THE MONTHLY MAGAZINE FROM CASC

GST UPDATES

EXCEL TIPS

RECENT JUDGMENTS

INDIAN ECONOMY ROUND UP

VOLUME-3 ISSUE-7 JULY 2024

CASC BULLETIN

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18.07.2024 (Thursday)	Tax Audit Specifications	CA. R. Sudarshan

The meetings will be held at CASC at 6.30 p.m. and will be preceeded by fellowship over High Tea at 6.00 p.m

CASC Annual Members are requested to renew their subscription for 2024 - 2025

EDITORIAL

With fresh hopes

The month gone by saw the formation of a new coalition government albeit with the existing Hon'ble Prime Minister Narendra Damodardas Modi. Despite the new coalition government, the formation of ministry and the portfolio allocation broadly indicates the continuity of government priorities. One hopes further economic reforms are ushered in at the earliest. Given that the opposition parties have gained in numbers, one can expect confrontation between the government and the opposition on every issue.

The government needs to focus on how to further energize the MSME sector which is the backbone of the economy. The government should analyse the number of new compliance requirements it has ushered in all the laws in the last decade viz a viz the intended benefit of those requirements. Further the governments (both the central and state) are the largest litigants on the tax matters. Many a times a simple clarification would have been sufficient to avoid litigation. The government should definitely focus on reducing litigation. One of the major areas of

litigation is the classification issue in GST. GST which has been ushered in as a simple law, today stands out as the source of litigation. Further, there is lack of co-ordination between the central government and the state governments or among state governments in respect of classification issues which are prevailing leading to contrary decisions by authorities. After almost 7 years of existence, one can safely say GST is not a simple law as stated by the government. An urgent attempt should be made to make this law simple.

The stock market reaction to the election results and its subsequent recovery indicate that it is not the place for the faint hearted. History suggests that the longer you stay in the market, you make decent returns in spite of the volatility caused by political and economic factors.

Appeal

We, at Chartered Accountants Study Circle, request members to contribute articles for the bulletin and you may contact the editorial board regarding the same. We have been regularly conducting technical programmes every month. Members are requested to attend the programmes

conducted by CASC and are also requested to send their suggestions and / or value additions to the services provided by CASC including this Bulletin. The same can be sent as hard copy to the office of the CASC or emailed to admin@casconline.org or any of the members of the Management Committee of the CASC. Any member interested in using the CASC platform for addressing our members on technical topics may kindly feel free to contact us by way of email at admin@casconline.org.

The coming month is going to be busy for the CA community due to tax filing season. While the work pressure is certain, we would urge our CA fraternity to focus on staying on balance by focussing on family and health.

Wish the professional fraternity a happy return filing and collection season!

For and on behalf of the Editorial Board

R. Sricharan

Sricharan R

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ANNOUNCEMENTS

1. The copies of the material used by the speakers and provided to CASC for distribution, for the regular meetings held twice in a month is available on the website and is freely downloadable.
2. Earlier issues of the bulletin are also available on the website in the "News" column.

The soft copy of this bulletin will be hosted on the website shortly.

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You may please send your Feedback / Contributions / Queries on Direct Taxes, Indirect Taxes, Company Law, FEMA, Accounting and Auditing Standards, Allied Laws or any other subject of professional interest to ***admin@casconline.org***

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RECENT JUDGEMENTS IN VAT / CST / GST

CA. V.V. SAMPATHKUMAR

Input Tax Credit: There is alleged failure of the petitioner to reverse Input Tax Credit to the extent of credit notes issued by suppliers. Ld. counsel for the petitioner contended that Input Tax Credit was availed of net of the value of such credit notes. In these circumstances, it is just and necessary that the petitioner be provided an opportunity, by putting the petitioner on terms. For reasons set out above, impugned order is set aside and the matter is remanded on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a maximum period of two weeks from the date of receipt of a copy of this order. **M/s. Raj Rekha, Vs The Deputy State Tax Officer-II (FAC), Kothawalchavadi Assessment Circle, W.P.No.11217 of 2024 DATED: 30.04.2024**

Natural Justice: The prayer in this WP is to quash the impugned order as violative or principles of natural justice as proper opportunity was not given, contrary to law and

unsustainable. Since both the show cause notice and impugned order were issued on the same date, the impugned order is unsustainable. Consequently, impugned order is set aside by leaving it open to the respondent to initiate proceedings in accordance with law. **M/s.Pithamber Distributors Vs The Assistant Commissioner (ST) Mannady Assessment Circle, W.P.No.11337 of 2024 DATED: 30.04.2024**

GSTR-2A vs 3B: Tax proposal arose out of a scrutiny of the GSTR-2A and upon noticing issuance of credit notes by the supplier. The petitioner has placed on record the GSTR-3B returns for the relevant month to establish that the petitioner did not avail of ITC in respect of purchases from supplier. In these circumstances, reconsideration was necessary by putting the petitioner on terms and stating so, the impugned order was set aside and the matter remanded to the respondent for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand within two weeks from the date of receipt of a copy of this order. **M/s. Sidhivinayak Marketing, Vs The Deputy Commercial Tax Officer, Kothawalchavadi, North-1, Chennai North, W.P.No.11643 of 2024 DATED: 30.04.2024**

Mismatch: A detailed show cause notice was not issued in these matters and that only a summary was provided to the petitioner. Ld Government Advocate submits that the petitioner was provided sufficient opportunity, as is evident from the notice in Form ASMT-10 and the intimation preceding the show cause notices. He also submitted that the statute imposes the burden on the tax payer to establish entitlement to Input Tax Credit (ITC) and that the petitioner completely failed to discharge such obligation. The liability pertains to alleged mismatch between the GSTR 3B returns of the petitioner and the auto populated GSTR 2A returns. In recognition of difficulties faced in this regard, Circular No.183 was issued. The petitioner has also placed on record a certificate from the Chartered Accountant with regard to the reason for disparity between the above-mentioned returns. For reasons set out, the impugned assessment orders are quashed and both these writ petitions were remanded for reconsideration subject to conditions. **M/s.Sri Balaji Blue Metals, Vs 1. The Assistant Commissioner (ST), Krishnagiri-II Circle, 2. The Manager, HDFC Bank Limited, Krishnagiri W.P.Nos.11897 & 11903 of 2024 DATED: 30.04.2024**

GSTR 1 and GSTR 3B: Mismatch between GSTR 1 and GSTR 3B occurred because the petitioner committed an inadvertent error while filling up the GSTR 1 statement by not indicating the amount in the appropriate row and column pertaining to supplies on reverse charge basis. Since such order was issued on the ground that the tax payer did not reply to the show cause notice, the interest of justice warrants that an opportunity be provided to the petitioner by putting the petitioner on terms. For reasons set out above, impugned order dated 20.11.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a maximum period of two weeks from the date of receipt of a copy of this order. **M/s.God Venkateswara Transport Vs 1. Assistant Commissioner (ST), Madipakkam Assessment Circle, 2. Deputy Commissioner (ST), (FAC), Tambaram Zone,3. The Bank Manager, Federal Bank, Ambattur, W.P.No.12403 of 2024 DATED: 30.04.2024**

GST registration: GST registration was cancelled with effect from 01.08.2022 and it is stated that the Petitioner was unaware of proceedings culminating in the impugned orders. According to the

Petitioner, he became aware of the said proceedings only upon the bank attachment being brought to his notice. The explanation that the Petitioner did not access the GST portal is not devoid of merit. Under these circumstances, the interest of justice warrants that the Petitioner be provided an opportunity to contest the tax demand on merits by putting the Petitioner on terms. Stating so, the impugned orders are set aside with conditions **M/s.Bhavani Agencies Vs The Assistant Commissioner (ST) R.G. Street Assessment Circle, Coimbatore WP.No.10626 etc DATED:29.04.2024**

Failure to reply: The tax proposal was confirmed because the petitioner failed to reply to the show cause notice or attend the personal hearing. Petitioner contended that the Petitioner would be able to establish that the purchases were genuine if an opportunity is provided. In these circumstances, it is just and necessary to provide an opportunity to the Petitioner to contest the tax demand on merits by putting the Petitioner on terms. Thus, the impugned orders are set aside with certain conditions. **M/s.Vetri Vinayaka Metal Mark Vs The Assistant Commissioner (ST) Ganapathy Assessment Circle, Coimbatore WP.No.10677**

and 10685 of 2024 DATED:29.04.2024

ASMT 10: The notice in Form ASMT 10 is recorded. However, the reply of the petitioner thereto was not taken into account. Consequently, as is evident from paragraph 12 of the impugned order, the tax proposal was confirmed on the ground that the petitioner did not respond to the notices or attend personal hearing. Since the petitioner's reply to the notice in Form ASMT 10 was not taken into consideration in the impugned order, such order is unsustainable. **M/s.Imperial Shipping Service, Vs The Assistant Commissioner (ST), Muthialpet Assessment Circle, Writ Petition No.11175 of 2024 DATED: 29.04.2024**

GSTR 3B returns and Form 26AS: Tax proposals pertain to the discrepancy between the petitioner's GSTR 3B returns and Form 26AS. Such proposal was confirmed because the petitioner did not reply to the show cause notice. Ld counsel for the petitioner relies on Notification No.11/2027 to contend that a part of the services provided by the petitioner are exempt from GST. For these reasons aforesaid, the impugned orders are set aside subject to the condition that the petitioner remits 10% of the disputed tax demand in respect of each assessment period as

agreed to after giving credit to the sum of Rs.4,44,025/- recovered from the bank. **M/s.Lakshmi and Co., Vs 1. The Assistant Commissioner (ST), Avadi Assessment Circle, 2. The Branch Manager, ICICI Bank Limited, Avadi, Writ Petition Nos.11181 and others DATED: 29.04.2024**

Ingredients of Section 74: The appeal was presented beyond the condonable period by 21 days, the appeal was rejected. Petitioner submits that the petitioner would prosecute the appeal, if the appellate authority is directed to receive and dispose of the same on merits. The petitioner has stated that the tax proposal was confirmed u/s 74 of applicable GST enactments in spite of the fact that the ingredients of Section 74 are not satisfied. By taking this aspect into account and by noticing that the period of delay beyond the condonable period is only 21 days, this writ petition is disposed of by setting aside the appellate order and consequently directing the 2nd respondent to receive and dispose of the appeal filed by the petitioner on merits without going into the question of limitation. **M/s.Sri Shanmuga Motors,Vs 1.The State Tax Officer, Edappady Assessment Circle, 2. The Deputy Commissioner (ST) (GST) (Appeals), Erode and**

Salem, Writ Petition No.11234 of 2024 DATED: 29.04.2024

Pre-GST period turnover: The tax proposal was on the basis of disparity between the total turnover as per the profit and loss account and as per the returns of the petitioner. Since such turnover relates to financial year 2017-18, the submission that a part of the turnover pertained to the pre-GST period cannot be disregarded. In these circumstances, the interest of justice warrants that an opportunity be provided to the petitioner albeit by putting the petitioner on terms. **M/s.Luv Kush Agency, Vs The State Tax Officer, Inspection – III, Intelligence, Salem. W.P.No.11360 of 2024 DATED: 29.04.2024**

Reply: The petitioner submitted a reply in February 2023. On perusal thereof, it is clear that the petitioner responded to each of the -15- discrepancies noticed during inspection. In particular, the petitioner responded to discrepancy -9- by providing an ageing report in respect of sundry creditors. In response to discrepancy -5-, the petitioner stated that revenues from Andhra Pradesh had been included on the basis of the audited financial statement and that such inclusion is untenable. A trial balance was also submitted. Although the

petitioner should have responded to the intimation and show cause notice and availed of the opportunity of personal hearing, in the above facts and circumstances, the impugned assessment order calls for interference albeit by putting the petitioner on terms. The impugned assessment order is quashed subject to the condition that the petitioner remits a sum of Rs.15,00,000/- as agreed to towards the disputed tax demand within a maximum period of two weeks from the date of receipt of a copy of this order. The assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within a period of two months from the date of receipt of the petitioner's reply. **Tvl. KCP Infra Limited, Vs 1. The State Tax Officer, O/o the JC, Group – VI, Inspection, Intelligence – I, Chennai – 6. 2.The State Tax Officer, Group-1, Chengalpattu Intelligence Division, W.P.No.11461 of 2024 DATED: 29.04.2024**

(The Author is a Chennai based Chartered Accountant in Practice. He can be reached at vvsampat@yahoo.com).

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CASE LAWS - GST

CA. VIJAY ANAND

1. **GST – SCN SERVED THROUGH ONLINE PORTAL – ASSESSEE SUBMITTED RETURNS THROUGH PROFESSIONAL AND WAS NOT ACQUAINTED WITH THE PORTION OF THE PORTAL – ORDER CONFIRMED WITHOUT HEARING THE ASSESSEE – MATTER REMANDED**

In Abitha Timber Traders v. Assistant Commissioner (ST) (FAC), Tenkasi 2024 (84) GSTL 24/(2024) 16 Centax 467 (Mad.) the petitioner was not acquainted with the advance technology of following the notices, which has been uploaded in the portal and had submitted the returns only through his professional. The impugned order has been passed after issuing notice in Form ASMT-10 dated 13.05.2022, notice in Form DRC 01A dated 05.11.2022 and notice in Form DRC 01 dated 03.12.2022 which were uploaded only through the portal. On a writ petition, the high court observed as under:

1. Although Section 169(d) of TNGST Act 2017, enables the respondent to issue notice

through the common portal, other modes are also made available to the respondent under Section 169 of the TNGST Act 2017. In this case, the petitioner is a Timber Trader and not an educated person and he is not acquainted in following the notices uploaded through the common portal.

2. In similar writ petitions filed in W.P.Nos.27651, 27654 and 27657 of 2021, dated 04.02.2022, Pushpam Reality v. State Tax Officer [2022] 136 taxmann.com 195/91 GST 417/ 2022 (63) G.S.T.L. 442 (Mad.), it was held that the department can continue the service of notice through registered post or speed post or courier with acknowledgment to the petitioners at their last known place of business or residence and upload the same in the web portal and that until all problems are resolved on the technical side, the authority may simultaneously serve the notice of assessment and communications under the Act and Rules both through registered post or speed post or courier with acknowledgment as is contemplated Section 169(1)(b) of the Act and through web portal and that the practice of sending physical copy through registered post or speed post or courier with acknowledgement may be dispensed with once all technical problems are resolved.

Hence, the writ petition was allowed by setting aside the impugned order passed and the matter was remitted back to the respondent for fresh consideration who shall proceed with the assessment and pass orders afresh, after providing an opportunity of hearing to the petitioner.

2. GST – SCN ISSUED FOR ALLEGED DISCREPANCY ON SCRUTINY OF RETURNS – WHICH WAS FOLLOWED BY ANOTHER SCN FOR RECOVERY – ASSESSEE REQUESTED FOR EXTENSION OF TIME WAS DENIED HOLDING THAT MORE THAN 6 ADJOURNMENTS HAVE BEEN GRANTED IN THE EARLIER SCN – DEMAND CONFIRMED BY AN ORDER – NOT SUSTAINABLE

In Pioneer Co-operative Car Parking Servicing and Constructions Society Ltd. v. Senior JC, Burrabazar 2024(84) GSTL 27/(2024) 16 Centax 110 (Cal.), the department had alleged discrepancy on scrutiny of the petitioner's returns, and had intimated the petitioner by issuing a notice in Form GST ASMT-10 on 16th May, 2023. Since, the petitioner could not afford any satisfactory explanation, an intimation under section 73(5) of the said Act was issued on 29th August, 2023 which was subsequently followed up by a show cause

notice issued u/s 73(1) of the said Act dated 12th September, 2023 to which the petitioner had duly within the time for providing its response to the aforesaid show cause notice, had sought for an extension by its response dated 11th October, 2023 by uploading the same in the official portal.

Thereafter, the adjudicating authority, without affording the petitioner an opportunity of hearing or to respond to the show cause by extending the time, had passed the final order dated 6th November, 2023, thereby determining liability under section 73(9) of the said Act. On a writ petition, the high court observed as under:

1. The petitioner was served with an intimation u/s 61 vide notice dated 16th May, 2023, the same was followed up by a further notice of intimation under section 73(5) of the said Act. None of the aforesaid notices are, however, a notice to show cause u/s 73(1) of the said Act. The statute provides for an opportunity to respond when the department contemplates passing of any adverse decision u/s 73(9) of the said Act.

2. The show cause notice u/s 73(1) had been issued on 12th September, 2023. Although, the petitioner had duly applied before the respondents seeking for an adjournment on the ground noted therein, on

11th October, 2023 within the due date to respond, the proper officer had purportedly rejected the same on the ground that more than six adjournments had been granted.

3. When the petitioner had sought for an extension, the adjudicating authority was obliged to consider the application for extension and ought not to have passed the final order holding that more than six adjournments had been granted to the petitioner. There is no finding on the part of the adjudicating authority that the petitioner did not make out sufficient cause for being denied the extension.

4. Consideration for rejection of an application for being extension was that more than six adjournments were granted is unacceptable. The adjournments granted to the petitioner in respect of proceeding u/s 61 of the said Act read with under Rule 99 of the CGST Rules, 2017, initiated vide notice dated 16th May 2023, cannot be clubbed together for the purpose of holding that the petitioner was afforded with ample opportunity to respond to the show cause issued under section 73(1) of the said Act.

5. Section 73 and its sub sections are independent provisions. The manner in which the

respondent no. 1 had proceeded to pass the final order without granting extension to the petitioner to file its response or to be offered personal hearing, despite the petitioner showing sufficient cause, appears to be a colourable exercise of power by the said authority.

6. Although, it has been argued by the respondents that the petitioner has an alternative remedy in the form of an appeal, an appeal is no substitute for revisiting of an ex parte order, especially when the defense of the petitioner is not on record.

7. Furthermore since, the order stands vitiated on the ground of violation of the principles of natural justice, alternative remedy in the form of an appeal is no bar for exercise of extraordinary writ jurisdiction.

Hence, the writ petition was allowed by setting aside the impugned order passed and the matter is remitted back to the respondent for fresh consideration who shall proceed with the assessment and pass orders afresh, after providing an opportunity of hearing to the petitioner.

3. GST – CANCELLATION OF REGISTRATION THROUGH VAGUE SCN FOR NOT FILING RETURNS FOR THE CONTINUOUS PERIOD OF SIX MONTHS

In Gaurav Bansal v. Commissioner of GST 2024(84) GSTL 132/(2024) 16 Centax 90 (Del.), the assessee was issued a show cause notice for the cancelaltion of registration on the ground that "Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months" which was followed up by the actual cancellation of registration certificate with retrospective effect, vide order dated 28-7-2021 without giving reasons of cancellation but merely mentioning that the registration is liable to be cancelled for the following reason "No response received to query raised". On a writ petition, the high court observed as under:

1. The Show Cause Notice and the impugned order are also bereft of any details. Accordingly, the same cannot be sustained. Further, neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation.

2. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied.

3. The registration cannot be cancelled with retrospective effect mechanically. It can be cancelled only if the proper

officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria.

4. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant.

Hence, the order of cancellation was modified to be operative with effect from 30-6-2021, i.e., the period upto which the Petitioner has filed its GST returns.

4. GST – DIFFERENTIAL TAX PAID PERSUANT TO FINALISATION OF PROVISIONAL AUDIT OF RETURNS ALONG WITH INTEREST THEREAFTER – SCN WAS ISSUED U/S 74 – NOT SUSTAINABLE

In Rays Power Infra Pvt. Ltd. v. Superintendent of CT 2024 (84) GSTL 146/(2024) 16 Centax 329 (Telangana), the petitioner was communicated the findings by the departmental audit on 14.10.2021 and immediately accepted the same and paid the tax with interest on 28.10.2021 and this was also accepted in the final audit report.

Thereafter, a show-cause notice was issued 20.04.2022 u/s 74(1) to which the petitioner submitted a reply on 04.09.2023 highlighting the facts to the

concerned authorities in respect of the entire tax liability having been discharged along with interest on 28.10.2021 and stating that the entire irregularly availed ITC already stood reversed for dropping of the show-cause proceedings and a personal hearing was also held. Thereafter, the demand was confirmed along with interest and penalties u/s 74(9) r/w Section 122(2)(b) for the period of dispute as regards tax is from July, 2017 to March, 2019. On a writ petition, the high court observed as under:

1. The point of issue for consideration is as to whether the petitioner, having discharged his entire tax liability along with the accrued interest immediately upon the finding of the audit team having been made available to the petitioner, could be subject to proceeding u/s 74.

2. There was some wrongly availed ITC by the petitioner in respect of certain exempted tax which was highlighted in the provisional audit report which has been made available to the petitioner by the audit team on 14.10.2021 for which the petitioner discharged the tax liability along with the accrued interest on 28.10.2021, i.e., within a span of around two weeks time, which was much thereafter that the petitioner's audit report was published on

10.11.2021 and wherein the audit report itself has highlighted that the petitioner has since cleared off all the tax liability and has also paid the relevant interest also up to date.

3. The show cause notice was thereafter has been issued much thereafter on 20.04.2022.

4. A perusal of Section 73(5) gives a clear indication that the framers of the law were very clear in mind that in the event if the assessee the tax payer clears all the tax liability along with interest at any day, prior to the issuance of show cause notice, they would not liable for any further additional taxes by way of penalty or interest. For this purpose, the provisions of Section 73(1) and Section 73(5) both have to be read together. The reading of the aforesaid two provisions would give a clear indication that Sub-Section (5) refers to even those payments which have been cleared by the taxpayers which were otherwise termed as wrongfully availed I.T.C.

5. On a plain reading of the provisions of Section 73 of the C.G.S.T Act, particularly sub-sections 5 to 8, it is very clear that the taxpayer is expected to clear the unpaid tax or reversal of the wrongfully availed ITC at the earliest in order to provide stringent coercive recovery measures including imposition of penalty.

6. In the instant case, the show cause notice was issued on 20.04.2022. However, during the course of the audit itself certain discrepancies were pointed out by the audit team. Even much before of the final audit report being published, the petitioner has paid the entire tax liability along with the updated interest on 28.10.2022.

7. In the said circumstances, the case of the petitioner is one which that would fall strictly under Sub-Sections (5) and (6) of Section 73 wherein it has been emphatically laid down by the law makers that any person chargeable with tax, if he pays the amount of tax along with the interest payable there on, proper officer upon receipt of such information shall not initiate any further proceedings under Sub-Section (1) and all the proceedings shall have to deemed to be concluded.

8. Section 74 would get attracted only in the event of their being strong materials available on record to show that the petitioner had played fraud or there was any misstatement made by him and there being any suppression of fact. Section 74 would come into play only if the conditions stipulated in Section 73 has not been met with by the taxpayer i.e. to say in the event if the conditions stipulated in Sub-Section (5) of Section 73 is not honored by the taxpayer in spite of the tax

liability being brought to his knowledge. Then in the said circumstances, Section 74 would automatically attract.

9. Sub-Section (8) of section 73 states that if necessary compliance in respect of tax as is stipulated under Sub-Sections (1) and (3) is paid along with interest even after issuance of show cause notice, even then the penalty cannot be levied and the notice proceedings shall be deemed to have been concluded.

Hence, the petition was allowed and the proceedings u/s 74 and the consequential impugned order dated 15.11.2023 were held to be in excess of jurisdiction and were accordingly set-aside / quashed.

5. GST – LADIES HOSTEL – RESIDENTIAL DWELLING FOR USE AS RESIDENCE ELIGIBLE FOR EXEMPTION UNDER SL.NOS.12 & 14 OF NOTIFICATION NOS.12/2017-C.T.(R) DATED 28.06.2017

In Thai Mookambikaa Ladies Hostel v. UOI 2024 (84) GSTL 209/(2024) 17 Centax 88 (Mad.), the petitioners are running private ladies hostels by providing residential accommodation and food to the college students and working women on monthly basis with the monthly tariff per student or per inmate ranging between Rs.1200/- to 6,500/- per month.

Applications were filed seeking advance ruling on the following questions:

a) Whether the hostel and residential accommodation extended by the Applicant hostel would be eligible for exemption under Entry 12 of Exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 dated 28.06.2017 and under the identical Notification under the TNGST Act, 2017 and also under Entry 13 of Exemption Notification No.9/2013- Integrated Tax-Rate dated 28.06.2017 as amended?

b) Whether the Applicant hostel being eligible for exemption under Sl. No. 12 of Notification-12/2017 (CT-Rate) dated 28.06.2017 as amended would at all be required to take registration under the GST Enactments by virtue of the Exemption Notifications as afore mentioned and also under the provisions of Section 23 of the CGST/TNGST Act 2017?

c) Whether any specific tariff entry is applicable to hostels under the Tariff Notification, in the event of requirement of registration?

d) Whether, in the event of the hostel accommodation being an exempt activity, whether the incidental activity of supply of in-house food to the inmates of the hostel would also be exempt being in the nature of a composite exempt supply?

e) Whether the judgement of the Division Bench of the Hon'ble Karnataka High Court in the

case of "Taghar Vasudeva Ambrish -v.- Appellate Authority for Advanced Ruling, Karnataka reported in Manu/ KA/0327/2022 is applicable to the facts of the applicant?

The authority ruled as under:

a) For Question No. 1: The services by way of providing hostel accommodation supplied by the Applicant are not eligible for exemption under Entry 12 of Exemption Notification No. 12/ 2017-CT (Rate) dated 28.06.2017 and under the identical Notification under the TNGST Act, 2017, and also under Entry 13 of Exemption Notification No. 09/2017-IT(Rate) dated 28.06.2017, as amended.

b) For Question No. 2: The Applicant is required to get themselves registered in the state of Tamil Nadu, if their aggregate turnover in a financial year exceeds twenty lakh rupees.

c) For Question No. 3: The supply of services by way of providing hostel accommodation falls under Tariff heading 9963 and is taxable @ 9% CGST + 9% SGST under Sl. No. 7(vi) of the Notification No. 11/2017, Central Tax (Rate), dated 28.06.2017, as amended vide Notification No. 20/2019 - Central Tax (Rate) dated 30.09.2019.

d) For Question No. 4: The activity of supply of inhouse food to the

inmates of the hostel amounts to providing services in a composite manner and the hostel accommodation services provided by the Applicant, being the principal supply, which is taxable @18%, is the tax rate for the composite supply provided by them.

e) For Question No. 5: No ruling is issued, as the question put forth by the applicant does not fall under the scope of Section 97(2) of the GST Act.

Aggrieved by the above, the asssessees filed writ petitions before the high court which observed as under:-

1. Even though alternate remedy is available, still in appropriate cases, where the orders of either the Hon'ble Division Bench of the High Courts or Superior Authority is not followed by the Statutory Authorities, the same can be challenged by way of writ petition, relying on the decisions in

a. Filterco and others versus Commissioner of Sales Tax, M.P. and others" reported in MANU/SC/0706/1986;

b. Tvl.Sakthi Masala (P) Ltd., vs.,The Special Commissioner of Commercial Taxes and Others reported in MANU/TN.9392/ 2007

c. Tvl.Pizzera Fast Foods Restaurant Madras Pvt. Ltd., vs. Commissioner of Sales Tax reported in MANU/TN/0206/ 2005,

Therefore, these writ petitions are maintainable.

2. At the time of introduction of GST, unconditional exemption was provided w.e.f. 01.07.2017 provided to renting of a residential dwelling to any person when the same is used for residence consequent to which GST was payable in the case of renting of a residential dwelling to any person when the same is used for the commercial purpose.

3. W.e.f. 18.07.2022, GST applicability on renting of residential dwelling will be as follows:

Particulars	GST position post 18th July 2022
Renting of residential dwelling for residential purpose to the person registered under GST	Taxable from 18th July 2022 [Exempted from 1st July 2017 till 17 th July 2022 and Taxable from 18th July 2022]
Renting of residential dwelling for residential purpose to the person not registered under GST	Exempted from 1st July 2017
Renting of residential dwelling for commercial purpose to the person registered under GST	Taxable from 1st July 2017
Renting of residential dwelling for commercial purpose to the person not registered under GST	Taxable from 1st July 2017

4. On perusal of the Sl. No. 12 of Notification-12/2017 (CT-Rate) dated 28.06.2017, it is clear that the services provided by way of renting of residential dwelling for residential purpose are covered under the exemption.

5. In the present case, in order to claim the benefit of the exemption conferred by Entry 12 of Exemption Notification No.12/2017, dated 28.06.2017, the burden is on the petitioners to prove that what they provided to the girl students and working women by way of renting out hostel rooms would qualify the condition, i.e. services by way of renting of residential dwelling for use as residence' and thereby would fall within the purview of Entry No.12 of the Exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

6. Clause (zz) of Notification No.12/2017 CT(R), dated 28.6.2017 refers to 'renting in relation to immovable property' means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

7. Further, in the said notification for renting of properties by the

hotel, motel, inn, guest house, camp site, lodge, house boat, or like places meant for temporary stay has not been exempted.

8. Delhi High Court in V.L.Kashyap v. R.P.Puri held that the word 'dwelling house' is synonymous with residential accommodation as distinct from a house of business, warehouse, office, shop, commercial or business premises and that the word 'house' means a building and would include the out-houses, courtyard, orchard, garden etc. which are part of the same house, but it cannot include a distinct separate house.

9. United Kingdom House of Lords in Uratemp Ventures Limited versus Collins" (2001) 3 WLR 806, held that the term 'dwelling house' has been interpreted to mean even a single room as part of a house.

10. Bombay High Court in Bandu Ravji Nikam v. Acharyaratna Deshbushan Shikshan Prasark Mandal" (W.P.No.4194/1989, dated 12.09.2002 held that by the very nature of the use of students hostel, it is only a residential user as hostel, is a house of residence or lodging for students and that just because the hostel owners charge some amount from the students, such accommodation cannot be treated as commercial or non residential.

11. Karnataka High Court in "Taghar Vasudeva Ambrish versus Appellate Authority for

Advanced Rulings, Karnataka and Others" (W.P.No.14981/ 2020, dated 7.2.2022 held that the expression 'residence and 'dwelling' have more or less the connotation in common parlance and therefore, no different meaning can be assigned to the expression 'residential dwelling' as it cannot be held that the same does not include hostel which used for residential purposes by students or working women. It was further held that the service provided by the petitioner therein, i.e. leasing out residential premises as hostel to students and working professionals is covered under Entry 13 of Notification No.9/ 2017 dated 28.09.2017, namely, services by way of renting of residential dwelling for use as residence issued under the Act and the petitioner is held entitled to benefit of exemption notification.

12. In other words, the exemption was being given to any person who may engage in renting of residential dwelling used as residence. It is further not specifically set out in the notification what would be considered as a short stay or long stay. This exemption benefit was available when landlord rented out to corporates/tenants who in turn rent out to students/working professionals/others. The same exemption was also available when renting was done as residence to the students by

corporate PG/other commercial entities.

13. It is well settled that when the word is not defined in the Act itself, it is permissible to refer to the Dictionaries to find out the general sense in which the word is understood in common parlance.

14. In 'common parlance, 'residential dwelling' means any building, structure, or part of the building or structure other than offices or factories, that is used or intended to be used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others.

15. U/s 2(e) of the Tamil Nadu Hostels and Home for Women and Children (Regulation) Act, 2014), the term 'hostel' or lodging house' is defined to mean a building in which accommodation is provided for women or children or both, either with boarding or not.

16. Thus, it is evident that the expression 'residence' and 'dwelling' have more or less the connotation in common parlance and therefore, no different meaning can be assigned to the expression 'residential dwelling' and accordingly, the same does include hostel which is used for residential purposes by students or working women.

17. Authority for Advance Ruling' has primarily concluded that hostel building cannot be considered as residential dwelling, but a non-residential complex, based on the following :-

i. The petitioners have rented out the premises with the intention of providing hotel accommodation which is more akin to sociable accommodation rather than what is typically considered as residential accommodation;

ii. A single house with two or more rooms where normally a single family resides, is subdivided and let out to different persons and rent being collected on per bed basis with bundle of other services against a consideration clearly constitutes a business of supplying accommodation services along with ancillary services and thus on this count, the hostel accommodation does not qualify as a residential dwelling and the question of using the same as residence does not arise;

iii. Though the accommodation and residence seems to be synonymous, there is subtle difference between the two and the hostels are nothing but accommodation which provide temporary lodging to the inmates by converting a residential dwelling into a hotel and providing hotel service, which eventually makes the same dwelling non-residential'

and taxable and in the instant case, the residential homes have been converted into a commercial purpose and thereby losing its status as 'residence dwelling';

iv. In order to run hostel the license from Shop and establishment Act is required and it is not required for residence dwelling for use as residence. Shops and establishment license are required for commercial establishment. Hence hostels falls under commercial establishment and hence GST should be applicable on hostel charges.

v. The purpose and objective of the notification is nothing but to avoid taxing on residential properties taken on rent by family or individuals and the benefit of exemption is not extended to the premises which do not qualify as residential dwelling for use as residence;

vi. The 'hostel accommodation' is not equivalent to 'residential accommodation' and hence, the services supplied by the petitioners would not be eligible for exemption under Entry 12 of the Exemption Notification.

18. From the above, it is clear that the Advance Ruling Authority (AAR) has mainly compared the hostel premises on par with hotel premises and the intention of the petitioners in renting out the premises in the name of hostels, is nothing but providing

hotel accommodation and it does not qualify as residential dwelling for use as residence.

19. The AAR has not ventured upon to find out whether the accommodation provided by the petitioners by renting out the hostel rooms to the girl students and working women, will fall within the purview of 'residential dwelling for use as residence' and whether the inmates of the hostels are using the premises as residential dwelling or as commercial purpose.

20. The term 'services by way of renting of residential dwelling for use as residence' contained in the exemption Notification, is very clear that the services provided by way of renting of residential dwelling for residential purpose are covered under the exemption.

21. Therefore, the AAR ought to have dealt with the matter in regard to the services provided by the petitioners by renting out the hostel rooms to the girl students and working women and whether such services are in the nature of residential or commercial in order to find out whether the petitioners are entitled to the exemption. But unfortunately, the AAR has dealt with the matter pertaining to the building/premises let out by the petitioners and compared the same with that of the hotels and came to the conclusion that the building/

premises rented out by the petitioners are not residential dwelling for use as residence.

22. Therefore, the impugned Ruling passed by AAR, is not sustainable and the same is liable to be set aside.

23. In the present case, it is not in dispute that the inmates of the respective hostels run by the petitioners are the girl students and the working women who are not registered persons and using the premises as their residence, for which, they are paying fee, which can be termed as rent and it is not the case of the respondents that the inmates are carrying on any commercial activities in the rented premises or using the same for commercial purpose. The inmates of the room also using the common kitchen and sharing the foods as their own.

24. GST is not applicable if a residential property is rented out to any persons in their personal capacity and for use as their own residence. In other words, if a residential property is rented out, that too for residential purpose, then the rental income derived from such property does not attract GST. However, if a person rents out any immovable property for doing business purposes, it would attract GST at a rate of 18%.

25. Assuming for a moment that a landlord owns a building

consisting of two rooms and a kitchen and attached bathrooms and if he gives it to a family consisting of four members for residential purpose, on a monthly rent of Rs.20,000/- plus 2,000/- towards maintenance and other charges, then no GST will attract. While so, if four girl students or four working women join together and take a house on rent by bearing the rent at Rs.5,500/- each, they are not liable to pay GST.

26. If the same 4 students are staying in a hostel room and paying rent where they are using the room allotted to them as their residential dwelling unit, which includes kitchen, wash room, cots and beds, so as to enable them to prepare food and wash clothes etc., while so, the said staying of those four students in a hostel cannot be excluded from the purview of residential dwelling and bring the same under the ambit of GST. As far as the said four girl students staying in the Hostel is concerned, that hostel room is the dwelling unit for them.

27. Thus, the word "residential dwelling" referred in Entry No.12 of the Exemption Notification No.12 of 2017 would include the hostel facilities provided by the petitioners to the working women, students, professional, etc. For the working women and professionals also, the said hostel room is residential dwelling unit for them.

28. To live, every person must have the residential dwelling. The hostel rooms are the residential dwelling units for the girl student and working women, etc. The residential dwelling varies from person to person.

29. As far as the homeless people are concerned, the residential dwelling will be wherever they are residing such as public roads, streets or in any other places and except the same, no other places can be provided, unless and otherwise if the Government has accommodated those people in a home, where they are maintaining the same for homeless.

30. Therefore, when for the homeless persons, the residential dwelling will be the places wherever they are residing, where, even they do not have cooking, washing and toilet, etc., facilities by itself it does not mean that their place is not a residential dwelling. For their sake of convenience, they reside in one place and used to get food and do washing and other activities from different places. If they are accommodated in a home provided by the Government for the homeless people, the said premises/hostel will be their residential dwelling and therefore it depends upon the status and the lifestyle of each

person, the nature of residential dwelling will vary.

31. Merely because the persons are staying in hostel rooms due to their financial condition, the same will not take away the status of the said hostel room as residential dwelling for the inmates of the room, because after their avocation, they have been staying, sleeping, eating, washing, etc in the hostel rooms alone.

32. As per the AAR's perspective, a working woman, who is drawing the salary of around a sum of Rs.15,000/- to Rs.20,000/-and paying hostel rent for around a sum of Rs.6,000/- will not be exempted from GST, whereas a Manager, who is working in a same office and can afford to pay around a sum of Rs.30,000/- to Rs.50,000/-as rent will be exempted from GST by citing the reason that the hostel accommodation would fall within the purview of GST.

33. However, it is not the intention of the Legislature to tax the poor people. The meaning of "residential dwelling" mentioned in the Entry No.12 of Exemption Notification No.12 of 2017 would cover both the poor and rich people.

34. Ultimately, the Authorities have to look into the aspect as to whether the particular place is a dwelling unit or not. When such being the case, since the

hostellers are staying in the room for months together, it cannot be construed as non-residential unit and certainly it is a residential dwelling as provided in the Entry No.12 of Exemption Notification No.12 of 2017.

35. Thus, the 'hostel services' provided by the petitioners would squarely fall within purview of Entry No.12 of Exemption Notification No.12 of 2017. Further, in the present case, no commercial activities can be attributed against the owners of the hostels since they have been providing only 'residential accommodation' to the girl students, working women, etc., who are using the 'hostel premises' as their residence and not for business purpose by using the common kitchen and sharing the food among themselves.

36. In view of the above, this Court is of the considered view that the 'hostel services' provided by the petitioners to the girl students and working women will squarely amount to the 'residential dwelling' and accordingly, the same will be squarely covered under the Entry No.12 of Exemption Notification No.12 of 2017.

37. The Hon'ble Supreme Court, in the case of "CCE v. Parle Exports (P.) Ltd. 1989 taxmann.com 1087 (SC)/[1989] 1 SCC 345 at p. 357 has suggested that in interpreting

the scope of any notification, the authority has first to keep in mind the object and purpose of the notification and all parts of it should be read harmoniously in aid of, and not in derogation, of that purpose.

38. Even on adopting the purposive interpretation having regard to the object and intent of the present exemption Notification, this Court finds that the purport and object of the legislation in issuing the present Notification is only to give exemption towards the services which are in residential nature and not towards commercial nature and the premises should be of residential dwelling for use as residence. The purpose of exemption given in the Notification is only to lessen the burden of tax on the dwellers, who are the tenants/occupants of the residential premises taken on rent.

39. In the present case, the imposition of GST on the Hostel accommodation should be viewed from the perspective of the recipient of service and not from the perspective of service provider.

40. However, the AAR has dealt with the entire issue as if GST is going to be imposed on the revenue of the service provider and he is going to pay the same from and out of his pocket.

41. On the other hand, the imposition of GST is only on the recipient of service and the GST

is going to be collected only from the recipient of the service and not from the service provider. As far as service provider is concerned, he is collecting the GST from the recipient of the service and making deposit with the Central Government.

42.. While adverting to the imposition of GST on hostel accommodation, it has to be looked into as to whether the inmates of the hostel rooms, are using the premises as their residential dwelling or commercial purpose since renting of residential unit attracts GST only when it is rented for commercial purpose. So, in order to claim exemption of GST, the nature of the end-use should be 'residential' and it cannot be decided by the nature of the property or the nature of the business of the service provider, but by the purpose for which it is used i.e. 'resident dwelling' which is exempted from GST. Therefore, this Court is of the considered view that the issue of levy of GST on residential accommodation should be viewed from the perspective of recipient of service and not from the perspective of service provider, who offers the premises on rental basis.

43. In the light of the above, it is clear that the renting out the hostel rooms to the girl students and working women by the petitioners is exclusively for

residential purpose, this Court is of the considered view that the condition prescribed in the Notification in order to claim exemption, viz., 'residential dwelling for use as residence' has been fulfilled by the petitioners and thus the said services are covered under Entry Nos.12 and 14 of the Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017, the petitioners are entitled to be exempted from levy of GST.

44. As far as the case laws referred to by the learned counsel appearing for the respondents are concerned, the same would not apply to the facts and circumstances of the present case.

Hence, all the Writ petitions are allowed and the impugned orders passed by the 2nd respondent are hereby set aside. No costs. Consequently, all the connected miscellaneous petitions are also closed.

6. GST – PARALLEL PROCEEDINGS INITIATED BY AUTHORITIES OTHER THAN TO WHOM THEY HAVE BEEN ASSIGNED OR WITHOUT JURISDICTION

In TVL Vardhan Infraastructre v. Special Secretary, Head of the GST Council Secretariat, New Delhi 2024 (84) GSTL 443/ (2024) 16 Centax 509 (Mad.), the petitioners are assessed by the Central Authorities under the CGST Act, 2017 and have

challenged the notices issued under Sections 62 & 67 of the TNGST Act, 2017 and orders passed under Section 73 and 74 of the TNGST Act, 2017 by the State Authorities. The high court observed as under:

1. The powers of assessment has been vested with the proper officers to whom the assessee have assigned by virtue of Circular No.01/2017-GST (council) dated 20.09.2017 bearing reference: F.No.199/ Cross-Empowerment/GSTC/ 2017. Thus, the Board can authorize any officer referred to in clauses (a) to (h) of Section 3 of CGST Act, 2017 to appoint any officers of the Central Tax below the rank of Assistant Commissioner of Central Tax to be the Central Tax Officer for the administration of the CGST Act, 2017 alone. Thus, under Section 4(2) of the CGST Act, 2017, these can be only a linear delegation.

2. Similarly, u/s 4(2) of the TNGST Act, 2017, the Commissioner has jurisdiction over the whole of State. The Additional Commissioner shall have jurisdiction over the whole of the State in respect of all or any of the functions assigned to them. Where the State Government so directs, the Additional Commissioner shall have jurisdiction, over any local area thereof. Such delegation is only to officers appointed under TNGST Act, 2017. Here also the delegation is linear.

3. Thus, the Commissioner has power to delegate powers under the Act to other Officer specified in Sub-clause (c) to (f) to Section 3 of the TNGST Act, 2017. There is no cross-empowerment under Section 4(2) of the TNGST Act, 2017.

4. Thus, neither the Board under Section 4(1) and (2) of CGST Act, 2017 nor the Government and/or the Commissioner under Section 4(1) and (2) of SGST Act, 2017 can appoint such officers in addition to the officer notified under Section 3 of the respective Act.

5. The Board can appoint and delegate only to Central Tax Officers appointed under the CGST Act, 2017 for CGST Act, 2017 and the Government and/or the Commissioner can appoint and delegate only to State Tax Officers appointed under the TNGST Act, 2017 for TNGST Act, 2017.

6. These provisions are pari materia with Section 4 of the Customs Act, 1962 and Section 12(E) of the Central Excise Act, 1944.

7. Section 6(1) of the respective GST Enactments empowers Government to issue notification on the recommendation of GST Council for cross-empowerment. However, no notification has been issued

except under Section 6(1) of the respective GST Enactments for the purpose of refund although officers from the Central GST and State GST are proper officers under the respective GST Enactments.

8. Since, no notifications have been issued for cross-empowerment with advise of GST Council, except for the purpose of refund of tax under Chapter-XI of the respective GST Enactments r/w Chapter X of the respective GST Rules, impugned proceedings are to be held without jurisdiction. Consequently, the impugned proceedings are liable to be interfered in these writ petitions.

9. Thus, if an assessee has been assigned administratively with the Central Authorities, pursuant to the decision taken by the GST Council as notified by Circular No.01/2017 bearing Reference F.No.166/Cross Empowerment/GSTC/ 2017 dated 20.09.2017, the State Authorities have no jurisdiction to interfere with the assessment proceedings in absence of a corresponding Notification under Section 6 of the respective GST Enactments and vice versa.

10. The manner in which the provisions have been designed are to ensure that there is no cross interference by the counterparts. Only exception provided is under Section 6 of the respective GST enactement.

11. Therefore, in absence of a notification for cross-empowerment, the action taken by the respondents are without jurisdiction. Officers under the State or Central Tax Administration as the case may be cannot usurp the power of investigation or adjudication of an assessee who is not assigned to them.

12. Therefore, the proceedings initiated by the respondents so far against the respective petitioners by the Authorities other than the Authority to whom they have been assigned to are to be held as without jurisdiction. Therefore, the impugned proceedings warrants interference.

    Therefore, the impugned proceedings were quashed with a direction to the Central Authority/State Authority as the case may be to whom the respective petitioners have been assigned for administrative purpose to initiate appropriate proceedings afresh against them strictly in accordance with the provisions of the respective GST Enactments and GST Enactments Rules and Circular issued thereunder. The time between the initiation of the proceedings impugned in these writ petitions and time during the pendency of the present writ petitions till the date of receipt of this order shall stand excluded for the purpose of computation of limitation.

Hence, the writ petitions were disposed.

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SUMMARY OF AAR/AAAR

CA. AMAN GOYAL

Admissibility of Input tax credit in respect of air conditioning, cooling, and ventilation system

In case of Re: M/s. Wago Private Limited (referred to as "appellant") (GUJ/GAAAR/APPEAL/2023/02 dated May 29, 2024) – Gujarat Appellate Authority for Advance Ruling

Facts of the case:-

The appellant has procured various assets to install and commission them (including air conditioning and cooling system and ventilation system) in their factory. The Appellant had seeked a ruling before the AAR on admissibility of input tax credit of GST paid on the procurement of the above including the service of installation and commissioning of the same, in terms of the provisions of Section 16 and 17 of the CGST Act, 2017. The AAR inter-alia held that ventilation system merits to be classified as works contract supply in relation to immovable property and ITC thereon is blocked. The Appellant seeked to appeal against the ruling of AAR.

Interpretation of Law by the Applicant:-

Air conditioning system is nothing but a group of inter-related and inter-dependent machines performing a desired task. Different machines may become part of air conditioning and cooling system. Each machine has a role to play. Chiller provides cool air, pumping system provides cool water, exhaust system ensures that there is sufficient ventilation etc.; and they become part of an Air conditioning system. The individual machines do not lose their identity.

In terms of CBEC Circular No. 58/1/2002-CX dated 15-1-2002, it can be inferred that plants are actually a system or a network of machines. Air conditioning and cooling system and ventilation system is a network of machines, put together for operational efficiency. HVAC system may not be considered as a single unit.

All the parts/machines can be dismantled and taken elsewhere without any substantial damage, the machines/ assets forming part of HVAC system are movable.

When the System description has clearly specified requirements separately for factory area, canteen building and server room, it cannot be construed as one system merely on account of issue of single work order issued to a single vendor. Invoices do not describe the nature

of supply because the vendor is supplying various machines and not one standalone system.

Even if all the machines are part and parcel of HVAC System, the HVAC system is also a machine entrusted to provide cooling for all production processes and factory area and hence ITC cannot be disallowed under section 17 (5) (c) of CGST Act, as plant and machinery is specifically excluded.

Observation of AAAR:-

It is evident, from the photographs produced that the Air Conditioning and cooling system and ventilation system becomes a part of the building once it is installed and is thereby an immovable property.

The Appellate authority relied upon the judgement of the Hon'ble Supreme Court in the case of ***Globus Stores P. Limited [2011 (267) ELT 435 (SC)]*** wherein it was held that air conditioning plant is an immovable property.

Ruling of the AAR:-

Appellant is not eligible to avail ITC on supply of air conditioning and cooling system and ventilation system since it ceases to be a plant and machinery. ITC thereon is blocked under Section 17(5)(c) of CGST Act, 2017 as the same is a works contract services for construction of an immovable property.

GST liability on amount recovered from employees towards canteen and transportation facilities and ITC in respect thereof.

In the case of Re: M/s. Zentiva Private Limited (referred to as "applicant") (GUJ/GAAR/R/2024/14 dated May 30,2024) - Gujarat Authority for Advance Ruling

Facts of the case:-

The applicant is a pharmaceutical manufacturing company. The applicant has engaged canteen service providers and transport service providers to provide food and transportation facilities to employees. In terms of the canteen policy, the applicant is deducting Rs. 260/- per month from the salary of the employees towards the meals provided in the canteen and the remaining cost is borne by the applicant.

For providing transportation facility, the applicant is not recovering any amount from the management employees. However, the applicant recovers a nominal amount of Rs. 75/- per month from the salary of employees falling under the category of staff.

Interpretation of Law by the Applicant:-

Canteen facility is provided in terms of the company policy is a perquisite provided by an employer to its employees in the course of

employment and is not in the nature of supply. It is not provided in the course of furtherance of business. There is no quid-pro-quo and no intention to undertake the business of providing canteen facilities. The recovery made from employees is ultimately paid to the service provider. The same position has been clarified by Circular 172/04/2022-GST and multiple judicial pronouncements.

The canteen facility is provided in pursuance of a statutory obligation under the Factories Act and thus ITC in respect thereof must be eligible.

The transport facility is provided in terms of the company policy and thus a perquisite provided by an employer to its employees in the course of employment.

Questions before AAR:-

Whether GST is liable to be discharged on the portion of the amount recovered by the Applicant from its employees towards the canteen facility provided to the employees?

Whether GST is liable to be discharged on the transportation facility provided by Applicant to its employees?

Whether the Applicant is eligible to avail input tax credit of the GST charged by the canteen service provider for the canteen facility provided to its employees?

Observations & Ruling of AAR:-

In terms of Circular 172/04/2022-GST, deduction made by the applicant from the employees who are availing food in the factory would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017.

Input Tax Credit will be available to the applicant in respect of food and beverages as canteen facility is obligatorily to be provided under the Factories Act, 1948, read with Gujarat Factories Rules, 1963. ITC on GST charged by the Canteen Service Provider will be restricted to the extent of cost borne by the applicant only.

Deduction for bus transportation facility would not be considered as a 'supply'' under the provisions of section 7 of the CGST Act, 2017 read with Circular 172/04/2022-GST.

Exemption in respect of pure services provided to state government by way of activity entrusted under Article 243G/W of the Constitution

In the case of Re: M/s. Devendra K Patel (referred to as "applicant")(GUJ/GAAR/R/2024/10 dated May 30, 2024) – Gujarat Authority for Advance Ruling

Facts of the case:-

The applicant is engaged in the business of providing works contract services. The applicant has received various contracts from

R&B (Roads & Buildings) Department of the Government of Gujarat, for providing engineering/ consultancy services for preparing & providing plans and estimate & DTP [Draft Tender Paper] for building work.

Interpretation of Law by the Applicant:-

R&B department falls under the Government of Gujarat and is headed by a Cabinet Minister. The department is in charge of all activities pertaining to planning, construction and maintenance of all categories of roads and all Government owned buildings in the state of Gujarat. R&B Department is a part of State Government. The State Government has entrusted functions of planning, construction & maintenance of all categories of road/Government owned buildings to the said department.

The consultancy services of preparing & providing plans & estimates & draft tender paper for building work provided by the applicant, would fall within the ambit of an activity in relation to function entrusted to a Panchayat under article 243G [eleventh schedule] and Municipality under article 243W [twelfth schedule] of the Constitution of India.

The above schedules, include activity of urban planning including town planning & planning of land - use and construction of buildings which are functions entrusted to a

Municipality.

The services provided by the applicant of preparing & providing plans & estimates & draft tender paper for building work would qualify as pure services and consequently would be eligible for exemption in terms of Sr. No. 3 of notification No. 12/2017-CT (R) dated 28.6.2017.

The phrase 'activity in relation to any function' used in the notification, is to be interpreted as similar/such/relatable activity carried out by the Central Government, State Government or Union Territory. Any other interpretation would render the exemption redundant.

Questions before AAR:-

Whether providing services of preparing and providing plans and estimate and preparing and providing DTP [Draft Tender Plan] for the building work provided by the assessee to the R&B department. Government of Gujarat under the contract would qualify as an activity in relation to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?;

If answer to the first question is in affirmative then, whether such service provided by the applicant would qualify as pure service [excluding works contract service or composite supplies involving supply of any goods] provided to the

Central Government. State Government or Union Territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution as provided in serial number 3 of notification No. 12/2017-CT (R) and thus be eligible for exemption from levy of CGST and SGST respectively ?

Observations of AAR:-

On examining the screen shot from the website of the R&B department, it is evident that the applicant has provided services to the State Government.

CBIC FAQs clarify that 'pure service' means supply of services without involving any supply of goods. Preparing and providing plans and estimates and DTP by the applicant is a pure service.

It is difficult to comprehend as to how constructing a building, which probably has nothing to do with any of the functions enumerated in schedules XI or XII can be said to be in relation to functions entrusted to Municipality under Article 243W in terms of Sr. No. and 2 of Schedule XII. We also do not find any merit in the averment, that the State of Gujarat has entrusted the functions of planning, construction & maintenance of all categories of roads and all Government owned

buildings to the R & B department which makes them fall within the ambit of the exemption at Sr. No. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, as amended.

The applicant has nowhere stated as to for what purpose the buildings were constructed by the State Government, which if provided, could have helped in examining whether the same was in relation to the function entrusted to a Panchayat or Municipality

The blanket exemption sought by the applicant in respect of all the buildings constructed for the State government under the notification, is not legally tenable.

Ruling of AAR:-

Providing services of preparing and providing plans and estimate and preparing and providing DTP [Draft Tender Plan] for the building work by the applicant to the R&B department, Government of Gujarat under the contract would not qualify as an activity in relation to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India.

Since the answer to the first question is in negative, the second question becomes infructuous.

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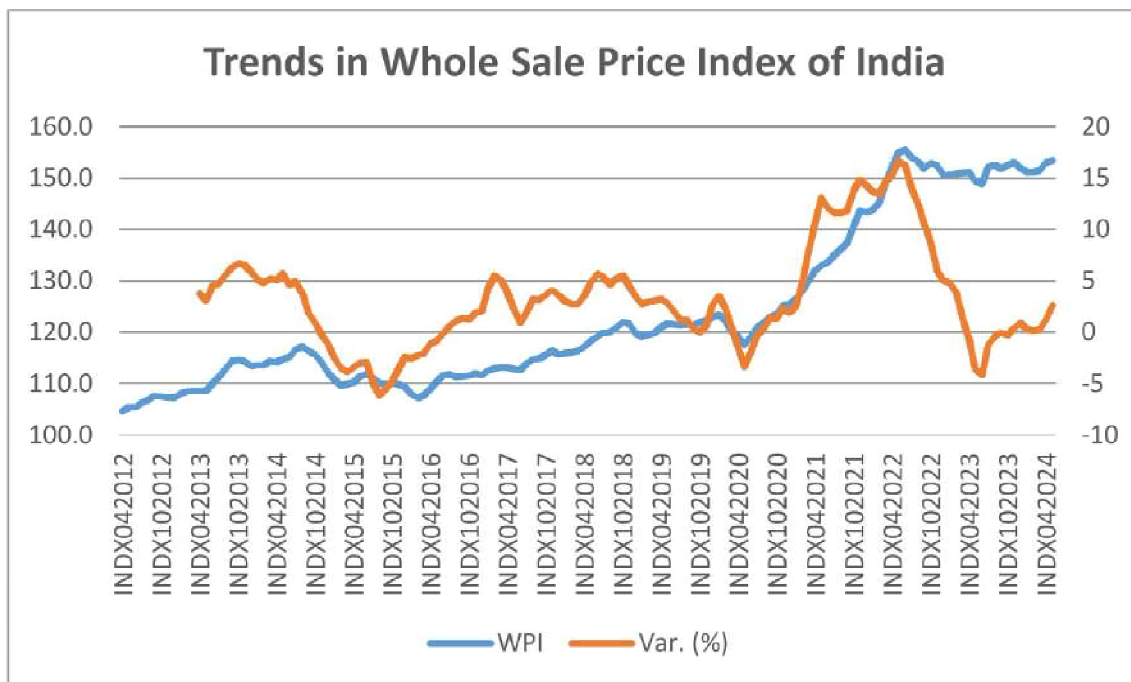
INCENTIVISING INVESTMENTS IS THE NEED OF THE HOUR FOR INDIA

CA. KANDASWAMY

India needs to incentivise investment in capacity additions and in infrastructure development, to optimally capitalise on the advanced markets China + 1 Strategy, and to effectively harness India's Demographic Dividend. In this background, there are lots of expectations from the Union Budget 2024-25 for the Industry, Trade, Commerce and the services sector.

The innovative approach in incentivising technological upgradation, new and renewable energy, electric vehicles / hydrogen powered vehicles are the need of the hour to significantly improve India's global competitiveness.

The Whole Sale Price based Inflation is benign at 2.6% in May 2024, which is still higher than 1.3% in April 2024 and mere 0.3% in March 2024. So, once the US Fed rates are cut, India appears well set to follow suit with a cut in rates, which should usher in significant savings to the corporate interest costs, and facilitate better capacity additions, going forward.



On the flipside, 8 core industries together have been recording deceleration in the pace of growth from impressive 10.4% growth in FY 2021-22 (achieved on a low base of 6.4% fall in FY 2020-21 due to Covid) to 7.8% growth in FY 2022-23, which decelerated further to 7.6% growth in FY 2023-24. On the positive note, the pace of growth has rebounded from 4.9% in April-May 2023 to 6.5% in April-May 2024.

Coupled with increased investment in capacity additions and infrastructure spending, there are hopes that the 8 infrastructure industries together can record an acceleration in the pace of growth in FY 2024-25, after two years of deceleration.

The stellar performance of electricity generation, which has seen a gradual acceleration in the pace of growth from mere 1.2% in December 2023 to relatively robust 10.2% in April 2024, and to 12.8% in May 2024, adds credibility to the expectations of better growth ahead. However, the heat wave conditions in most part of the country, could also be attributed to this strong growth in summer months of April 2024 and May 2024!

India's total trade deficit inched down by 4.5% to US$ 10.9 billion in April-May 2024 from US$ 11.41 billion in the corresponding previous period. This was powered by net service exports growth of impressive 15.9% to US$ 12.88 billion, but moderated by widening of merchandise trade deficit by 5.5% to US$ 23.78 billion during this period.

While the merchandise exports grew by 9.1%, the service exports accelerated by 11.7% to US$ 30.16 billion. During this period, the merchandise imports recorded 7.7% growth to US$ 61.91 billion, while services imports grew by 8.8% to US$ 17.28 billion.

India's GST collections recorded double digit 10% growth in May 2024 to

Rs 1.73 lakh crore, powered by 15.3% growth in domestic transactions but moderated by 4.3% fall in imports. After accounting for refunds, the net GST revenue grew by 6.9% in May 2024 to Rs 1.44 lakh crore.

The gross GST collections in April-May 2024 grew by 11.3% to Rs 3.83 lakh crore, powered by 14.2% growth in domestic transactions (up 14.2%) and marginal 1.4% increase in imports. After accounting for refunds, the net GST revenue during this period grew by 11.6% to Rs 3.36 lakh crore.

The Direct Tax Collections were much better. From 1st April 2024 to 17th June 2024, India's net direct tax collections grew by robust 21% to Rs 462664 crores. The Provisional figures of total Advance Tax collections recorded healthy 27.34% growth in 1st April 2024 to 17th June 2024 to Rs. 1,48,823 crore.

The Government of India has received Rs 5,72,845 crore in April-May 2024, which represents 18.6% of corresponding BE 2024-25 of Total Receipts. This comprises of Rs 3,19,036 crore of Tax Revenue (Net to Centre), Rs 2,51,722 crore of Non-Tax Revenue and ¹ 2,087 crore of Non-Debt Capital Receipts, on account of Recovery of Loans. A sum of Rs 1,39,751 crore has been transferred to State Governments as Devolution of Share of Taxes by Government of India in April-May 2024, which is Rs 21,471 crore higher than the previous year.

Total Expenditure incurred by Government of India is Rs 6,23,460 crore, which is 13.1% of corresponding BE 2024-25. Out of the total expenditure, Rs 4,79,835 crore is on Revenue Account and Rs 1,43,625 crore is on Capital Account. Out of the Total Revenue Expenditure, Rs 1,23,810 crore is on

account of Interest Payments and Rs 54,688 crore is on account of Major Subsidies.

India's output of fishing and aquaculture sub-sector increased steadily from about Rs 80 thousand crore in 2011-12 to about Rs 195 thousand crore in 2022-23. Andhra Pradesh remained the largest producer of fishing and aquaculture during the period 2015-16 to 2022-23 and, its share in all-India output increased from 17.7% in 2011-12 to almost 40.9% in 2022-23. India's seafood exports touched an all-time high in volume during the financial year 2023-24 despite various challenges in significant export markets. India shipped 17,81,602 MT of seafood worth ₹ 60,523.89 crore (US$7.38 billion) during 23-24.

The aspirations of the Youth, accelerated pace of technology absorption, expansion of capacity and the huge investment in infrastructure together ushers in strong growth of Indian economy. The country needs slew of fiscal measures to sustainably step up domestic and foreign investments in Indian Industry and infrastructure sector. The country appears well set to get the twin benefits of these fiscal measures, followed by monetary measures of cut in the interest rates by RBI.

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EXCEL TIPS

XIRR function

CA. DUNGAR CHAND U JAIN

This function is available for user of Excel for Microsoft 365 and for users of Excel 2016 and above.

To calculate the internal rate of return for a series of periodic cash flows, use the IRR function. And unlike the IRR (Internal Rate of Return), which assumes periodic cash flows, XIRR provides a more realistic measure for real-world scenarios where cash flows do not follow a standard pattern. In other words, XIRR function returns the internal rate of return for a schedule of cash flows that is not necessarily periodic.

Values (Compulsory)	A series of cash flows that corresponds to a schedule of payments in dates. The first payment is optional and corresponds to a cost or payment that occurs at the beginning of the investment. If the first value is a cost or payment, it must be a negative value. All succeeding payments are discounted based on a 365-day year. The series of values must contain at least one positive and one negative value.

Dates (Compulsory)	A schedule of payment dates that corresponds to the cash flow payments. Dates may occur in any order. Dates should be entered by using the DATE function, or as results of other formulas or functions. For example, use DATE(2024,7,1) for the 1st day of July, 2024. Problems can occur if dates are entered as text.
Guess (Optional)	A number that you guess is close to the result of XIRR.

Remarks

- Microsoft Excel stores dates as sequential serial numbers so they can be used in calculations. By default, January 1, 1900 is serial number 1, and January 1, 2008 is serial number 39448 because it is 39,448 days after January 1, 1900.
- Numbers in dates are truncated to integers.
- XIRR expects at least one positive cash flow and one negative cash flow; otherwise, XIRR returns the #NUM! error value.
- If any number in dates is not a valid date, XIRR returns the #VALUE! error value.

- If any number in dates precedes the starting date, XIRR returns the #NUM! error value.

- If values and dates contain a different number of values, XIRR returns the #NUM! error value.

- In most cases you do not need to provide guess for the XIRR calculation. If omitted, guess is assumed to be 0.1 (10 percent).

- XIRR is closely related to XNPV, the net present value function. The rate of return calculated by XIRR is the interest rate corresponding to XNPV = 0.

- Excel uses an iterative technique for calculating XIRR. Using a changing rate (starting with guess), XIRR cycles through the calculation until the result is accurate within 0.000001 percent. If XIRR can't find a result that works after 100 tries, the #NUM! error value is returned. The rate is changed until:

$$0 = \sum_{i=1}^{N} \frac{P_i}{(1+rate)^{\frac{(d_i - d_1)}{365}}}$$

where:

di = the ith, or last, payment date.

d1 = the 0th payment date.

Pi = the ith, or last, payment.

Example 1 :

	A	B
1	**Values**	**Dates**
2	-10,000	01-Jan-23
3	2,750	01-Mar-23
4	4,250	30-Oct-23
5	3,250	15-Feb-24
6	2,750	01-Apr-24
7		
8	**Result**	**Formula used in Cell A9 :**
9	0.374581093	=XIRR(A2:A6, B2:B6)
10	**The internal rate of return is 0.374581093 or**	
11	**37.45%**	
12		
13	**Result**	**Formula used in Cell A14 :**
14	0.374581093	=XIRR(A2:A6, B2:B6, 0.1)
15	**The internal rate of return is 0.374581093 or**	
16	**37.45%**	

Example 2 : Real Estate Investment

Scenario: An investor purchases a property for ?30,00,000 and spends an additional ?5,00,000 on renovations. After one year, the property generates ?2,00,000 through rent. At the end of the second year, the property is sold for ?38,00,000.

Cash Flows:

Initial investment : -?35,00,000 (purchase and renovation)

Year 1 : +?2,00,000

Year 2 : +?38,00,000

	A	B	C	D	E
1	**Details**	**Dates**	**Amount**		
2	Initial investment	15-Aug-23	₹ -30,00,000		
3	Renovation	15-Aug-23	₹ -5,00,000		
4	Year 1	15-Aug-24	₹ 2,00,000		
5	Year 2	15-Aug-25	₹ 38,00,000		
6					
7	**Result**	**Formula used in Cell A9 :**			
8	0.07083607	=XIRR(C2:C5, B2:B5)			
9	7.08%				
10					
11	0.07083607				
12	**Formula used in A11 :**				
13	=XIRR({-3500000,200000,3800000}, {"2023-08-15","2024-08-15","2025-08-15"})				
14					

Putting the data in table are better option to get better understanding. However the contents can also be put directly in a formula to get the desired output.

Example 3 : Venture Capital Investment

Cash Flows : -₹ 50,00,000; -₹ 20,00,000; -₹ 30,00,000; +₹ 60,00,000; +₹ 1,50,00,000

Dates : March 1, 2021; March 1, 2022; March 1, 2023; March 1, 2024; March 1, 2025

Formula: **=XIRR({-5000000, -2000000, -3000000, 6000000, 15000000}, {"2021-03-01", "2022-03-01", "2023-03-01", "2024-03-01", "2025-03-01"})**

Result : **0.282486 or 28.24%**

Example 4 : Personal Investment in Bonds

Cash Flows : -₹ 10,00,000; +₹ 50,000 each for 4 years; +₹ 10,50,000

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During the middle of 1978 a handful of young chartered accountants, based on MADRAS (as it then was) met periodically to discuss matters of professional relevance and significance and to widen the knowledge exposure and skills. From a limited role of discussions on tax laws and corporate laws, we have become full fledged treasure-house of talent mobilization. More than two third of our speakers / Chief guests have made their first ever public Speech under our banner.

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