearing on the contract between applicant-supplier and person receiving the service i.e., employee. AAR held that since the employee is the person who pays the consideration, he becomes the recipient of service and the service is rendered by the applicant to the employee. The recipient is not bound to purchase items and only on his decision to purchase the food items available for sale, the contract of supply is entered and the consideration is as shown in the menu card. Thus, AAR held that the contract of supply is between the applicant and the employee.

Further, AAR noted that services supplied by the applicant cannot be said to 'outdoor catering services' in terms of entry no. 7(v) of *Notification No. 11/2017-CTR*, as the transactions relating to cash and carry model, are neither event-based nor of occasional nature. As regards applicability of entry no. 7(i) of said notification i.e., 'services provided by canteen', AAR noted that two conditions shall be satisfied, i.e., the supply of service made in the canteen belonging to an institution is based on the contractual arrangements with such institution and such supply is not event-based or occasional. AAR observed that in the present case the services are provided from the canteen and that the entry does not require the ownership of the said premises by the supplier. Further, supply in the present case is not event-based or occasional. Therefore, AAR held that since there is no condition

of ownership of premises in said entry no. 7(i), the services supplied by the applicant to employees of Cisco under cash and carry model are covered under said entry. The applicable rate of GST would be 5% subject to the proviso that credit of input tax charged on goods and services used in supplying the service has not been taken.

Excise

LD/68/96, Uttarakhand High Court: Special Appeal No. 893 of 2019, Pegasus Farmaco India Private Limited Vs. The Union of India & Ors, 25/09/2019

The assesee had appealed before the High Court on the issue of waiving the condition of depositing the 7.5% of disputed duty for entertaining an appeal under section 35F of Central Excise Act. The assessee's reliance on Delhi High Court judgement in Shubh Impex was rejected by the High Court. The High Court analysed Section 35F and observed that by the words 'shall not entertain any appeal', legislative intent was clear as to the obligation to deposit 7.5% of the disputed duty being imperative and that no authority under the Central Excise Act has discretion to waive such a requirement. The High Court observed that the statutory provision prohibits the Tribunal from entertaining an appeal without pre-deposit of 7.5% of disputed duty and that it would not be appropriate to waive such requirement under proceedings of Article 226 of the Constitution of India.

LD/68/97, [Gauhati High Court: C. Ex. App. 1/2019], The Commissioner of Central Goods and Service Tax Vs. SRD Nutrients Private Limited, 06/09/2019

The assessee had utilised Cenvat credit available with it for the mandatory pre-deposit payment of filing of appeal, as per 35F of Central Excise Act, 1944. CESTAT ruled in favour of the assessee against which the Revenue had preferred appeal before the Gauhati High Court. Gauhati High Court referred to Jharkhand High Court ruling in Akshay Steel Works and Gujarat High Court ruling in Cadila Health Care Pvt. Ltd., which had ruled in favour of the assessee. The High Court held that Rule 3(4) which stipulates that Cenvat credit may be utilised for payment in certain cases, was not exhaustive and it did not impose any prohibition on the assessee to avail such credit for the purpose of pre-deposit. The High Court thus ruled in favour of the assessee thereby permitting such utilisation.

Disciplinary Case

Company carrying out the business of Non-Banking Finance Company without obtaining Certificate of Registration from RBI — Failure of Respondent-Auditor to report the matter of undertaking of NBFC business by the Company to RBI amounts to Professional misconduct.

Held:

The Committee observed that the main charge against the Respondent was that he being an auditor of the Company for the relevant period, failed to report that the Company had carried the business of Non-Banking Finance Company without obtaining the certificate of registration from the RBI. The Committee has condemned the Respondent's failure to not to report the carrying out of business of Non-Banking Finance Company to RBI. It is observed that the Respondent had admitted that such non-reporting is a lapse on his part and apologised for not reporting the matter of undertaking NBFC business to the RBI. The Committee found that it was a lapse on the Respondent's part as he failed to carry out the due diligence which he was required to do. Accordingly, the Committee held that the Respondent is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second to Chartered Accountants Act, 1949.