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SCT-I  
in Review & Comments  
16/1/18

F.No.354/ 117 /2017-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Tax Research Unit  
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Room No.146 G, North Block,  
New Delhi, the 16th January, 2018

OFFICE MEMORANDUM

Leg

Subject: Applicability of Goods and services Tax on Extra Neutral Alcohol (ENA)

The undersigned is directed to refer to 20<sup>th</sup> meeting of GST Council held on 05.08.2017, wherein the matter regarding taxation of rectified spirit/ Extra Neutral Alcohol (ENA) under GST was deliberated upon and it was agreed that legal opinion of the Attorney General of India may be sought on the matter.

2. Accordingly, the matter regarding levy of GST on supply of ENA for manufacture of alcoholic liquor for human consumption within the prevailing constitutional provisions, was referred to Ld. Attorney General, who has conveyed his considered opinion on the matter, through the Ministry of Law and Justice.

3. In this context, find attached herewith the opinion of the Ld. Attorney General for circulation to concerned GST officers of state and central government in all States.

Encl: As above.

*Mohit Tewari*  
16/1/18  
(Mohit Tewari)  
Under Secretary (TRU- I)

The Commissioner,  
GST Council Secretariat,  
5th Floor, Tower II, Jeevan Bharti Building, Janpath Road,  
Connaught Place, New Delhi-110 001.

Office of the Commissioner of Taxes  
Receipt No. 2393  
Date. 23/1/18

No.AG16/2017-Adv.C  
Office of the Attorney General for India  
Supreme Court

The Union of India, Ministry of Finance, has sought my opinion on the legality of the levy of Goods and Services Tax (GST) on supply of extra neutral alcohol (ENA) for manufacture of alcoholic liquors for human consumption.

I must state at the outset that while there is no dispute between the Centre and the States as to the levy of GST on industrial alcohol (i.e., denatured ENA), there is divergence of opinion in regard to ENA that is used for manufacture of 'alcoholic liquor for human consumption.' The brief for opinion annexes a note containing the views received from the State of West Bengal. The State objects to the levy of GST on ENA by relying on the judgment of the Supreme Court of India in *Bihar Distillery v. Union of India* (1997) 2 SCC 727. The State contends that no GST can be levied on ENA that is used to manufacture alcoholic liquor for human consumption and the power to regulate and impose taxes on ENA is vested exclusively in the States. Subsequently, on 24<sup>th</sup> October 2017, the Ministry of Finance has forwarded a copy of the representations received from the Government of Tamil Nadu, Rajasthan and Andhra Pradesh. These States also place reliance on the judgment of the Supreme Court in *Bihar Distillery (supra)* to contend that no GST can be levied on ENA. Thereafter, on 18<sup>th</sup> November 2017, at the request of the Ministry of Finance, I held a conference with the representatives of the States of West Bengal, Karnataka, Andhra Pradesh, Tamil Nadu, Rajasthan and Maharashtra. During the conference, these States have once again placed reliance on the judgment of the Supreme Court in *Bihar Distillery* to submit that the power to levy tax on ENA would vest exclusively with the State Governments and therefore, no GST can be levied.

It is in this background that the Ministry of Finance has sought my opinion. I have examined the facts in detail and I am of the view that even though the judgment of the Supreme Court in *Bihar Distillery (supra)* does hold that the States have the power to control rectified spirit removed for manufacturing potable liquors, this judgment cannot be used as precedent for the proposition that the States have absolute power to impose taxes on ENA that is used to manufacture 'alcoholic liquor for human consumption.' This is because:

1. The court in *Bihar Distillery* was not concerned with the power of the State to levy Excise under Entry 51. To that extent, the court did not deal with the meaning of the words 'alcoholic liquor for human consumption' as used in Entry 51. On the other hand, the Court was only concerned with the regulatory power of the State under Entry 8 of List II. Entry 8 in its entirety reads -- 'intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors'. Nowhere does Entry 8 use the phrase 'alcoholic liquor for human consumption'
2. The meaning of the term 'alcoholic liquor for human consumption' has been dealt with categorically in *Synthetics and Chemicals v. State of UP* (1990) 1 SCC 109 (7 judges) and *State of UP v. Modi Distillery* (1995) 5 SCC 753 (3 judges). In *Synthetics*, the Court has held that the expression 'alcoholic liquor for human consumption' means that liquor

