



PARIKH & ASSOCIATES

Advocate | Tax consultants

## Important Judgments under GST Law

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By **Kuntal Parikh** Advocate

# [ Composite & Mixed Supply ]

## Section 2(30)

**Composite Supply** means:

- a supply made by a taxable person to a recipient
- consisting of two or more taxable supplies of goods or services or both, or any combination thereof,
- which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply

## Section 2(90)

**Principal Supply** means:

- the supply of goods or services
- which constitutes the predominant element of a composite supply and
- to which any other supply forming part of that composite supply is ancillary

## Section 2(74)

**Mixed Supply** means:

- two or more individual supplies of goods or services, or any combination thereof,
- made in conjunction with each other by a taxable person for a single price
- where such supply does not constitute a composite supply.

## Section 8

### **Taxability on Composite and Mixed Supplies**

- The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:
- a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

## Torrent Power Ltd. v/s UOI, 2020 (34) GSTL 385 (Guj.)

- The Petitioner is engaged in **generation, transmission and distribution of electricity**.
- As per the **Electricity Act**, the charges for electricity includes charges for actual supply of electricity and other charges like registration fees, electric meter, testing fees, labour charges, etc.
- Transmission and distribution of electricity is granted exemption under Notification No. 12 / 2017 – Central Tax (Rate).
- Circular dated 01.03.2018 clarified that transmission and distribution of electricity is exempted, but other charges charged from customers for providing electricity are taxable.
- Issue arose whether other charges collected by the Petitioner from the customers would attract GST or not.

## **Torrent Power Ltd. v/s UOI, 2020 (34) GSTL 385 (Guj.)**

- As per the Circular issued by the Government under Service Tax Regime, all essential activities having direct and close nexus with the transmission and distribution of electricity would be exempted.
- Therefore, Circular dated 01.03.2018 under GST is completely contrary.

### **Held:**

- Transmission and distribution of electricity cannot be done without electric line, electric plant, electric meter, etc. and such services cannot be used for any other purpose other than transmission and distribution of electricity.
- Principal supply and ancillary services go hand in hand and one cannot be provided independent of the other.
- Submissions of the Revenue rejected that Section 8 would not be applicable where the principal supply is exempt. Term 'taxability' used in Sec. 8 would mean liability to taxation. Liability to taxation would also mean 'not being liable to tax'.
- Hence, it is composite supply and ancillary services are also exempted.

## Abbott Healthcare Pvt. Ltd. v/s Commissioner of Commercial Tax, Thrissur, 2020 (34) GSTL 579 (Ker.)

- Petitioner entered into **agreement with hospitals** for supplying **equipment for waste disposable for free of cost** for specified period.
- However, the **consumable** required for operation of equipment shall be purchased by the hospitals on payment of GST from the distributors appointed by the assessee.
- There is **minimum purchase obligation** in respect of **consumables** and in case of failure, hospitals are obliged to pay to the Petitioner deficit amount.
- AAR held that such supply as Composite Supply and AAAR also affirmed it.  
(Since, instrument cannot function without consumables, both supplies are to be clubbed to ascertain the real 'supply'. The arrangement of supplies made through agreement was to avoid payment of tax at higher rate)
- The Petitioner before the HC contended that Composite supply is to be construed from the point of view of supplier.
- Held, two supplies are provided by two different suppliers, and therefore, it is not Composite Supply.

## MFAR Hotels & Resorts Pvt. Ltd., 2020 (42) GSTL 470 (AAR – TN)

- The applicant own and manage the Hotel and Resorts.
  - i. Supply Cigarettes and Soft beverages to the guests.
  - ii. Supply Non-GST item of liquor to the guests.
  - iii. Supply food to their employees free of charge.
- Supply of **soft beverages** held **composite supply** as it involves supply of item along with use of facilities / staff of the restaurant. (Para 6(b) of Sch. II) (SAC 996331)
- In case of **Cigarettes** products are not naturally bundled together with the restaurant services as the services of the restaurant involves serving of food and beverages in ordinary course of business. But, when cigarettes are supplied by the restaurant, a single price is charged, and it involves **two individual supplies of goods and supply of services by the restaurant**. Therefore, it is **mixed supply**.
- In case of **free supply of food to employees**, it is a supply between related person (explanation a(iii) to Section 15) as part of employment contract and therefore, it is covered under **Para 2 of Schedule I** of the Act.  
Therefore, it is **taxable supply of Services**.

**Karnataka State Electronics Development Corp. Ltd**  
**2020 (42) GSTL 284 (AAAR – Karn.)**

- The appellant provides street lighting services to Thane Municipal Corporation.
- The appellant is responsible for implementation of energy conservation measures for street lighting fixtures.
- Scope of service involve removal of existing lights and installation of LEDs at appellant's cost, operation and maintenance.
- The appellant is being paid for energy saving achieved.
- Basically it was **Energy Performance Contract**.
- It was service oriented contract, though for rendering such service LED lights were used by the appellant.
- The appellant remains the owner of LED lights and other equipment installed during service contract.
- At the end of contract the appellant is required to transfer all rights and titles to the goods to Thane Municipal Corporation.

**Held**, It is **composite supply** and **principal supply is supply of service** of operation, management and maintenance of street lights.

# [ Job work ]

## Central Excise Act

- Manufacture had exhaustive meaning.
- **New commercial commodity must come into existence**
- Process **incidental or ancillary to the completion of manufactured product.**
- Job worker treated a manufacturer & ownership of inputs supplied to the job worker was irrelevant.

## Service Tax

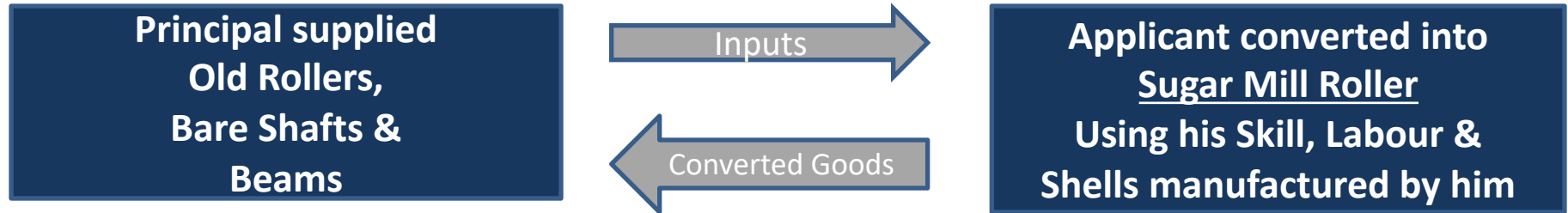
- If, the job worker is not a manufacturer, he is covered under definition of BAS under Section 65(19) of the Finance Act.

## GST

- Any treatment/process undertaken by a person on goods belonging to another registered person.
- Ownership of goods/inputs does not transfer to the job-worker, but it rests with the principal.
- Thus, ownership of inputs is relevant.



**S. B. Reshellers Pvt. Ltd.,  
2019 (27) GSTL 120 (AAR – Maharashtra)**



**Issue:**

- Whether activity of supply of Sugar Mill Roller by the applicant to the principal amount to 'supply of goods' or 'supply of services as a job worker'.

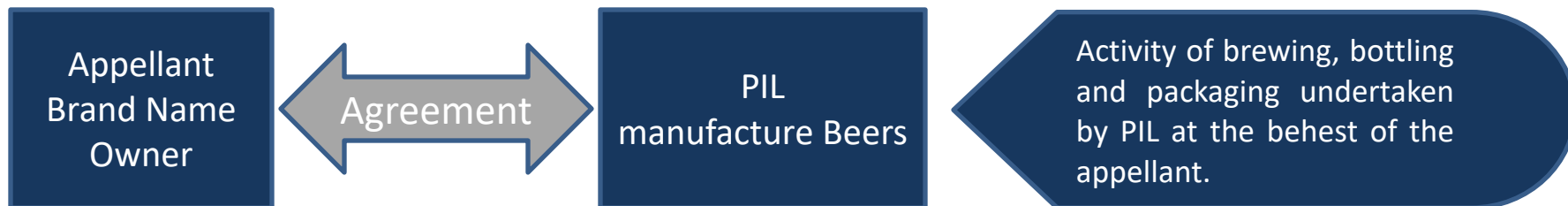
**Findings:**

- **Nature of additions** made by the applicant is relevant.
- Whether such addition is **Minor or Substantial** is the determinative test.
- **Prestige Engineering India, 1994 (73) ELT 497 (SC)** additional application of minor items is permissible in job work.

**Ruling:**

- Activity of supply of Sugar Mill Roller held as 'supply of goods' as substantial goods, namely, 'Shells' manufactured by the applicant himself out of which Sugar Mill Roller was made.

**Crown Beers India Pvt. Ltd.,  
2019 (27) GSTL 468 (App. AAR – Maharashtra)**



**Issue:** Whether activity carried out by PIL is ‘job work’ and subject to GST or is it ‘manufacturing’ activity and subject to Excise Duty.

**Appellant’s case** is that PIL is the actual owner of raw-materials and other ingredients required for making beers are purchased by it in accordance with agreement. Merely, reimbursement of cost of raw-material would not change the fact that raw-materials owned by PIL. Therefore, PIL is not performing any treatment on goods/inputs belong to the appellant. Therefore, such activity is ‘job work’ under the GST law.

**Findings:**

- (qualities and varieties of materials | specific suppliers | T&C for purchasing raw-materials | cost of raw-material and insurance borne by the appellant)
- All goods on which PIL is undertaking the manufacturing process, belong to the appellant.

**Held:** Job work activity

**Ratan Projects & Engineering Co. Pvt. Ltd.,  
2019 (23) GSTL 416 (AAR – WB)**



**Issue:**

- Whether dispatch of such consumable materials is to be treated as supply of goods by the Principal (applicant) to the job worker as they are not returned within the time allowed under Section 143(1)(a) of the GST Act.

**Findings:**

- It is an intermediate stage in applicant's manufacturing activity, and 'inputs' include 'intermediate goods' under Section 143(1)(a).
- The 'inputs' returned, however, do not include in their original physical forms the goods like furnace oil, zinc, etc., return of galvanized goods satisfies the condition of section 143(1)(a).

**Ruling:**

- Consumables should not be treated as supply under Section 143(3).

# [ Input Tax Credit ]

## Conditions:

1. Possession of Tax Invoice.
2. Details of invoice must be furnished in GSTR – 1 (statement of outward supplies).
3. Must have received the goods or services or both.
4. Tax charged on supply must have been **actually paid** to the Government.
5. Must have furnished returns under Section 39.

**Aristo Bullion Pvt. Ltd.,  
[2021] 127 taxmann.com 42 (AAR – Gujarat)**

**Facts:**

- **Business 1:** Engaged in supply of **gold** unwrought or semi-manufactured forms, and for the said activities procured **GST paid inputs**, namely gold dores.
- Thus, ITC is available on purchases and outwards supply is taxable.
- **Business 2:** Engaged in supply of **Castor oil seeds** and procured such goods without payment of GST from agriculturist (unregistered persons).
- Thus, ITC not available on purchases, but outward supply is taxable.

**Issue:**

- Whether the ITC availed on legitimate inputs (gold dores) can be utilized for GST liability of 'Castor Oil Seeds'.

**Ruling:**

- Failed to prove **nexus/connection** between inputs (gold dores) and the castor oil seeds
- Basic condition of section 16(1) not fulfilled.
- Therefore, ITC earned on inputs (gold dores) cannot be used for discharging GST on supply of Castor Oil Seeds.

## **Mahalaxmi Cotton Ginning and Pressing and Oil Industries, 2012 SCC OnLine Bom 733**

- Section 48(5) of the MVAT Act:

**In no case ITC shall exceed the amount of tax ‘actually paid’ to the Government.**

1. The expression “actual paid” must receive their ordinary and natural meaning. No reason for the Court to depart from the plain and ordinary meaning.
2. Set off is available where tax has been deposited and to the extent it is deposited.
3. Set off is concession granted by the legislature.
4. The entitlement to a set off is created by the taxing statute and therefore terms on which set off is granted by the legislature must be strictly observed.
5. “actually paid” cannot be read as “ought to have been paid”. It amounts to rewriting of provision.

## On Quest Merchandising India Pvt. Ltd. v/s. Govt. of NCT Delhi, 2018 (10) GSTL 182 (Del.)

- Section 9(2)(g) of the Delhi Vat Act:

**No ITC is available unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government.**

1. Free hand to Department in deciding to proceed either against purchaser or seller or both.
2. Defaulter is Seller because he has collected tax but failed to deposit with the Government. For default of seller, buyer is expected to bear consequences.
3. Legislature failed to distinguish between purchasers who have bona fide transacted with the sellers and those who have not.
4. Therefore, need to restrict ITC only to the sellers who had failed to deposit the tax collected and not to the buyers who are bona fide.
5. When sellers fail to pay tax collected from buyers, the Department would proceed against the seller to recover tax.
6. When the Department is able to show from material that sellers and buyers acted in collusion, appropriate action under the Act can be taken.

**D. Y. Beathel Enterprises v/s. State Tax Officer, Tirunelveli,  
[2021] 127 taxmann.com 80 (Madras)**

1. Petitioner purchased goods from his vendor on payment of tax. During investigation it was found that vendor has not deposited tax with the Government. It has been alleged that the Petitioner has not purchased the goods and indulged in paper transactions.
2. Impugned order confirming liabilities against the Petitioner was passed without involving the vendor in investigation.

**Held:**

- i. The Respondent has not taken recovery action against the vendor.
- ii. When the payment of tax to the vendor is not in dispute, serious and strict actions must have been initiated against the vendor because omission to remit the tax is on part of the vendor.
- iii. The vendor must have been confronted with the inquiry.
- iv. Impugned Order suffers from fundamental flaws:
  - a. Non-examination of the vendor.
  - b. non-initiation of recovery against the vendor in first place.



- Prima facie inquiry revealed that the transactions were only on papers, and therefore, ITC of the Petitioner was blocked under Rule 86A.

**Issue:**

Whether Rule 86A contemplate any passing of Order with an obligation to communicate the same to the affected person so that such person can take recourse to any legal remedy?

1. **‘Reason to believe’** is necessary to be formed for blocking ITC.  
Existence of **relevant material** is a pre-condition to form opinion.
2. In **absence of any cogent or credible material**, action of blocking of ITC would be **malice in law**.
3. **Indefeasible right to avail ITC vis-à-vis Rule 86A:**
  - Utilization of accrued credit is vested right. No vested right accrues before taking credit.
  - Once the Credit is taken validity, the right is indefeasible.
  - Since, the Petitioner is not able to avail ITC, in the circumstances, it cannot be said that it has indefeasible right.

4. Rule 86A casts an obligation upon the authority to form an opinion before blocking credit, but it is **silent with regard to passing of any specific order assigning prima facie reasons for invoking Rule 86A.**
5. **Interference with the proceedings** initiated by the Statutory Authority in exercise of the extraordinary writ jurisdiction, in **3 – situations:**
  - a. Constitutional vires of the very enactment under which the proceedings initiated.
  - b. Proceedings initiated or concluded in total violation of the principles of natural justice.
  - c. Impugned orders are totally without jurisdiction.
6. Power under Rule 86A should neither be used a tool to harass the assessee nor in a manner which may have irreparable loss to the business of the assessee.
7. Power to block ITC under Rule 86A can be invoked when case of the department falls under any of the circumstances enumerated under sub-rule (1) of Rule 86A.

Facts:

- Original proceedings were initiated for directing the **tenant to vacate property** on the ground that property was possessed without any authority or agreement.
- The Court appointed the **Court Receiver** and directed the tenant to pay **royalty** during the pendency of the suit to the Court Receiver.
- The landlord raised issue before the Court that when the royalty amount is paid over to him by the Court Receiver in future, the same would be treated as **‘income’ from ‘renting from immovable property’** and therefore, **GST** may also be liable to be paid.
- The landlord’s case was that if GST is not recovered from the tenant from time to time, it will be very difficult to recover the same from the tenant at the time of recovering possession of suit property.

Issues:

1. Whether **GST is liable to be paid on royalty** paid by the tenant to the Court Receiver who has been appointed for the suit property.
2. Where the landlord alleges that the tenant is in illegal possession of the suit property:
  - i. Whether there is any **‘supply’** of services under the GST laws?
  - ii. Whether payment of royalty for remaining in possession of the suit premises, during pendency of suit or at the time of passing of decree, amounts to **‘consideration’** for a ‘supply’.

**Findings and Discussions:**

- Section 92 of the CGST Act states that
  - where the estate of a taxable person in respect of which any tax is payable under the GST Act is under the control of the Court Receiver appointed by the Court,
  - the tax shall be recoverable from such Court Receiver
  - in same manner and to the same extent it is recoverable from such taxable person as if he was conducting business.
- It is held that the Court Receiver is an employee or a department of the High Court, who is subject to administrative control of the Hon. Chief Justice.
- ‘Supply’ is the taxable event under GST Act, and in absence of supply, tax is not payable.
- Therefore, even for applicability of section 92, there has to be ‘supply’.

Findings and Discussions:

In the present case:

- payment of **royalty** by the tenant to the Court Receiver was as a **condition for remaining in possession** of the suit premises.
- Prima facie finding is that the tenant has not semblance of right to be in occupation of the premises.
- The permission granted to the tenant to remain in possession subject to royalty in order to balance equities of the case.
- The **basis for this payment is the alleged illegal occupation / trespass** by the tenant. Thus, such **royalty payment is in nature of damages or compensation**.
- Therefore, such payment lacks the reciprocity to make it a 'supply'.
- In cases where happening of taxable event of 'supply' is not in dispute, but dispute is regarding 'payment' for supplies, GST is payable under Section 92.
- However, where no **reciprocal relationship** exists because there is violation of legal rights itself, then in that case grant of damages / compensation from a Court is to make violation good. Therefore, it cannot be termed as 'supply' because the transaction itself is illegal and therefore, reciprocal relationship does not exist.
- In the present case the landlord made out a strong case that the tenant has no right to occupy the suit premises, and therefore, it cannot be said that the tenant's occupation pursuant to an order of Court is a contract involving a 'supply' for consideration.
- In absence of reciprocal relationship, the Court held that occupation by the tenant cannot be termed as a 'supply' for 'consideration'.

Issue:

- Whether **foreclosure charges** levied by the banks on **premature termination of loans** are leviable to Service Tax?

Facts:

- Banks (lenders) advancing loan to borrowers for an agreed period at agreed rate of interest.
- Agreement provides for closure of loan by the borrower before the stipulated period on payment of foreclosure charges.
- Foreclosure charges are generally determined on percentage of outstanding amount; nature of loan and remaining period of loan.

**Findings:**

- In contractual relationship between banks and borrowers, banks are promisors and borrowers are promisees.
- The contractual relationship is for repayment of the loan amount over an agreed period.
- The banks would not desire premature termination because it results in loss of future interest income.
- Therefore, the banks charge an amount for foreclosure of the loan to compensate for the loss in interest income.
- It is the customer who has taken the loan, who moves for foreclosure and thereby breaching the promise to service the loan for the agreed period of time.
- Breach of contract may give rise to claim for damages.

## Findings:

1. Therefore, it is held that **foreclosure charges are not a consideration for performance of lending services** but they are imposed as a condition of the contract to compensate for the loss of 'expected interest'.
2. Clauses for Foreclosure charges are usually incorporated in contracts as an agreed measure of damages which can be enforced in the event of breach of contract. Therefore, such clause cannot give rise to 'consideration'. Such clause comes into effect only when the contract comes to an end.
3. Therefore, **foreclosure charges are for termination of services and not towards 'lending' services**. Since, element of 'service' is absent, 'foreclosure charges' cannot be treated as 'consideration'. **Foreclosure charges are nothing but damages** which the banks are entitled to receive when the contract is breached.



1. Alternative remedy of **filing of appeal against the order of Provisional attachment** passed under Section 83.
2. Grant of **Opportunity of Hearing** to the person whose property has been attached is **not discretionary power** under Section 83 read with Rule 159(5).
3. There must be **formation of Opinion** before passing an order for provisional attachment. Opinion must be formed on the basis of **tangible material**.
4. Provisional Attachment order must have been passed **during pendency of proceedings** under Section 62 or 63 or 64 or 67 or 73 or 74. Therefore, once order of assessment is passed, provisional assessment ceases to subsist.
5. On payment of pre-deposit of 10% under Section 107(6), provisional attachment ceases to subsist.

1. Entered into contract for importing machinery before GST came into force.
2. Zero duty import as against EPCG Authorization.
3. EPCG authorization issued by DGFT under FTP, promising exemption from whole duty of customs (basic customs duties & additional customs duties)
4. Notification issued under Customs Act granting exemption from whole duty of customs to the EPCG Authorization holders.
5. When Capital Goods (machinery) imported into India, GST law was in force.
6. Exemption of additional customs duties (IGST) was not granted with effect from 01.07.2017 to the EPCG authorization holder.
7. With effect from 13.10.2017 exemption of additional customs duties (IGST) granted to EPCG authorization holder.
8. Thus, for the period from 01.07.2017 to 12.10.2017 importers having EPCG authorization were kept out of exemption of additional customs duties (IGST).
9. Petitioner had to pay IGST on import of goods, though BCD exemption was granted.
10. Challenged Notification of Customs whereby exemption of additional duties of customs was not granted through promised under FTP.
11. Difference between 'Statutory Exemption' and 'incentive based exemption'

- Summons issued by the SGST department on the issue which is already pending before the CGST department.
- Summons issued by the SGST department and proceedings thereunder stayed by the Court as it is in violation of Section 6(2)(b) of the SGST Act.

# THANK YOU

for any queries write to  
[kuntal@pnalaw.in](mailto:kuntal@pnalaw.in)



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ADVOCATES | TAX CONSULTANTS