

THE MONTHLY MAGAZINE FROM CASC

GST UPDATES



IND AS



Indian Accounting Standards



TOP 5

Excel Tips & Tricks you absolutely need



INDIAN ECONOMY ROUND UP



VOLUME-3

ISSUE-1

JANUARY 2024



CASC BULLETIN

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11.01.2024 (Thursday)	Digital Data Protection Act, 2023	Adv. Tanvi Sreevatsan
25.01.2024 (Thursday)	Bhartiya Sakshya Act vis-a-vis Income Tax - An Overview and Analysis	Adv. Vignesh Krishnaswamy*

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

*subject to confirmation

**CASC Annual Members are requested to renew their
subscription for 2023 - 2024**

EDITORIAL

“When learning is purposeful, creativity blossoms. When creativity blossoms, thinking emanates. When thinking emanates, knowledge is fully lit, economy flourishes. “ – Dr.A.P.J.Abdul Kamal

Dear Professional Colleagues,

2024 New Year, Pongal and Republic day Greetings!!!

We, at Chartered Accountants Study Circle, wish all our members and their family and colleagues a very Happy, Healthy and Prosperous New Year and Pongal 2024 and 74th Republic Day. May this New Year and Pongal bring more great opportunities, Success, happiness, Prosperity, Peace and Glory!!!

CASC - Annual Residential Conference

This year, your much awaited **24th Annual Residential Conference (ARC)** is going to be held at “**Sterling Holiday Resorts**” Munnar from **8th to 11th February 2024** for the CASC members and their delegates. So far, **110** registrations received for the ARC

program. **Still 20 more delegates can be accommodated**, therefore members are requested to contact the Registration Committee members and register for the program. All arrangements are underway to enrich your SKILLS and cherish the THRILLING experience at the CHILLY HILLS of “**God’s Own Country**” with their family and delegates.

CASC - Annual Day Celebrations

CASC celebrated its **45th Annual Day** on **29th December 2023** at “**Hotel Palmgrove**”, Chennai, with its members. The celebrations were begun with Welcome Address, Lighting of Kuthuvillaku and Cake cutting by the Founder Members of CASC, Key note address by one of the founder members, **CA R Bhupathy** and a **Special Address** by **CA Ramanathan Venkat** on “**Opportunities and Challenges in Digital Transformation**” followed by Dinner. Total of **40** members attended the function and graced the occasion.

India's Resilience

After the successful moon mission and hosting the G20 Summit, India is well poised to emerge in 2024 as a most preferred investment destination from 2023 with increased stability and optimism for its growth and future prospects, which is evident from some key economic factors.

- Boasting a GDP of US\$ 3.75 trillion, India is the fifth largest economy in the world. According to IMF estimates, will emerge as the world's third largest economy by 2027, hopping over Japan and Germany.
- India's real GDP growth figures for the first 3 quarters for the current year stood at 6.4%, 7.8% and 7.6 % respectively. RBI has also raised the estimated GDP growth rate for this FY 2023-24 to 7% from 6.5%.
- GST collections for the current FY (April to November) stood at INR 13.30 trillion, which 12% higher than the last year for the same period. Considering the average monthly GST collections of INR 1.65 trillion it is expected that the GST Collections for the entire FY 2023-24 would be around INR 19.9 trillion and estimated to grow at 14-15 per cent in FY 2024-25. GST collections have been on a consistent rise over the last three fiscal years and that provides a stable outlook despite global uncertainties.
- The CPI inflation index remains below 6% throughout the FY 2023-24. India's Nifty 50 index, hit a new high, up 16% this year. India is in 5th place on the list of the highest-funded geographies in 2023.
- The 2023 survey conducted by the United Nations Economic and Social Commission for Asia Pacific (UNESCAP) on digital and sustainable trade facilitation positioned India as a leader in global trade facilitation efforts, achieving an impressive score of 93.55% in 2023 compared to 90.32% in 2021.

Early Release of New ITR Forms – ITR 1 & ITR 4 for AY 2024-25

For the very first time, the CBDT have notified and released pretty well in advance (i.e. by December 2023 itself) the new Income Tax Returns (ITR) ITR-1 (SAHAJ) and ITR-4 (SUGAM) for the AY 2024-25 for the individuals, who are required to file tax return by on or before 31st July 2024. The early release of the forms ITR-1 and ITR-4 by CBDT is a welcome step by the CBDT as it would help taxpayers to understand the new changes and enable them to file the return properly and much before the due date. It seems that CBDT has been very proactive on this aspect this time and don't want to grant extension of time for late release of forms. Last AY 2023-24, the new form ITR-7 for AY 2023-24 for Trusts with several changes was released in the last minute, which compelled them to grant extension of the time limit for filing the ITR-7 by a month. Hopefully, all other ITR forms for AY 2024-25 might be released in January or before end of March, 2024 itself, so that the taxpayers can understand the

changes in the form and file it properly.

Record-break in IT filing

Unique landmark for the IT department!! **8 Crore IT Returns** filed for AY 2023-24 for the first time. IT Department has thanked the taxpayers for achieving this milestone. This is one another indicator for India's growth and development.

Effect of non-compliance of CPE hours

The CPE Committee of ICAI has released an Exposure Draft proposing consequential provisions for non-compliance with CPE hours, starting from the calendar year 2024 and has invited the comments from members by 2nd January 2024 by email to cpeadmin@icai.in

Members are now required to complete the minimum CPE hours only a yearly basis from the Calendar Year 2024. The draft proposes a four phased approach to deal with the non-compliance comprising of 6 month period for each phase from the end of the Calendar Year 2024:

-
- **Phase I (Jan to June) 2025**: Members failing to meet CPE requirements at the year end would get 6 month extension to achieve compliance by fulfilling twice the shortfall
 - **Phase II (July to Dec) 2025**: Non-compliant members are classified and displayed in the CPE Portal and they must again fulfil twice the shortfall to regain compliance.
 - **Phase III (Jan to June) 2026**: Persistent non-compliance may lead to disclosure in the Multipurpose Empanelment Form for members holding a COP and six months are provided for compliance.
 - **Level IV (July to Dec) 2026**: Continued non-compliance may result in the issuance of a Provisional Peer Review Certificate, with a final certificate contingent on compliance within an additional 6-month period.

The proposed guidelines prescribed by CPE Committee of ICAI aims at ensuring Members to comply with

CPE requirements and to foster the habit of continuous learning to enrich their knowledge so to maintain professional standard in their practice. Therefore, it is imperative of each member/ CA firms to have proper systems in place to monitor the compliance of CPE Hours of own or its partners to avoid the repercussions of non-compliance by spending more time in attending CPE programs.

Extending Time limit to issue SCN by GST Officers - a Menace

We all know that on 31st March 2023, the CBIC has issued a notification extending the time limit for issuing SCN by GST Officers u/s 73(10) of CGST to taxpayers to recover tax in case of discrepancies in the Annual Returns filed for the FY 2018-19 and FY 2019-20 from 30th September, 2023 to 31st December 2023 and from 31st December to 31st March 2024 respectively by way of notification by exercising its power u/s 168A. Such notification has been challenged before the Gujarat High Court, on the ground that invoking powers u/s 168A to extend timeline is unjustified,

unless there is a force majeure situation like COVID or other natural calamities etc. The High Court has also issued notice to CBIC to respond by 8th February, 2024 and the matter is under sub-judice. Now, the CBIC has issued other notification on 28th December 2023, further extending the time lines for issuance of SCNs for any discrepancies in the annual returns for FY 2018-19 from 31st December 2023 to 31st January 2024 and for FY 2019-20 from 31st March 2024 to 31st May 2024 without mentioning the reason that warrants extension. Such an act of extending the timelines for issuance of notice clearly impinges taxpayer's rights and keeps them in a limbo. Hence, this new notification would also be challenged by many taxpayers resulting in more litigation. Any administrative power granted under the legislature to any authority has to be exercised diligently and any abuse or misuse of such power could definitely be challenged before the Courts. I hope that the Judicial Forum would definitely step in and issue proper guidelines on this issue for proper administration of the law.

GST Appeal Tribunal sooner a reality

With the passing of CGST (Second Amendment) Bill, 2023 in both the Houses of Parliament, increasing the age limit for the president of the Tribunal from 67 to 70 years and for members from 65 to 67 years is definitely a step closer to setting up the GST Appellate Tribunal (GSTAT) across India. Further, the Bill proposes a minimum age of 50 for both the Members and President of the GSTAT. It also provides that the President and Members of GSTAT would hold office for 4 years or till the attainment of the age of 70 or 67 respectively, whichever is earlier. It also provides for appointing an advocate in practice for 10 years having substantial litigation experience as a Judicial Member of the Tribunal.

The functioning of GSTAT is the need of the hour, with many taxpayers awaiting setting up of the GST Tribunal for filing appeals against the orders passed by the first appellate authorities and to obtain certainty on the tax positions adopted. It is hoped that the Bill comes into force at the

earliest upon the assent by the President for the benefits of taxpayers across the country. The functioning of GSTAT would also provide greater opportunities to tax practitioners and it is definitely a welcoming move.

New Criminal Laws mark end of Colonial-Era Laws

India's President assented to three new Criminal laws, the **Bharatiya Nyaya Sanhita**, the **Bharatiya Nagarik Suraksha Sanhita** and the **Bharatiya Sakshya Act** which replaced the colonial era laws, the **Indian Penal Code**, the **Code of Criminal Procedure** and the **Indian Evidence Act of 1872** respectively. However the new Criminal Laws would take at least 3-4 months or even longer time to get implemented as it involves updating of involving updating of criminal justice infrastructure, software, training of human resources and complete computerisation of courts etc.,. Now, all Policemen, Advocates, law administrators, and Judges have to acquaint themselves with the new Criminal laws. Further, the Law

Universities have revised the new curriculum for the law degree courses. It is indeed a great opportunity for young legal professionals.

One Day Seminar on GST

CASC had conducted a One Day seminar on "**GST Annual Returns and Reconciliation Statement**" on Tuesday, 12th December 2023, for CA Students, Professionals and Staff at "**Maharashtra Building Trust**", Vepery, Chennai, jointly with **The Society of Auditors**, Chennai and **Association of Auditors**, Chennai. Eminent Speakers on this topic, from Chennai, **CA. R. Bharath**, **CA. Subhashini Ganapathy** and **CA.V. Shankara Narayanan** conducted the training program over three sessions. It was a grand success with over **130** delegates attending the program and was well received by them. CASC would continue to conduct such training programs on various relevant topics for the member's and student's benefits, with the able support from our members and students.

A Tribute to a Noble Soul

For the first time, CASC had conducted a special meeting on Thursday, 21st December 2023, at 6 p.m at our CASC premises prior to our regular monthly meeting to pay our last tribute to **Late. Shri CA. R. Sivakumar**, who left all of us to heavenly abode on 14th December 2023. Few CASC members who have closely worked or associated with him shared their thoughts and experience in the meeting and then everyone observed one minute silence. CASC is personally indebted to the great soul for all his contribution, support and guidance for the past so many years to the members as well as the student's fraternity and also the society at large. Thanks for all those members who had attended the meeting and pay their tributes. CASC believes that he has carved his name in all our hearts and his Holy Spirit will continue to guide and enlighten us the righteous way is all our future endeavours.

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.

For and on behalf of the Editorial Board

Balaji V

Balaji V

GLIMPSES FROM THE 45th ANNUAL DAY CELEBRATIONS

1. Welcome Address by the Convenor, CA.V Thulasidharan



2. Lighting of Kuthivillaku by Founders and MC members



3. Cake Cutting by Founder Members



4. Key Note Address by Founder Member, CA R Bupathy



5. Special Address by CA Ramanathan Venkat on Opportunities and Challenges in Digital Transformation"



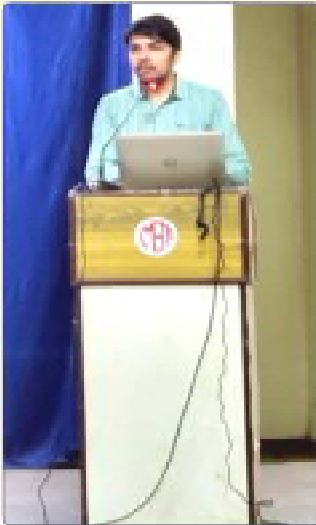
6. Group Photo with Founder & Committee Members



GLIMPSES FROM ONE DAY SEMINAR ON GST

1. Presentation by Eminent Speakers on GST Annual Return and Reconciliation Statement

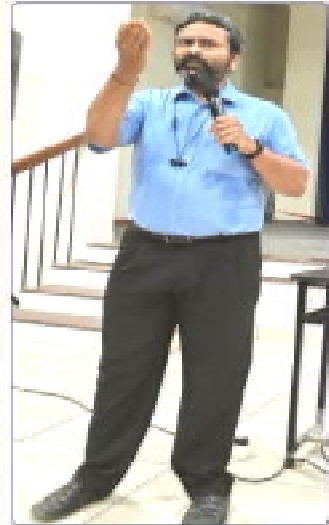
CA R Bharat



CA G Subhashini



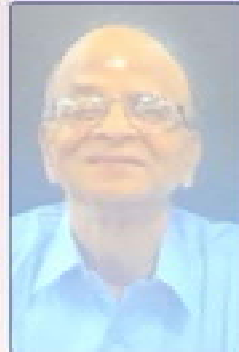
CA V Shankara Narayanan



2. Participants who attended the program



GLIMPSES FROM TRIBUTE MEETING TO LATE. R CA SIVAKUMAR



1. Special Address by Close Associates to Him

CA R Bupathy



CAT Banusekar



CA V Pattabiraman



CAT C Vijay



CA R G Rajan



CA N V Balaji



CA P S Prabhakar



CA G Subhashini



2. Members who attended the Meeting



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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.

READER'S ATTENTION

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

GSTR 3B not filed: The petitioner uploaded GSTR-1 Returns under Rule 59(1) without filing GSTR-3B under Rule 61(5) of the Rules due to business difficulties and not having money. After recovery actions and when orders were passed the WP is file and the Ld counsel for the petitioner submitted that the petitioner was unable to upload Form~GSTR-3B as the petitioner was unable to avail file input tax credit on purchases made. It is further submitted that without allowing the petitioner to avail the proportionate credit on inward supplies, the petitioner cannot be mulcted with tax liability. It is therefore submitted that the Impugned Orders are liable to be quashed. The impugned orders have been passed on 15.10.2019. The limitation for filing the appeal expired long before the writ petition was filed on 17.09.2020. The Hon'ble Supreme Court in Assistant



CA. V.V. SAMPATHKUMAR

Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Kline Consumer Health Care Limited, (2020) 19 SCC 681, 2020 SCC Online SC 440. has held that High Courts cannot entertain the writ petition against assessment orders beyond the period of statutory period. If the petitioner had furnished a valid return within thirty days of the service of the aforesaid assessment orders under section 62(1) of the Act, the said assessment orders would have been deemed to have been withdrawn Section 62(2) of the Act but the liability for payment of interest under Section 50(1) or for payment of late fee under Section 47 was to continue.

Thus, there is no scope for interfering with the impugned orders. Stating so, these writ petitions are liable to be dismissed. However, liberty is given to the petitioner to seek time from the respondent for discharging the tax liability in instalments which shall be considered. **M.K.N. Coconut Industries Vs. The State Tax Officer (Intelligence), (Adjudication-1 wing) O/o the Joint Commissioner of ST, Salem W.P.Nos.14334 & 14341 of 2020 dated 10.10.2023**

Limitation: There is no scope for setting aside the impugned order on the ground of limitation since the impugned order has been passed during covid 19 pandemic and Apex order saving was also in force. However, since the order has been passed without following the principle of natural justice and without giving an opportunity to the petitioner to reply to the Show Cause Notice No.10/2021 (ST) dated 28.04.2021, Court was inclined to set

aside the impugned order and remits the case back to the respondent to pass a fresh order on merits in accordance with law. The respondent shall furnish a copy of the Show Cause Notice No.10/2021 (ST) dated 28.04.202, to the petitioner within a period of 30 days from the date of receipt of a copy of this order. The respondent shall thereafter endeavour to pass final order on merits and in accordance with law within the aforesaid period of six months from the date of receipt of a copy of this order. **David Stansislaus vs The Assistant Commissioner of GST & Central Excise, TVK Nagar Division - GST, Chennai North Commissionerate, Chennai-40. W.P.No.7661 of 2022 dated 10.10.2023**

Mistake in TRAN 1: The question that arose for consideration is that the impugned order has been passed without granting personal hearing to the petitioner in compliance with Section 75(4) of the TN GST Act, 2017

read with Section 73(5) of the TN GST Act, 2017. It was submitted by the learned counsel for the petitioner that the petitioner is disentitled to credit only on the premise that the Input Tax Credit has been made in the wrong column in GST TRAN 1. He also submitted that the issue stands resolved in favour of the assessee by the following judgments of this Court in the case of Pentacle Plant Machineries Pvt Ltd., v. Office of the GST Council, Secretariat, New Delhi and others, (2021-VIL-193-Mad) and in the case of Ram Auto v. The Commissioner of Central Taxes & Central Excise and others in W.P.(MD)No.15531 of 2020 dated 16.02.2021. It is submitted by the learned counsel for the respondents that they will redo the assessment after granting an opportunity of hearing to the petitioner. Recording the same, the writ petition is closed with liberty to the respondents to redo the assessment after affording an

opportunity of hearing to the petitioner. It is open to the petitioner to place reliance on the above judgments if such reliance is placed, the same shall be dealt with by the assessing officer. **M/s. Star Royal Distributors Vs. 1. State Tax Officer, Egmore Assessment Circle, Chennai 600 031. 2. Principal Commissioner of GST and Central Excise, O/o the Principal Commissioner of GST and Central Excise, Chennai 34. W.P. No.185 of 2021 DATED: 17.10.2023**

Alternative Remedy: Aggrieved, by the order of the AO, the petitioner preferred an appeal before AC (Appeals) in Appeal No.12/PVAT/2020~21/AC(APPEAL) and Appeal No.13/CST/2020~21/AC (APPEAL), the same was dismissed by the 1st Respondent herein. The Ld counsel for the Respondents would raise a preliminary objection that the present WP ought not to be entertained inasmuch as alternative remedy by

way of appeal is available before the Appellate Tribunal under Section 49 of the Puducherry VAT Act, 2007. The Ld counsel for the petitioner submitted that he may be granted liberty to file an appeal before the Sales Tax Appellate Tribunal, Puducherry, to which, there was no serious objection by the learned counsel for the Respondents. In view of the above, the writ petition stands disposed of by the Hon'ble Court, with liberty to the petitioner to approach the Tribunal within a period of 6 weeks from the date of receipt of a copy of this order. If such appeal is filed, the Tribunal shall entertain the same subject to complying with other conditions including pre-deposit without reference to limitation.

M/s.Welcord Component Industries, Vs. 1. The Assistant Commissioner (Appeal), Puducherry. 2.The Deputy Commercial Tax Officer (IAC), Puducherry. W.P. No.8070 of 2021 DATED: 06.10.2023

Rectification Application: WP is filed praying for a writ of Mandamus directing the Respondent to dispose of the Application dated 07.09.2019 filed u/s 84 of the TNVAT Act, 2006 before taking any recovery proceedings against the petitioner. The Ld counsel for the Respondent would submit that the rectification application would be disposed of in the event the rectification application has not been disposed of yet. Recording the submission made by the leaned counsel for the Respondent, the writ petition stands disposed of by the Court and the Court expected that the Respondent shall dispose of the rectification petition/ application within a period of 4 weeks from the date of receipt of a copy of this order, in case the same has not been disposed of earlier.

Tvl.N.R. Electricals Vs. The State Tax Officer (Additional), Gudiyatham (West). W.P. No.8182 of 2021 DATED: 06.10.2023

Input Tax Credit: The issue that arises for consideration in this Writ Petition is whether proviso to Section 19(2) (v) of the Tamil Nadu Value Added Tax Act, 2006 introduced by Act 28 of 2013, which restricts the availment of input tax credit (ITC) in excess of 3% of tax is applicable only to traders and not to manufacturers, (since the petitioner herein is a manufacturer of automobile engineering parts). The issue involved in this Writ Petition is no longer res integra, as the Hon'ble Division Bench of this Court, in a decision in the case of State of Tamil Nadu, and another Vs. M/s.Everest Industries Ltd., rep. by its Senior Manager-Finance Podanur Post, Coimbatore, in W.A.No.1260, 1508, etc. batch of 2017, dated 31.03.2022. which has taken into consideration the entire legal gamut of case laws on the issue and culled out ratio decidendi an it would be beneficial to refer the operative

portion of the said decision which is reproduced as under:~ “ 140. In the light of the view expressed by us on the scope of the curative/declaratory nature of Amendment to Section 19 (2) vide Act 5 of 2015, there is a possibility that the State may have to deal with the claims of refund on account of excess ITC to the credit of the assessee, consequent to the above view.” Thus, in the light of the law laid down by the Hon'ble Division Bench in the case of M/s.Everest Industries Ltd., this Court holds that the petitioner is entitled to the benefit available under Section 19(2)(v) of the TNVAT Act. Stating so, this Writ Petition was allowed, the impugned order, reversing the ITC, dated 02.01.2017 as well as the consequential order, levying penalty, dated 06.09.2021 are set aside. **M/s. Nixon Engineering Vs. The Commercial Tax Officer, Pattravakkam Assessment Circle, Chennai-35. W.P.No.24295 of 2021 DATED : 04.10.2023**

Recovery: WP filed praying for the issuance of a Writ of mandamus directing the first respondent to refund a sum of Rs.81,53,038/- which was recovered from the petitioner's bank a/c in Axis Bank, Tiruchengode Branch towards the alleged arrears of tax and penalty of the petitioner's sister concern M/s.Eagle Earth Movers, for the years 2012-13, 2013-14 and 2014-15, as illegal and without jurisdiction and contrary to the provisions of the TNVAT Act, 2006. The petitioner furthermore submitted that, challenging the assessment order in respect of the assessment said years, the petitioner filed W.P.No.10337 of 2020 and W.P.Nos.10338 and 10361 of 2020 and by virtue of the orders passed by this Court, in the aforesaid Writ Petitions, the assessment order for the three years were directed to be re-assessed and therefore, the amount of Rs.81,53,038/- appropriated by the

first respondent from the bank of the petitioner has to be refunded, and hence, the learned counsel prayed for appropriate direction in that regard. It is an admitted fact the petitioner entered into an business succession agreement dated 01.04.2012 with the petitioner's sister concern and by means of the said agreement the petitioner's sister concern transferred entire business, including all assets and liability in the name of the petitioner. Therefore, it has to be presumed that in the event, any business is carried on by the petitioner concern, the same would be deemed to have carried out only by the petitioner and based on the same, assessment has to be made by the respondent. The Ld Government Advocate for the respondent-Department pointed out that, by virtue of the agreement, petitioner succeeded the business of proprietary concern in the name of Tvt.Eagle

Earth Movers and which culminated in recovery proceedings, whereby, the petitioner's bank account was attached and a sum of Rs.81,53,038/- was recovered from the petitioner's bank account. In view of the order passed by this Court in setting aside the assessment made against the petitioner's sister concern, and the amount realized out of the attachment of the petitioner's bank account, Axis Bank, to an extent of Rs.81,53,038/~, is liable to be refunded. Therefore, this Court issued orders, directing the respondent to refund the amount, as prayed for by the petitioner. **M/s. Eagle Earth Movers (P) Ltd., Vs. 1. STO, Thiruchengode Town Assessment Circle, 2. AC (ST) Thiruchengode Rural Assessment Circle, 3. The Branch Manager, Axis Bank, Thiruchengode - 637 211. 4. The Commissioner of Commercial Taxes, Chennai -5. W.P.No.11282 of 2023 DATED: 06.10.2023**

Appeal filing opportunity: In this case, the petitioner is well aware of the fact that the impugned order is going to be passed. However, instead of filing the appeal, he had not taken any steps to challenge the said impugned order till date. Now, he had filed this writ petition only because of the attachment order dated 06.10.2023 passed by the first respondent. In view of the above, this Court is not inclined to entertain this writ petition. However, liberty is granted to the petitioner to file a Statutory appeal before the Appellate Authority within a period of 30 days from today (20.10.2023). **Tvl.Rahman Steel Traders Vs.1.The AC (ST), Broadway Assessment Circle, Chennai-3. 2.The Branch Manager, HDFC Bank, Chennai - 600 001. W.P.No.30450 of 2023 Dated 20.10.2023**

Rectification petition: Impugned order came to be passed on 22.06.2023, wherein it has been clearly stated that the notice for personal hearing was provided vide reminders dated 16.11.2022, 28.10.2022 and 15.05.2022. Further, it appears that the petitioner had asked for extension of time on 27.02.2023 and 29.03.2023 and in spite of the same, no reply was filed by the petitioner. In such case, this Court was of the considered view that no interference is required with regard to the said impugned order passed by the respondent. However, it was submitted that a rectification application was filed by the petitioner on 25.07.2023 and no order has been passed till date. Therefore, the respondent is directed to consider the said rectification application and pass appropriate order within a period of 15 days from the date of receipt of copy of this order. In the meantime, the petitioner may file an appeal, if he is so advised. With the above

directions, these writ petitions are disposed of. **M/s.Nelson Travels, Vs. AC (ST), Ambattur Assessment Circle, Chennai 35. W.P.Nos.30649, 30656 & 30659 of 2023 Dated 20.10.2023**

Opportunity: SCN, dated 04.03.2023, was alleged to have been issued, the same was not served directly to the petitioner by any other modes of communications such as Post, e-mail, etc. but, was only uploaded in the online Portal. Hence, it is submitted that the impugned order is liable to be set aside as the same suffers from violation of principles of natural justice. Perusal of the SCN dated 04.03.2023, which has culminated in the impugned order, dated 01.06.2023, it is seen that in first sentence of last para, the respondent-Department has called forth reply/objections from the petitioner within 30 days and in the very same para, particularly, in three lines above, the petitioner has been

asked to appear for personal hearing on 17.03.2023, which itself is much prior to the date fixed for filing reply, which per se would show that the real intention of the respondent-Department is not to provide fair opportunity to the petitioner to defend their case, but, only to put the petitioner in peril. Had it been the real intention of the respondent-Department to provide an fair opportunity of personal hearing to the petitioner, then, the respondent-Department would obviously, granted sufficient time to the petitioner to hear them in person and waited for the petitioner's reply/objections. Whereas, the respondent-Department proceeded to confirm the proposals contained in the show cause notice, without waiting for reply to be filed by the petitioner. The Court further observed that even the SCN, dated 04.03.2023 was not served upon the petitioner directly by means

of post or any other communication, whereas, the same was uploaded in the online Portal. All these would go to show that the opportunities, alleged to have been granted to the petitioner are not the real ones, but were the opportunities provided at nominal level and the same cannot be construed as fair opportunities. Therefore, as rightly pointed out by the learned counsel for the petitioner, the impugned order is in gross violation of principles of natural justice and liable to be set aside.

Sundar Prabhu Deva Vs.1. The STO (ST), Alwarpet Assessment Circle, Chennai - 35. 2. The DC (ST), South I, Chennai - 35. 3. Kotak Mahindra Bank Ltd., Chennai - 18. W.P.No.30453 of 2023 DATED: 19.10.2023

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CASE LAWS - GST

1. GST - EXPORT OF SERVICES - INTER-COMPANY SERVICES GIVEN US HOLDING COMPANY FOR EXPORT OF INFORMATION TECHNOLOGY SERVICES AT COST + 15% MARK UP - NOT INTERMEDIARY SERVICES - ENTITLED TO REFUND

In Xilinx India Technology Services Pvt. Ltd. v. Special Commissioner, Zone VIII 2023(78) GSTL 24/(2023) 10 Centax 200 (Del.), the petitioner is a subsidiary of Xilinx Inc., USA, a company registered in the United States of America. The petitioner is an Export Oriented Unit (hereafter 'EOU') registered with the Software Technology Parks of India (hereafter 'STPI') and is primarily engaged in exporting information technology software services to entities located overseas.



CA. VIJAY ANAND

The petitioner entered into an Intercompany Service Agreement dated 10-6-2016 with its holding company (Xilinx USA) for export of information technology services wherein it was agreed that the petitioner would be remunerated on costs plus 15% mark-up basis. The assessee's application for the refund of IGST was rejected on the ground that it did not satisfy the condition as laid down in condition (v) of Section 2(6) of the Integrated Goods & Service Tax Act, 2017 namely, "that the supplier of service and the recipient of service are not merely establishments of

a distinct person in accordance with *Explanation 1* in section 8. On a writ petition, the high court observed as under:

1. The respondents, without alluding or referring to the Circular No. 161/17/2021-GST dated 20-9-2021, simply rejected the petitioner's application for refund on the same ground as stated in the show cause notice and also mentioned, after referring to the provisions of section 2(6) of the IGST Act, that the petitioner was an intermediary in terms of section 13 of the IGST Act read with Circular dated 18.7.2019.
2. The petitioner is a separate entity and it is settled law that identity of an incorporated company is separate from that of its shareholders. This fundamental proposition was reiterated by the Constitution Bench of the Supreme Court in *Bacha F. Guzdar v. CIT* AIR 1955 SC 74/ [1955] 27 ITR 1.
3. The services rendered by a subsidiary of a foreign company to its holding are not covered under section 2(6)(v) of the IGST Act and the same is beyond any pale of controversy in view of the Circular dated 20.9.2021 issued by the CBIC.
4. The impugned order has been passed without application of mind and in disregard of the provisions of law. The relevant circular was brought to the notice of the respondents by the petitioner but the respondent completely ignored the same and proceeded to pass the order mechanically.
5. Although, it is mentioned that the petitioner is an intermediary but there is no ground whatsoever for holding the said view. The terms of the Agreement are unambiguous. The petitioner has provided services on principal-to-principal basis.

The services provided by the petitioner are on its own count and not facilitated by provision of services from any third-party services provider. The petitioner is a registered EOU for the services as exported by it.

The high court expressed their displeasure in respect to the cavalier manner in which respondent has passed the impugned order without considering the settled law and the Circular dated 20.9.2021 issued by the department despite the same being brought to its notice. Such orders, apart from unnecessarily increasing the burden of tax litigation, have a debilitating effect on the confidence of taxpayers in the tax department.

Hence the petition was disposed off in favour of the assessee.

2. GST - EXPORT OF AGRICULTURAL PRODUCTS LIKE RICE & SUGAR - ZERO RATED SUPPLIES - ENTITLED TO REFUND APPROPRIATELY

In KS Commodities Pvt. Ltd. v. AC, CGST, South Delhi 2023(78) GSTL 50/(2023) 10 Centax 281 (Del.), the petitioner is engaged in export of agricultural commodities like rice and sugar and filed an application for seeking refund of ITC for the zero rated supplies which was rejected on the ground that the petitioner was unable to co-relate the input supplies respect of which ITC refund claim was made and the export of the commodities and this was sustained by appellate authority. On a writ petition the high court observed as under:

1. The Commissioner has rejected the refund claim on the ground that the petitioner was unable to

satisfy that the inputs in respect of which the credit was claimed, was directly co-related to the export of the commodity in question (sugar). The petitioner had also exported rice during the relevant tax period and the Appellate Authority was of the view that the petitioner had not distinguished the inputs in respect of export of rice and export of sugar.

2. Since the petitioner was granted refund in respect of the inputs for the export of rice, the petitioner's claim for refund in respect of sugar was required to be rejected.
3. Although the petitioner has a statutory right of appeal in respect of the impugned order, the petitioner is unable to avail of the same as the Appellate Tribunal has not been constituted. It is in the aforesaid context that the petitioner has filed the present petition.

4. It is the petitioner's case that it had provided the necessary documents and invoices to reflect that the inputs in respect of which refund is claimed, had a direct correlation to the export of sugar.
5. Neither the Order-in-Original nor the impugned order passed by the Appellate Authority discusses the aforesaid invoices and the material produced by the petitioner nor indicate any reason as to why the authorities have not considered the said material to be relevant for establishing that the input supplies in respect of which refund was claimed, were directly co-related to export of sugar.

Hence, the impugned order was set aside and the petitioner's appeal was restored before the learned Appellate Authority for reconsideration on merits.

Hence the petition was disposed off as above.

3. **GST - ADVANCE RULING - TRANSPORTATION OF STUDENT AND STAFF FOR PICKING & DROPPING OF HIGHER SECONDARY SCHOOL - EXEMP**

In RE: Muniyasamy Abinaya 2023(78) GSTL 93/(2023) 10 Centax 247 (AAR.GST-TN.), the applicant has registered as an unregistered applicant in GST portal on 9.2.2023 for filing advance ruling application under the category of service provider. The Applicant had enclosed a letter dated 3.2.2023, addressed to the Commissioner, wherein she had stated that she was approached by few schools in Chennai to provide transport service i.e. pick up and drop of their school children; This transport service will be operated by providing school bus/van service only to the students studying in respective schools and not for general public for which the payment of fees will be

collected directly from the parents of the students as per advice and agreement with school. The teachers and staff will also be picked and dropped en-route for which the school will pay. Further the bus/van permits will be in the name of the respective school only.

An application was filed seeking advance ruling as to the following:

- (a) Whether GST applicable on the above said service?
- (b) Whether the collection of transportation charges from parents will be taxed or exempted under GST, since only school students are only picked up and dropped, and school staff which will be covered in the agreement with school? (c) If GST applicable, then what is the percentage of GST to be charged from parents and school?

The authority observed as under:

1. The questions which need to be answered is whether the activity proposed to be undertaken by the applicant by way of transport of staff and students of school as school bus operator, by school bus/van service is applicable to GST or is exempted from GST; and if GST is applicable, then the percentage of GST to be charged to parents and to school for arranging pick up and drop of their staff.
2. The Applicant proposes to provide the service of picking up and dropping of school children and staff of higher secondary school in bus and/or by van and not of the general public; that the service will be provided under agreement with schools; that the bus and van permits will be in the name of respective schools; that the applicant will be receiving the payments for the services directly from the parents, as per advice and agreement with school; and that for picking up and dropping of the teachers and staff, the respective school will pay.
3. The Applicant did not submit any copy of the agreement entered with the schools as the whole activity is only proposed to be undertaken.
4. The Applicant proposes to provide the service of picking up and dropping of school children and staff of higher secondary school in bus and/or by van by entering into an agreement with the schools. Further the bus and van permits will be in the name of respective schools.
5. Thus, the Applicant's proposed activity of providing transport services to the education institutions by way of transportation of students and staff, will become eligible for

exemption vide S.l. no. 66(b) of the Notification No. 12/2017-Central Tax (rate) dated 28.6.2017, if the services provided by the Applicant is to an educational institution as defined in Para No. 2(y) of the said notification and necessary permit has been obtained as mandated under the Tamilnadu Motor Vehicles (Regulation and Control of School Buses) Special Rules, 2012.

Hence, the authority ruled as under:

The activity proposed to be undertaken by the Applicant as specified in their application relating to the educational institution as defined in the Act amounts to supply of service and is exempted from GST under Sl. No. 66(b) of Notification No. 12/2017-Central Tax (rate) dated 28.6.2017 read with para 2(y) (Definition) of Notification No. 12/2017-Central Tax (rate) dated 28.6.2017.

4. **GST-REFUND-UNUTILISED ITC ON INVERTED TAX STRUCTURE - NOT TO BE DENIED**

In *Simran Chandwani v. Principal Commr. of CGST, Delhi North* 2023(78) GSTL 371/(2023) 11 Centax 195 (Del.) the petitioner is engaged in the business of selling footwear which is chargeable to goods and services tax at the rate of 5% or 12%, depending on whether the price of the footwear is below Rs.1,000/- or above Rs.1,000/-. One of the components used in manufacturing of footwear is PVC straps, which is chargeable to goods and services tax at the rate of 18%.

In view of the said inverted duty structure, the petitioner filed an application for refund of ITC, which was denied by the adjudicating authority on account of (a) ineligible ITC under Rule 36(4) of the Central Goods and

Services Tax Rules, 2017 as the claim for the ITC could not exceed more than 20% of the eligible credit in respect of the invoices and debit notes which have not been uploaded by the supplier and (b) the returns filed by one of the suppliers in respect of the goods who had classified the goods supplied as HSN 6404, which was the code for the finished products (complete shoes) and charged GST at the rate of 18% consequent to which the petitioner's claim for the inverted duty structure in respect of the said goods was questioned as if the input was the same product as supplied by the petitioner, the goods supplied would not be chargeable to tax at a lower rate. This was sustained by the first Appellate Authority.

The petitioner filed an appeal, which was rejected the Appellate Authority. In view of the non constitution of the Appellate

Tribunal, the assessee filed a write petition before the high court which observed as under:-

1. The first and foremost question to be addressed is whether the petitioner can be denied the refund of the ITC on the ground that the one of the suppliers had erroneously mentioned HSN 6404 in respect of the goods supplied in its invoices notwithstanding that it had also furnished the certificate acknowledging the same. The Adjudicating Authority had not accepted the petitioner's contention while observing that the petitioner had obtained the declaration just to shelter their vicious thinking to gain cash refund which is based on mere suspicion and surmises and not on cogent material.
2. The controversy relates to the six invoices issued by one of the suppliers (M/s V.K. Polymers) who charged the GST at the rate

of 18% which is chargeable on PVC straps. There is no cavil that the tax chargeable on footwear (complete finished products) is 5% or 12%, depending on the value of the said product. The supplies made by M/s V.K. Polymers under the six invoices in question, were below the price of Rs.1,000/- . Thus, if the said supplier had supplied a complete product, it would have charged GST at the rate of 5%. However, the supplier had incorrectly classified the goods under HSN 6404 instead of HSN 6406. There is no ground to doubt the petitioner's explanation that the six invoices incorrectly mentions the classification of the goods and therefore, the petitioner ought not to be denied the benefit of the accumulated ITC.

3. The petitioner's claim was denied solely for want of relevant documents. However, there is no dispute that the other suppliers had correctly classified the

products supplied by them. Whilst the concerned authorities have accepted the classification of the product supplied by a singular supplier, M/s V.K. Polymers, under six invoices, as correct; they have not accepted the classification of goods as far as the other suppliers are concerned.

4. The next question to be addressed is whether the petitioner would be entitled to the refund notwithstanding that the ITC availed for the month of October, 2020 and November, 2020 was in excess of the limit as specified in Rule 36(4) of the CGST Rules.
5. ITC availed in the month of October, 2020 and November, 2020 was in excess of the ITC as reflected in GSTR-2A, the ITC reflected in GSTR-2A for the month of December, 2020 would more than cover the same. This mismatch was on account of some of the suppliers filing the returns

on a quarterly basis, whereas the petitioner accounted for the ITC on a monthly basis. If there is any excess ITC availed in excess of the limits provided under Rule 36(4) of the CGST Rules, the petitioner may be liable to pay an interest, but the refund of the ITC cannot be denied if there is no excess claim for the “relevant period” as defined under Rule 89(4)(F) of the CGST Rules.

6. The revenue’s counsel does not dispute the correctness of the claim nor the fact that the mismatch is only on account of the suppliers filing the quarterly returns but stated that the petitioner did not submit the relevant documents to establish this claim.

In view of the above, the impugned orders were set aside and the matter was remanded to the Adjudicating Authority to consider the petitioner’s claim

regarding availing ITC in excess of the limit as prescribed under Rule 36(4) of the CGST Rules.

Hence, the petition was disposed of as above.

5. GST-ADVANCE RULING - PRE & POST EXAMINATION SERVICES PROVIDED TO UNIVERSITIES - EXEMPT UNDER SL.NO.66 OF NOTIFICATION NO.12/2017-CT(R)

In RE: Institute of education & Examination Management Pvt. Ltd. 2023(78) GSTL 441/(2023) 10 Centax 197 (AAR.-GST-WB), the applicant is providing pre and post examination services to Universities. An application was filed seeking advance ruling as to whether GST exemption is available to the applicant in respect of the following pre and post Examination services being provided to the Educational Boards and Universities?

-
- (i) Online and offline printing of Pre-Examination items such as Registration Certificate, Examination Enrollment Forms, Admit Cards, Award List for marks entry and other Pre examination related services to Educational Boards, Council and Universities.
- (ii) Designing, Developing and managing Web based applications and related services for conducting online Examination of Educational Boards, Council and Universities.
- (iii) Post examination services of Scanning and Processing of Examination Results, generation and printing of Mark Sheets (Online and offline), Printing of Pass certificates and other related Examination activities for Educational Boards, Council and Universities.

The authority observed as under:

1. The issue involved in the instant case is to decide whether the supply of services as detailed by the applicant can be treated as services to an educational institution relating to conduct of examination by such institution so as to get covered under serial number 66 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as amended till date.
2. Circular No. 151/07/2021-GST dated 17.06.2021 (CBIC-190354/36/2021-TRU Section-CBEC) clarifies that "Central and State Educational Boards" are treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students. Therefore, the recipient of the applicant's service is an Educational Institution in so far as

it provides services by way of conduct of examination, including any entrance examination, to the students.

3. A perusal of the agreement /work orders by different universities namely West Bengal State University, University of North Bengal, Cooch Behar Panchanan Barma University and Alipurduar University could be regarded as “educational institutions”.
4. The process of conducting examination includes pre-examination works, the examination itself and post-examination works. The applicant has undertaken activities like Online and offline printing of Pre-examination items such as Registration Certificate, Examination Enrolment Forms, Admit Cards, Award List for marks entry and other Pre-examination related services, Designing, Developing and

managing Web based applications and related services for conducting online Examination, Post examination services of Scanning and Processing of Examination Results, generation and printing of Mark Sheets (Online and offline), Printing of Pass certificates and other related Examination activities for Universities. The said activities can be treated as services relating to conduct of examination.

5. Arising out of the above, the supply of services shall get covered under serial number 66 of the Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017/ West Bengal State Notification No. 1136 F.T. dated 28.06.2017, as amended and shall be exempted from payment of tax under the GST Act.

Hence, the authority held that the services provided by the applicant to the universities in respect of conduct

of examination (both pre and post examination) is exempted from payment of tax under the GST Act vide serial number 66 of Notification No.12/2017- Central Tax (Rate) dated 28th June, 2017 and West Bengal State Notification No. 1136 F.T. dated 28.06.2017.

6. GST-ADVANCE RULING - CONTRIBUTION FOR EMPLOYEES CATERING SERVICES AND RECOVERY OF PART AMOUNT - NOT LIABLE FOR GST

In RE: Brandix Apparel India Pvt. Ltd. 2023(78) GSTL 454/(2023) 5 Centax 249 (AAR.-GST-AP) , the applicant is engaged the business of manufacture of apparels and export of the same outside India. The applicant hired a third-party contractor for providing canteen services to the employees in the factory who raises an Invoice on the company for provision of

canteen services and recovered amount form the employees for provisions canteen facility. The total amount charged by the canteen service provider per employee per month is Rs.1,538.25. Out of the total canteen expense Rs.578/- is recovered from each employee per month and the applicant bears the cost of balance INR 960.25 per month per employee.

The applicant has hired a contractor for providing transportation services to the employees of the company transport services per employee per month. The total amount charged by the bus transport service per employee Rs.2,277/-. Out of the total transportation expense only Rs.350/- is recovered from each employee per month and the applicant bears cost of balance of INR 1927/- per employee per month.

An application was filed seeking advance ruling on the following:

- 1) Whether GST would be applicable on the amount recovered from employees for canteen facility provided to them?
- 2) Whether GST would be applicable on the amount recovered from employees for transportation facilities provided to them?

The authority observed as under:-

1. The first issue is regarding provision of canteen services to the employees of the applicant by the third -party service provider. The service provider, a third-party, is charging Rs.1,538.25 per employee per month which is being paid by the applicant out of which, Rs.578/- is being recovered from the employees from their salaries by the applicant. This is as per the

requirements of Factories Act, 1948 which stipulates for a canteen facility with work force of more than 250. The applicant's work force is well over 11000 and therefore they are mandated to provide the canteen facility as per the Factories Act, 1948. It is clearly seen that the provision of service of canteen is by the third- party to the applicant and not by the applicant to their employees.

2. As per Section 7 of the CGST ACT, supply includes all forms of supply of goods or services for a consideration by the person in the course or furtherance of business. The applicant is involved in the supply of manufacture of apparel and not in the activity of provision of canteen service. The canteen service is not an output service of the applicant as it is in the business of apparel manufacture. In fact, the canteen

services are being received by the applicant from the Third-party providers.

3. Therefore, it can be concluded that the provision of canteen facility by the applicant to the employees is not a supply as it is not in the course or furtherance of business. Further, the applicant is merely collecting a part of the canteen expenses from the employee and this does not tantamount to supply es per Section 7 of the CGST and SGST Act.
4. Para 2, serial NO.5 of Circular 172/04/2022, dated 6.7.2022 clarifies that any perquisites provided by the employer to its employee in lieu of the services provided by the employee to the employer in relation to the employment and therefore the perquisites provided by the employer to the employee will not be subjected to GST. As provision
- of canteen facility is a mandate as per Factories Act, 1948, GST Is not applicable.
5. The applicant is not liable to pay GST on the recoveries from the employees for the canteen services provided to them.
6. The second issue pertains to the provision of transportation services by a third-party to the employees of the applicant wherein the service provider is charging Rs.2,277/- from the applicant per month per employee while the applicant is recovering rs.350/- per employee per month and bearing Rs.1927 on their account.
7. The main business of the applicant is manufacture of apparel and they are not engaged in the business of bus transportation. The transportation service is not a supply for the applicant made in

the course or furtherance of business and the recoveries made by the applicant from their employees does not fall under the definition of supply under Section 7. The transportation services are being supplied by the third-party to the applicant and they are receiver and not supplier of the same.

8. Therefore, it can be concluded that the GST is not applicable for the recoveries from the employees for the transportation services provided to them.

Hence, the authority ruled as under:

- a. GST would not be applicable on the amount recovered from employees for canteen facility provided to them.
- b. GST would not be applicable on the amount recovered from employees for transportation facilities provided to them

7. **GST - ITC- BLOCKED CREDIT OF ALLEGED FRAUDELENT ACTION WITHOUT FOLLOWING DUE PROCEDURES - NOT SUSTAINABLE**

In Ashapura Steel Meetal v. UOI 2023(78) GSTL 472/(2023) 11 Centax 248 (Bom.), ITC of the assessee was blocked under rules 86-A of the CGST/MGST Rules on the ground that the petitioner had availed such input tax credit fraudulently during the period from 2021-22 and 2022-23 and the same was apparent from the records. On a writ petition, the high court observed as under:

1. Rule 86-A of the CGST rules cannot override the powers which are conferred on the Commissioner under section 5 of the MGST Act nor can the same be contrary to the provisions of section 6 of the CGST Act. The legislature is clear in its intention,

when the provisions of sub-section (1) of section 6 of the CGST Act itself mandates that the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorized to be the proper officers for the purpose of CGST Act. The latter part of sub-section (1) which provides that subject to such conditions as the Government shall, on the recommendations of the Council, by notification specify, would not defeat the earlier part of the provision, which categorically authorizes the officers appointed under the State Goods and Services Tax Act to be the proper officers for the purposes of the CGST Act.

2. The provisions of section 5 and section 6 of the CGST Act are *pari materia* to the provisions of sections 5 and 6 of the MGST Act. For that matter, the substantive

implication of rule 86-A of the CGST and the MGST rules is also not different when it provides the conditions for use of amounts available in electronic ledger, which would permit the officer to block the input tax credit in a given situation. It would bring about an incongruity if the State Tax Officer is not recognized to exercise powers under rule 86-A of the CGST rules when he is permitted to do so under rule 86 A of the MGST rules.

3. Thus, the provisions conferring powers on the State Officers under the CGST Act are required to be read harmoniously. It cannot be conceived that the intention in framing rule 86-A of the CGST rules would be to denude the powers which are conferred on the State Tax Officer to exercise powers under rule 86A as permitted by section 5 of the MGST Act read with a clear

authorization under section 6 of the CGST Act.

4. if the petitioner has any grievance against such order, a reply may be submitted electronically on common portal and electronically, through e-mail at anytime and accordingly, on such reply, the petitioner would be heard and after recording reasons if the claim of the petition is found valid and appropriate, an action to unblock credit can be taken.
5. A perusal of the documents indicate that by roznama order dated 10 April, 2022 (sic 10 April, 2023), the State Tax officer has purportedly considered such objection of the petitioner, however such order was not communicated to the petitioner and that none of the contentions of the petitioner on merits have been addressed by the State Tax Officer. In fact the State Tax Officer has observed is that the petitioner

has a remedy of appeal under section 107(1) of the CGST/MGST Act if the petitioner was to be aggrieved by the decision of the State Tax Officer on the orders passed under rule 86A of the CGST/MGST rules, 2017.

6. This order passed by the State Tax Officer is neither in consonance with the observations as made by the very officer in the impugned order providing for an opportunity to the petitioner to make out a case against such blocking of input tax credit, as also the same would be contrary to the provisions of rule 86-A (2) of the CGST/MGST rules, which itself provides that the Commissioner or the Officer authorized by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger, no longer exist, allow such debit. Sub-rule (2) of rule 86-A therefore certainly provides for a window

or an opportunity available to the assessee to make out a case against the action of the department to disallow the benefit of credit to the assessee.

Hence, the ordered the following:

- (i) The order dated 10 April, 2023 passed by the State Tax officer, being roznama order, rejecting the petitioner's objection was quashed and set aside;
- (ii) The State tax officer was directed to hear the petitioner on the contentions as raised by the petitioner against blocking of the petitioner's input tax credit under the impugned order dated 10 March, 2023, on the basis of the documents as submitted by the petitioner by its email dated 28 March, 2023.
- (iii) After according an opportunity of a hearing to the petitioner, a

detailed order be passed by the State Tax Officer in accordance with law.

- (iv) The State Tax Officer shall make an endeavour to hear the petitioner as expeditiously as possible and in any event pass appropriate order.
- (v) Needless to observe that the petitioner may avail an opportunity of placing on record of the State Tax Officer additional submissions and documents.

8. **GST - EXPORT OF SERVICE - LOCATION OF SUPPLIER/ RECEIVER OUTSIDE INDIA - GST NOT APPLICABLE - EXPORT OF SERVICE**

In Vodafone Idea Ltd. v. UOI 2023(78) GSTL 495/(2023) 11 Centax 243 (Del.) the petitioner holds a telecommunication license from Government of India, and is engaged in providing

telecommunication services including services in the nature of International Inbound Roaming Services (“IIR”) and International Long Distance Services (“ILD”) to inbound subscribers of Foreign Telecom Operators (FTOs).

The petitioner entered into various service agreements (International Roaming Agreements) with FTOs for providing IIR and ILD services. Undisputedly, the consideration for providing IIR and ILD services to subscribers of FTOs during their visit to India, is paid by FTOs to the petitioner.

The petitioner filed its applications for refund of IGST claiming that it had exported services and paid integrated tax as provided under section 16 (3) of the IGST Act on the ground that they had entered into International Roaming Agreement for establishing connectivity between

mobile services offered by it and those offered by FTOs to their customers which were rejected on time bar as also on other technical issues and sustained by the First Appellate Authority. On a writ petition, the high court observed as under:-

1. In view of GST Notification 13/2022-Central Tax dated 5-7-2022) relaxing the period of limitation, for filing a claim for refund u/s 54(1) of the CGST Act, the ground of time bar does not sustain for period commencing from 1-3-2020 to 28-2-2022.
2. Wrt the petitioner’s case that FTOs are recipient of services in question and since they are located outside India, the place of supply of services is outside India in terms of Section 13 of the IGST Act, in Verizon Communication India (P.) Ltd. v. Asstt. CST [2017] 85 taxmann.com 332/2018 (8) GSTL 32, it was held in favour of

the assessee. Although the decision in Verizon Communication India (P.) Ltd. was rendered in the context of service tax imposed by virtue of the Finance Act, 1994, it would still apply to the instant case as the provisions for ascertaining the place of supply of services under Rule 6A of the ST Rules are similar to Section 2(6) of the IGST Act inasmuch as the services will be treated as export of services when (a) the provider of service is located in the taxable territory, (b) the recipient of the service is located outside India, and (d) the place of provision of the service is outside India. There is no cavil that the decisions rendered on the question of export of services in the context of Rule 3 of the Export of Services Rules, 2005 are also applicable to the instant case.

3. CESTAT has in several cases followed the aforesaid decision, allowed the appeals preferred by the petitioner and directed the refund more particularly in the case of the predecessor of the petitioner (Vodafone India Ltd.) wherein on the revenue's appeal before the Supreme Court [Civil Appeal Diary No. 38259/2014], the direction to grant refund was not stayed. The learned counsel for the petitioner also informed this court that in some cases, the Revenue has refunded the amount claimed by the petitioner.

Hence, the petition was allowed and the respondents were directed to refund the amounts as claimed by the petitioner.

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SUMMARY OF AAR/AAAR

1. Taxability of the consideration received as damages for terminating a sub-lease before the agreed lock-in period.

In case of M/S. Enzyme Business Center [TSAAR Order No. KAR ADRG 33/2023 dated November 16, 2023] referred as 'Applicant' - Karnataka State Authority of Advance Ruling ('AAR' or 'Authority').

Brief facts of the Case:

- The applicant has entered into a lease agreement for subletting two premises to the tenant/client. The tenant, due to their inability to continue the lease, has approached the applicant for early termination of the lease agreement.
- The applicant has received damages for early termination of contract by way of forfeiture of



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Interest free security deposit of INR 11,900,000/- and INR 16,00,000/-. Further, the tenant has also paid INR 50,00,000/- from July 2022 to January 2023 in various trenches towards damages for foreclosure as one-time settlement.

Questions before AAR:

- i. Whether damages received by the applicant amounting to INR 18,500,000/- from the tenant towards the termination of sub-lease before the agreed lock-in period as per the sub-lease agreements tantamount to supply

as per Section 7 of Central GST Act, 2017 (hereinafter referred to as “CGST Act”) and will the above amount received towards damages as per the settlement agreement be construed as consideration for the above supply.

- ii. If answer to the above question is affirmative, what is the Rate of GST applicable and what shall be appropriate classification / SAC for payment of GST.

Applicant’s Interpretation of law

- The applicant goes on to evaluate whether the above transaction classifies as a supply as per Section 7(1) of the CGST Act.
- Entry no. 5(e) in Schedule II of the CGST Act treats the following activity as deemed supply: “Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.”
- Further, as per Section 2(h) of the Indian Contract Act, 1872 (hereinafter referred to as “ICA”) defines a Contract as “An agreement which is enforceable by Law”. There has to be an agreement which is legally valid and consisting of a set of promises in exchange for a consideration. The applicant contends that providing working space as per the rental agreement is the principal essence of the contract to supply.
- However, if a client fails to continue the above supply or terminates the contract prematurely, and if the client compensates for the contract breach as agreed upon in the contract, this situation wouldn’t be classified as a supply.
- The applicant states that premature termination of lease before the lock-in period violates the contract as defined in the ICA,

invoking Section 73 of the ICA. This section addresses compensation for breach of contract, entitling the injured party to receive monetary compensation equivalent to what they would have gained if the breach hadn't occurred.

- The applicant believes that the amounts received and forfeited serve as liquidated damages, compensating for the loss of rent and as compensation for violating the lock-in period clause in the agreement.
- The applicant further relies on Circular No 178/ 10/2022-GST dated 3rd August 2022 to support their interpretation that damages received from the client for early termination of contract does not constitute a supply. The Circular clarifies that when liquidated damages are solely meant to compensate for losses or damages due to a contract breach,

without any additional agreement for the aggrieved party to perform or tolerate something in return, these payments are essentially a flow of money from the party causing the breach to the party experiencing the loss or damage. In these cases, these payments aren't seen as consideration for a service or supply and thus are not considered taxable.

Observations of AAR

- The funds received by the applicant were due to the client's failure to fulfill the stipulated conditions outlined in the lease agreement.
- The applicant has refrained from taking subsequent action/ tolerated an act of the tenant, for which consideration has been received by him. The payment of amount is for an act of tolerance. The same can be understood as

consideration received by the Applicant for “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation” of their client of not completing the lock-in period, which he had agreed in terms of contractual obligations.

- As a result, the act of the Applicant to agreeing to refrain or to tolerate or to do an act i.e., early termination of contract of lease gets squarely covered under clause 5(e) of Schedule II of the CGST Act. Therefore, the same shall constitute a supply as per Section 7(1) of CGST Act.
- Reference has been drawn to Para 7.1.6 of Circular No 178/ 10/2022-GST dated 3rd August 2022 which mentions that amounts paid for early termination of lease as contemplated by the contract as part of commercial terms agreed

to by the parties, constitute consideration for the supply of a facility, namely, early termination of a lease agreement. Even if these payments are labeled as fines or penalties, they are essentially a form of compensation for the provision of a service (in this case, early termination of contract of lease). Therefore, these payments are subject to GST if the service provided is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply.

Ruling of the AAR

- The compensation received by the applicant from the tenant due to early termination of the sub-lease falls under Section 7 of the Central GST Act, 2017.

-
- The services provided by the Applicant are classifiable under Chapter heading 9972 and is liable to GST at 18% (9% CGST and 9% SGST).

2. Clarification on whether supplier of service is liable to pay tax on forward charge basis on renting of residential property for commercial purposes.

In case of M/s. Deepak Jain [TSAAR Order No. RAJ/AAR/2023-24/14 dated November 29, 2023] referred as 'Applicant' - Rajasthan State Authority of Advance Ruling ('AAR' or 'Authority').

Submissions of the Applicant

- The Applicant along with his family members (hereinafter collectively referred to as "Lessors") has entered into a lease agreement with GST registered person (hereinafter

referred to as "Lessee") for leasing the property jointly owned by the Lessors. As per terms of the Lease agreement, in consideration of grant of lease to use and possess the aforesaid property, the lessee is required to pay to the applicant a monthly rent. The monthly rent is inclusive of various installation and services such as lift, water connection & storage tank, fire alarm and smoke detection setup, cafeteria furnishing, etc.

- The property let out by the Lessors is residential. Lease deed issued by Jaipur development Authority (JDA), in the respect of property let out is residential. However, as per Lease Agreement the property shall be used solely for commercial purposes by the Lessee i.e., for establishing the branch/office of the Lessee.

-
- As per Notification No.: 04/2022-Central Tax (Rate) dated 13th July 2022, with effect from 18th July 2022 exemption was partially withdrawn for renting of residential dwelling to a GST registered person. Further, as per Notification No.: 05/2022-Central Tax (Rate) dated 13th July 2022 in case of services provided by way of renting of residential dwelling to a GST registered person, the recipient shall be liable to pay GST under reverse charge mechanism (hereinafter referred to as “RCM”).
 - The term “residential dwelling” is not defined in Central Goods and Services Tax Act, 2017. In this context, the CBIC Education Guide dated June 20, 2012, addresses the interpretation of ‘residential dwelling’ in service tax laws. It states that in the absence of a specific definition, the term should be understood based on its common understanding in trade. According to this guide, a residential dwelling typically refers to a house or home used for permanent residence and excludes establishments like hotels, motels, inns, guest houses, campsites, lodges, houseboats, or similar places intended for temporary stays.
 - The Applicant submits that the key factors in determining whether a property is considered a residential dwelling revolve around its design structure and intended use. There is no exemption provided under GST laws for renting out commercial premises. Regardless of the tenant’s registration status (registered or unregistered), the transaction becomes taxable for the landlord under the forward charge mechanism. If the property is deemed commercial, the lessor is responsible for forward charge taxability.

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- The Applicant further relies on advance ruling passed by Appellate Authority for Advance Ruling, Andhra Pradesh in the case of M/s. Aluri Krishna Prasad, advance ruling passed by Authority for Advance Ruling, Andhra Pradesh in the case of M/s. Lakshmi Tulasi Quality to support the above view that a property will be considered as a residential property only based on their intended view.
 - Therefore, the applicant's view is that the property let out by them is not residential dwelling as the same is let out for commercial purposes and tax is to be paid by the Applicant under forward charge. Recipient is not required to pay tax under RCM and in present case RCM is not applicable whether supplier is GST registered or not.

Questions on which Advance Ruling was sought:

- Whether the property let out in the present case will be covered in the definition of residential dwelling for the purpose of Notification No.: 05/2022-Central Tax (Rate) dated 13th July 2017?
- Out of the following which are factors important to include in definition of residential dwelling?
 1. *Land use of property by local authorities or*
 2. *Layout of the property, its structure, whether it is designed for usage as a residential unit or a commercial unit; or*
 3. *The purpose for which the dwelling is put to use; or*
 4. *How is the plan of the property sanctioned by the local authorities; or*

-
5. The intention of the developer / owner of the property; or
 6. The length of stay intended by the users; or
 7. Electricity Bill; and
 8. Municipal Tax

Findings, Analysis & Conclusions

- The Authority for Advance Ruling held that “Residential Dwelling” is not defined in the GST law. However, following definitions of “Residential Dwelling” were relied on: *Black Law’s dictionary*: Residential dwelling means living in a certain place permanently or for a considerable length of time.

Merriam Webster Dictionary: ‘A shelter (as a house) in which people live’

Oxford Dictionary: A house or apartment or other places of residence or a place to live in or building or other places to live in

Thus, the main thing is to find out the use of the property let out by the applicant and accordingly the taxability of GST shall be determined.

- The Authority for Advance Ruling observed that the Lease Agreement entered between the Applicant i.e., lessor and the lessee stipulates that the premises shall be used solely for commercial purpose by the lessee i.e., for establishing the branch/ office
- Further, on the perusal of the electricity bill, which is in the name of the Lessee, it is evident that the electric connection has been issued for commercial purpose.
- Thus, the Authority for Advance Ruling have reached to the conclusion that the property in question has been rented for commercial use regardless of the

lease deed provided by JDA stating that the property let out is residential.

- The said supply of service i.e., renting for commercial use is covered under 997212 and taxable @ 18% and the Applicant i.e., lessor is supposed to pay GST as mentioned above on forward charge basis. The lessee is not required to pay GST under RCM basis in term of Notification No. 05/2022-Central Tax (Rate) dated 18th June 2022.

Ruling of the AAR

- The property let out in the present case will not be covered in the definition of residential dwelling in term of Notification No. 05/2022-Central Tax (Rate) dated 13th July 2022 as it being used for commercial use.
- The important factors to be included in the definition of Residential Dwelling is the

purpose for which the dwelling is put to use, and the length of stay intended by the users.

3. Clarification on taxability of goods sold by subsidiary canteen (sold at a subsidized rate) of Central Police Force Canteen System (CPFCS/ CPF Canteen System) to authorized customers.

In case of M/S. Central Police Canteen [TSAAR Order No.KAR ARDG 35/2023 dated November 16, 2023] referred as ‘Applicant’ – Karnataka State Authority of Advance Ruling (‘AAR’ or ‘Authority’).

Brief facts of the Case:

- The applicant is a subsidiary canteen of Central Police Force Canteen System (CPFCS/ CPF Canteen System), which is set up vide letter No. 27011/75/201 I-R&W dated 18.11.2011, issued by the Resettlement & Welfare Department, Police Division-II,

Ministry of Home Affairs, Government of India and thus, the applicant claims that they are entitled to avail CPF Canteen facilities.

Questions on which Advance Ruling was sought:

- a. Whether the applicant being a recognized “Unit Run Canteen” be exempted from levying CGST on goods sold by it to authorized customers?
- b. Whether similar exemption can be availed under State GST also?
- c. Is the applicant eligible to claim refund of CGST and SGST paid by it on goods purchased till date?

Applicant’s Interpretation of law

- The Applicant contends that that their canteen is covered under “Unit Run Canteens” as specified in Notification No. 7/2017-

Central Tax (Rate) dated 28th June 2017 and thus the supply of goods by them to the authorized customers is exempted from levy of GST.

- Further, Notification No. 6/2017-Central Tax (Rate) dated 28th June 2017, issued in exercise of the powers conferred by Section 55 of the CGST Act 2017 specifies that *“the Canteen Stores Department under the Ministry of Defense, as a person who shall be entitled to claim refund of fifty percent of the applicable central tax paid by it on all inward supplies of goods received by it for the purpose of subsequent supply of such goods to the Unit Run canteens of the CSD or to the authorized customers”*.

The applicant quoting the Notification supra contends that they are entitled to claim refund of fifty percent of the applicable central tax paid by it on all inward supplies.

Findings & Discussions

Question a: Whether the applicant being a recognized Unit Run Canteen be exempted from levying CGST on goods sold by it to authorized customers?

- Notification No.: 7/2017 dated 28th June 2017 provided exemption from levy of GST only in respect of supply of goods by the CSD to the Unit Run Canteens, to the authorized customers and by the Unit Run Canteens to the authorized customers.
- Further, Notification No.: 6/2017-Central Tax (Rate) dated 28th June 2017 clearly specifies that the CSD i.e., Canteen Stores Department, Unit Run Canteens of the CSD and the authorized customers of CSD are under the Ministry of Defense, Government of India.
- In the present case, it is an admitted fact that the applicant is a subsidiary canteen of the Central Police Force Canteen System (CPFCS), under the Ministry of Home Affairs, Government of India, formed in terms of permission granted vide letter No. DA-VII/SC-CP/2013 dated 28th November 2013.
- Further, the above-mentioned letter dated 28th November 2013 specifies that “VAT as applicable in conformity with orders of State Government will be paid unless specifically exempted by notification of concerned State Government”. Furthermore, the Central Police Force Canteen System (CPFCS) does not mention/use the terms Canteen Stores Department, Unit Run Canteens of the CSD and the authorized customers of CSD in the aforesaid letter dated 28th November 2013.

-
- Thereby, the applicant is not covered under the Unit Run Canteen as they are a subsidiary canteen of CPF canteen under the Ministry of Home Affairs. Therefore, the applicant is not entitled to claim the exemption provided under the Notification No. 7/2017-Central Tax (Rate) dated 28th June 2017.

Question b: Whether similar exemption can be availed under State GST also?

- As discussed above, the Applicant is not entitled for the exemption provided under Notification No.: 7/2017-Central Tax (Rate) dated 28th June 2017. Since similar exemptions are issued by State GST on subject issues, we find that the applicant is not entitled for any exemption even under the Notification issued by the State GST.

Question c: Is the applicant eligible to claim refund of

CGST and SGST paid by it on goods purchased till date:

- Notification No. 6/2017-Central Tax (Rate) dated 28th June 2017, specifies that *“the Canteen Stores Department under the Ministry of Defense, as a person who shall be entitled to claim refund of fifty percent of the applicable central tax paid by it on all inward supplies of goods received by it for the purpose of subsequent supply of such goods to the Unit Run canteens of the CSD or to the authorized customers.”*
- Thus, in view of the foregoing it is very clear that the notification is applicable only to the Canteen Stores Department under the Ministry of Defense, and not to any other Canteen Stores. In the instant case, the applicant canteen is formed under the orders of Ministry of Home Affairs and thus the notification No. 6/2017-Central Tax (Rate) dated 28.06.2017 is not applicable to the applicant and thereby they are not entitled to claim the benefit of the said notification.

Ruling of the AAR

- The applicant is not covered under Unit Run Canteen and thus is not exempted from levy of CGST on goods sold by it to authorized customers.
 - The applicant is not entitled for any similar exemption under State GST.
 - The applicant is not eligible to claim refund of CGST and SGST paid by them on goods purchased till date.
- 4. Clarification on whether an advance ruling can be sought for rectification of mistakes made GSTR-1 for prior period:**

Brief Facts of the Case

- The applicant encountered errors while submitting FORM GSTR-1 for the financial year 2017-18. Mistakes occurred due to incorrect selection of State Codes in the drop-down list, causing the portal to misidentify intra-state supplies as inter-state supplies

and vice versa. Consequently, this led to inaccurate discharge of output tax liability.

- The applicant affirms that they accurately recorded and settled their GST liability in their accounting books and through GSTR-3B. However, discrepancies were identified in February 2023 when cross-referencing GSTR-1 and GSTR-3B data obtained from the GST portal. The applicant acknowledges errors from 2017-2018 but expresses difficulty to amend these mistakes at this stage.
- Thus, the applicant has raised the following issue vide the current advance ruling:

Please guide us how to rectify the mistake which are showing in GSTR -1 (IGST short GST liability and CGST & SGST excess liability) of that month in 2017-2018 but tax during the month has been properly discharged by your assessee in correct head i.e. in IGST, CGST and SGST.

Conclusion

- As per Section 97(2) of the CGST Act, 2017 the question on which the advance ruling is sought under this Act, shall be in respect of the following:
 - a) Classification of any goods or services or both;
 - b) Applicability of a notification issued under the provisions of this Act;
 - c) Determination of time and value of supply of goods or services or both;
 - d) Admissibility of input tax credit of tax paid or deemed to have been paid;
 - e) Determination of the liability to pay tax on any goods or services or both;
 - f) Whether applicant is required to be registered.
 - g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
- The Authority for Advance Ruling observed that the question on which advance ruling is sought by the applicant is found not to be covered under any of the aforesaid clauses.
- Further, the applicant was allowed an opportunity for personal hearing and the aforesaid observation was brought to the notice of the authorized representative of the applicant in course of hearing. The authorized representative hadn't put any argument in favor of admissibility of the instant application.
- Thus, the above application for advance ruling made by the applicant was disposed of by the Authority for Advance Ruling.

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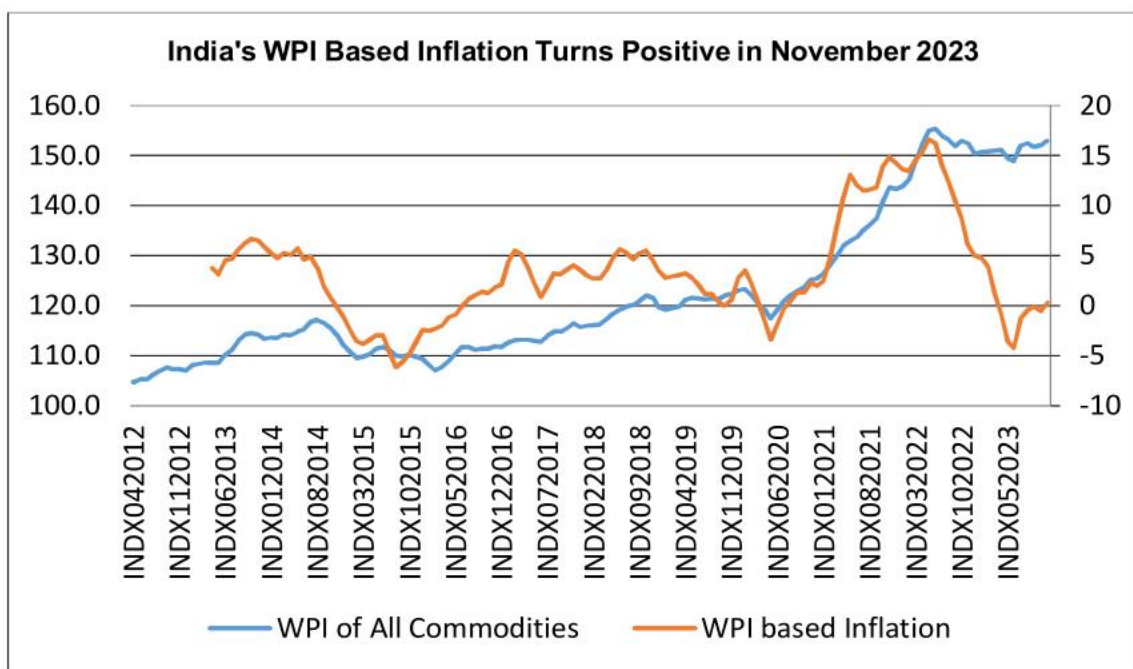
INDIA LOOKS TO LEAP FORWARD IN 2024

After remaining negative for seven months of the current fiscal, Whole Sale Price Index based inflation was 0.3% positive in November 2023. Positive rate of inflation in November, 2023 is largely due to increase in prices of food articles, minerals, machinery & equipment, computer, electronics & optical products, motor vehicles, other transport equipment and other manufacturing etc.



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Incidentally, Food Index consisting of 'Food Articles' from Primary Articles group and 'Food Product' from Manufactured Products group. The Food Index increased from 179.6 in October, 2023 to 183.1 in November, 2023, and the pace of growth in WPI of Food Index accelerated from 1.07% in October, 2023 to 4.69% in November, 2023.



India recorded 39% fall in overall trade deficit to US\$ 61.44 billion in the eight months ended November 2023. The fall in deficit were triggered by steeper fall in merchandise imports by 8.7% to US\$ 445.15 billion, and relatively moderate 6.5% fall in merchandise exports to US\$ 278.80 billion. Similarly, the rise in services exports by 5.9% to US\$ 220.66 billion and 3.1% fall in services imports to US\$ 115.75 billion also helped in reducing the overall trade deficit.

India's GDP growth at 7.6% for the quarter ended September 2023 was a positive surprise. But the devil is in detail, with mere 1.2% growth in Agriculture, Livestock, forestry and fishing and the moderation in the share of private final consumption expenditure from 59.3% in the Quarter ended September 2022 to 57.3% in the quarter ended June 2023 and to 56.8% in the quarter ended September 2023. The

combined reading of sluggish growth in agriculture and deceleration in the share of private final consumption expenditure evidences that the consumption remains weak in rural areas, which were also the sentiments echoed by FMCG players. The massive down trading is affecting the pricing power of FMCG players.

On the positive side, Diwali was in November in 2023 as against in October in 2022. So, the festive demand will be captured in the quarter ending December 2023. Similarly, the quarter ending March 2024 will consist one more day, being a leap year, compared to the previous year. As per RBI, the real GDP growth for 2023-24 is projected at 7.0% with Q3 at 6.5%; and Q4 at 6.0%. Real GDP growth for Quarter ending June 2024, September 2024 and December 2024 is projected at 6.7%, 6.5% and 6.4% respectively.

Apparently, the US Fed Reserve may not raise the interest rates, and may even cut the interest rates going forward. This should help improve consumption in the advanced markets and can help India step up exports on the one hand, and look for accelerated pace of FDI and FII inflows. The ensuing Union Government Elections in 2024 may mean higher government expenditure for the next few months, which can also propel the consumption story, form hereon.

The global merger and acquisition space was excited with the proposed acquisition of 122 year old US Steel for US\$ 14.9 billion by Japan's Nippon Steel. With automotive demand expected to improve, the global steel demand supply equation is set to improve in favour of the steel producers. India was a net exporter of steel in the past 3 years, but turned out to be a

net importer of steel in the current fiscal, sofar.

On a low base, the production of 8 infrastructure industries recorded impressive 12.1% growth in October 2023 from mere 0.7% growth in October 2022. The shift in Diwali from October 2022 to November 2023 could partially be attributed to this resounding performance. Power generation surged by 20.3%, coal production accelerated by 18.4% while cement and steel production grew by 17.1% and 11.0% respectively. Natural gas too recorded high single digit 9.9% growth in October 2023. Laggards were mere 1.3% growth in crude oil production, 4.2% growth in refinery products and 5.3% growth in fertilizers during October 2023.

For the seven months ended October 2023, the eight infrastructure industries together recorded mild

improvement in the pace of growth to 8.6% from 8.4% growth recorded a year ago. During this period, the star performer was coal with 13.1% growth, followed by 14.5% growth in steel production and 12.2% growth in cement production. Crude oil was the odd one out with 0.1% fall in production during this period, which was still better than 1.4% fall recorded a year ago. Power generation improved by 7.9%, Fertilizer production increased by 6.7%, natural gas production rose by 5.1% while refinery products recorded 4.0% growth during this period.

The only missing link is the meaningful growth in consumption in the rural areas. Unseasonal rains, sluggish agricultural production, unfavourable demand supply dynamics leading to wide swings in agricultural commodity prices are a

cause for concern. On the positive side, the government spending may remain elevated for next few months, before model code of conduct for ensuing General Elections come into place. Thereafter, election spending will add cream to our short term prospects.

The effective use of big data, internet of things, artificial intelligence and block chain in industry and services can significantly help India to improve its global competitiveness. Western World's China +1 policy, massive investments in capacity expansion and infrastructure and the accelerated pace of rise in the share of new and renewable energy are three positive factors. As a result, India is in the cusp of moving to the next orbit of growth.

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EXCEL TIPS

Understanding and Utilising the UNICHAR Function

Microsoft Excel offers the 'UNICHAR' function, enhancing the ability to manage and display Unicode characters. This function is particularly useful in various scenarios, including data visualisation, custom formatting, and specialized text manipulation.



CA. DUNGAR CHAND U JAIN

Overview of UNICHAR

The 'UNICHAR' function in Microsoft Excel is designed to return a Unicode character based on a specified numeric value. The syntax of the function is straightforward: 'UNICHAR(number)', where 'number' is a numeric value representing a Unicode character.

Unicode is a universal character encoding standard that assigns a unique numeric value to each character, regardless of the platform, program, or language. This standard covers a wide range of characters, including alphabetic characters, numerals, symbols, emojis, and characters from various languages around the world.

Applications of UNICHAR

1. Custom Data Representation :
 - 'UNICHAR' is invaluable for creating custom data representations. For instance, it can be used to insert check marks, arrows, and other symbols that are not readily available on the keyboard.
2. Enhancing Data Visualization:
 - In Excel, visual representation of data is crucial. 'UNICHAR' can be used alongside functions like 'REPT' to create in-cell bar graphs or to add symbols that enhance the understanding of data sets.
3. Internationalization and Localization:
 - For users dealing with multiple languages, 'UNICHAR' helps in displaying characters from different language scripts, facilitating internationalization and localization of spreadsheets.

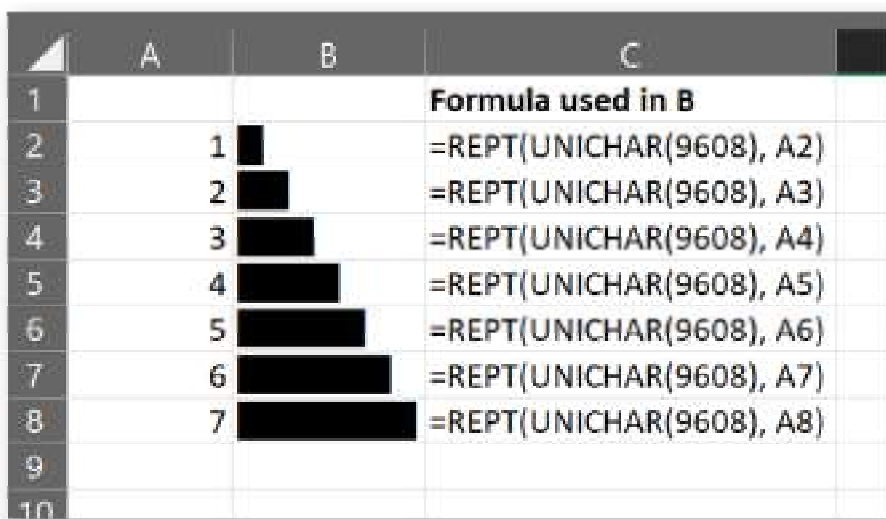
Examples :

1. Inserting Symbols:

- To insert a check mark (✓), use: =UNICHAR(10003)
- For a heavy black heart (◆), use: =UNICHAR(10084)

2. Creating In-Cell Bar Charts:

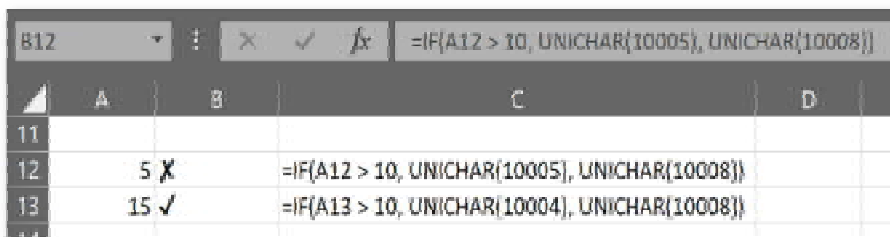
- Suppose cell A1 contains a number, say 5. To create a bar graph, use: =REPT(UNICHAR(9608), A1). This will display a bar 5 units long using the solid block character.



	A	B	C
1			Formula used in B
2	1	█	=REPT(UNICHAR(9608), A2)
3	2	██	=REPT(UNICHAR(9608), A3)
4	3	███	=REPT(UNICHAR(9608), A4)
5	4	████	=REPT(UNICHAR(9608), A5)
6	5	█████	=REPT(UNICHAR(9608), A6)
7	6	██████	=REPT(UNICHAR(9608), A7)
8	7	███████	=REPT(UNICHAR(9608), A8)
9			
10			

3. Combining with Other Functions:

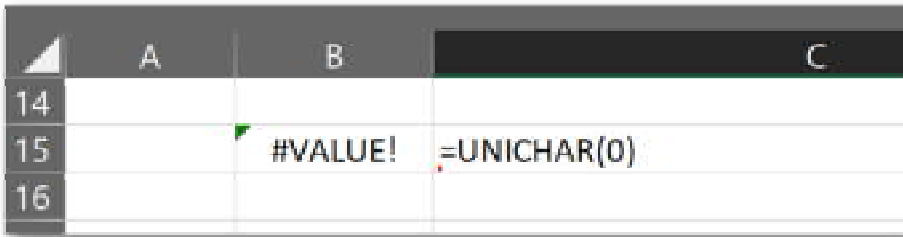
- `UNICHAR` can be combined with functions like `IF` for conditional displays. For example, =IF(A12 > 10, UNICHAR(10005), UNICHAR(10008)) can show a check or a cross based on the condition.



	A	B	C	D
11				
12	5	X	=IF(A12 > 10, UNICHAR(10005), UNICHAR(10008))	
13	15	✓	=IF(A13 > 10, UNICHAR(10004), UNICHAR(10008))	
14				

Limitations and Considerations

1. Font Dependency:
 - Not all fonts support the full range of Unicode characters. Some characters might not display correctly if the font doesn't support them.
2. Compatibility:
 - `UNICHAR` is available in Excel 2013 and later versions. For earlier versions, similar functionality might be achieved using `CHAR` in combination with specific code pages.
3. Error Handling:
 - Invalid input values can lead to errors. For instance, `=UNICHAR(0)` or a very large number that doesn't correspond to a Unicode character will result in an error.



	A	B	C
14			
15		#VALUE!	=UNICHAR(0)
16			

Remarks :

- This function returns the same characters as the CHAR function for numbers 1 to 128.
- This function can be used with other functions to help remove unwanted characters.
- If “number” < 1, then #VALUE! is returned.
- If “number” is not numeric, then #VALUE! is returned.
- You can use the UNICODE function to return the UNICODE number for the first character in a text string.
- You can use the CODE function to return the ANSI/ASCII number for the first character in a text string.
- You can use the CHAR function to return the character with the corresponding ANSI/ASCII character.

	A	B	C
23	54	6	=UNICHAR(A23)
24	55	7	=UNICHAR(A24)
25	56	8	=UNICHAR(A25)
26	57	9	=UNICHAR(A26)
27	58	:	=UNICHAR(A27)
28	59	;	=UNICHAR(A28)
29	60	<	=UNICHAR(A29)
30	61	=	=UNICHAR(A30)
31	62	>	=UNICHAR(A31)
32	63	?	=UNICHAR(A32)
33	64	@	=UNICHAR(A33)
34	65	A	=UNICHAR(A34)
35	66	B	=UNICHAR(A35)
36	67	C	=UNICHAR(A36)
37	68	D	=UNICHAR(A37)
38	69	E	=UNICHAR(A38)

The `UNICHAR` function in Microsoft Excel is a powerful tool for working with Unicode characters, offering a wide range of applications from data visualization to internationalization.

Understanding its usage and limitations allows users to leverage Excel's capabilities fully, making data more expressive and visually appealing. As with any function, proper application and creativity in its use can significantly enhance the effectiveness of data presentation and manipulation in Excel.

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ACCOUNTING FOR CONSTRUCTIVE OBLIGATIONS UNDER IAS 37 & IND AS 37: PROVISIONS, CONTINGENT LIABILITY AND CONTINGENT ASSETS

An entity interacts with a lot of stakeholders which are key to its survival and growth, including its employees, customers and society in general. An entity to manage the expectation of its various stake holders makes promises and conducts its business in a particular manner and takes decisions considering their interest as well.

Some of these promises and decisions are executed even if they are not legally binding or enforceable ie they are not mandated by law or the terms of any contract entered. For example:

- Providing warranty services to a customer even if the sale agreement does not include such provisions.
- Paying additional compensation for child support to employees even though their employment contracts don't contain such clause, nor does the law mandates it.



CA. VINAY NAHAR

- Restoring the land to its original state after uninstalling any plant and equipment or any mining operation, even though the entity might not legally require to do so.

The intricacies of accounting for such decisions and practices which are not mandated by any law or terms of any contract:

IAS 37 & Ind AS 37: Provisions, contingent liabilities and contingent assets, contains the following definitions, which sets the preamble for accounting for such transactions.

A **liability** is a present obligation of the entity arising from past events, the settlement of which is expected to

result in an outflow from the entity of resources embodying economic benefits.

A **provision** is a liability of uncertain timing or amount.

An **obligating event** is an event that creates a **legal or constructive obligation** that results in an entity having no realistic alternative to settling that obligation.

A **constructive obligation** is an obligation that derives from an entity's actions where:

- a. by an established pattern of past practice, published policies or a sufficiently specific current statement, the entity has indicated to other parties that it will accept certain responsibilities; and
- b. as a result, the entity has created a valid expectation on the part of those other parties that it will discharge those responsibilities.

A Case Study:

- An entity has set up a manufacturing unit in a remote

village, to make use of the incentives provided by the government on doing so. The employee force majorly consists of the residents of the nearby villages.

- The entity processes the smoke it emits during the manufacturing process, through its pollution control equipment mandated by the government. Also, to alleviate the concerns of the residents of the nearby villages the entity also has promised that the medical bills of anyone suffering from breathing related ailments or illness among them, will be borne by the entity. This particular decision of the entity with regard to reimburse the medical bills is not mandated by any law nor is there a legally binding agreement between the entity and the residents of the villages.
- The entity had made a public announcement to that effect and has actually come through by reimbursing the medical bills of the residents with such ailments.

-
- In this scenario, the entity has, through a public announcement of its policy and actions, has indicated that it will accept the responsibility of reimbursing the medical bills and this has created an expectation from the residents.
 - Thus, this becomes a constructive obligation for the entity and IAS 37 & Ind AS 37 mandates the entity to provide for such expenses i.e. in a particular period the entity manufactures goods and emits smoke, it also has to create a provision for reimbursement of medical bills to the residents which may come up in the future due to its operations in this period.

A constructive obligation can arise from an entity's past practise, published policies or sufficiently current statement that an entity will take on certain responsibility (even though it is not mandated to do so under any law or terms of any contract) and this has created a valid expectation on the part of other parties that it will discharge its responsibilities.

Note to Auditors:

The audit plan should contain a procedure on collating and verifying the list of such constructive obligations form the management. The following aspects should be part of such procedures:

- The completeness of the list of constructive obligations received from the management is to be verified.
- Independently collate all the constructive obligations of entity based on the entity's past practices, public announcements etc.
- Seek a representation the entity's legal representative about the constructive obligations of the entity.

Ensure that adequate provision is created as per the requirement of IAS 37 & Ind AS 37.

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TAX DEDUCTIONS ON GRATUITY PAYMENTS - BRIDGING THE GAP

Gratuity - an employer's obligation

The term 'gratuity' is derived from a French word '*gratuité*' meaning gift. While it etymologically means to be voluntary in nature, 'gratuity' has been a statutory affair in India since the introduction of the Payment of Gratuity Act, 1972 ('POGA').

Technically, employers (say, companies) have two options to comply with the aforesaid requirement -

- (i) A **funded gratuity plan**, wherein the company sets up a separate fund, trust or like arrangement for receiving gratuity funds, administering and disbursing the funds to employees at the instance of superannuation
- (ii) A **non-funded gratuity plan**, wherein the company by itself meets the gratuity expenses of



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employee at the instance of their superannuation and no separate arrangements are made.

Statistically, number of active companies in India crossed the mark of 1.62 million in October 2023¹. It is needless to say that a sizeable number of companies would be required to mandatorily comply with POGA. While the companies attend to its POGA compliance, is the claim of deduction under the provisions of Income-tax Act ('the IT Act') a cinch?

This article gives a snapshot of the challenges arising in the context of deductibility of gratuity payments.

Deductibility of gratuity payments under the IT Act:

- Section 30 to 37 of the IT Act allows deductions in respect of a variety of expenditure incurred in the course of business. Amongst others, Section 36(1)(v) of the IT Act allows deduction in respect contribution made by an employer towards an “approved” gratuity fund, which is set up by the employer for the exclusive benefit of their employees.
- Section 40A(7) of the IT Act, which overrides the other provisions of the Chapter IV - D. ‘Profits and gains from business or profession’, prohibits claim of deduction in respect of ‘provision for gratuity’ created by an employer, unless such provision is created for:
 - Payment towards an approved gratuity fund
 - Gratuity payable to an employee during the year

It is also clarified that the company-employer claiming deduction in respect of provision for gratuity created cannot once again claim deduction at the instance of actual payment out of such provision.

- Notwithstanding the above, section 43B(b) of the IT Act restricts the claim of deduction, otherwise claimable, in respect of sum payable by employer towards a gratuity fund, only on ‘actual payment’ basis.
- Section 37 of the IT Act allows deduction in respect of any expenditure which is not covered within the provisions of section 30 to 36 of the IT Act, subject to the other conditions (such as – revenue in nature, incurred for the purpose of business or profession etc.) being satisfied.

Prima facie, a combined reading of the above provisions would result in an interpretation that–

- **Only actual payment of contributions towards an ‘approved gratuity fund’ will be deductible as an expenditure** under section 36(1)(v) r.w.s. 40A(7) r.w.s. 43B(b) of the IT Act.
- The provisions created for contribution towards an approved fund, though not hit by section 40A(7), would be deductible on actual payment basis as per section 43B(b) of the IT Act.
- On the other hand, where the company-employer has a **non-funded gratuity plan, deduction can be claimed on actual payment to the employees under section 37 of the IT Act.**

As per section 2(5) of the IT Act, only those gratuity funds which are approved by the jurisdictional Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Chief Commissioner

/ Principal Commissioner / Commissioner in accordance with the 4th Schedule would be considered as an “Approved” gratuity fund. Often, **many employers do not perceive obtaining such approval to be a separate requirement under the IT Act, instead misunderstands it for any other regulatory approvals. We, as Chartered accountants, acting in the role of tax advisors, statutory / internal auditors of such companies, are certainly placed in a responsible position to highlight such requirements.**

Given the above, let us discuss a few specific challenges practically encountered -

Challenge 1: Whether contribution to group gratuity scheme of LIC is deductible?

The IT Act does not provide for any exceptions specifically for LIC gratuity schemes. Hence, contributions towards such LIC

schemes shall also pass the litmus test under section 36(1)(v), 40A(7) and 43B of the IT Act.

One may come across the following scenarios:

Scenario 1 – Company contributes to a group gratuity trust, which in turn contributes to LIC (scheme with LIC is in the name of group gratuity trust)

In this case, the company-employer can claim deduction in respect of gratuity contributed to the trust, provided such fund is an ‘approved’ gratuity fund for the purposes of the IT Act.

Scenario 2 – Companies directly pay to LIC on behalf of a group gratuity trust (scheme with LIC is in the name of group gratuity trust)

While only the payment channel is different, the tax position in scenario 1 equally applies.

At this juncture, it is relevant to quote the Hon’ble Apex Court ruling in the case of *Textool Co. Ltd. [2013] 35 taxmann.com 639 (SC)*, wherein the taxpayer made payment of gratuity to LIC directly without redirecting the payment through the ‘approved’ gratuity fund. The Court, adopting a purposive interpretation allowed deduction on the premise that it satisfied the real intention of the provision i.e., the employer should not have any control over the funds of the irrevocable trust created exclusively for the benefit of the employees.

Though the ‘approval’ of the gratuity fund established was not discussed in this ruling as an imperative condition for claiming deduction, such factual premise under which the ruling was delivered cannot be left unconsidered.

Scenario 3 – Company directly pay to LIC towards a scheme in its name

Only when the fund established with LIC is approved for the purposes of the IT Act, the company would be eligible to claim a deduction on contribution.

Challenge 2: Whether contribution to unapproved gratuity fund (where no application for approval has been made) is deductible?

At the outset, section 36(1)(v) of the IT Act allows deductions only in respect of 'approved' gratuity fund. Following the legal principle "*Generalia Specialibus Non Derogant*", contribution to a fund being covered under section 36(1)(v) of the IT Act (specific provision), cannot be deductible under section 37 of the IT Act (general provision). Such position has been confirmed by the *CBDT Circular No. 146 [F. No. 228/2/73-IT(A-II)], dated 26-9-1974*.

Challenge 3: Whether deduction can be claimed given the pendency of application for approval?

On a strict interpretation of law, only payments made to an 'approved' gratuity fund is allowed as a deduction. Albeit, practically, the disposal of applications by the jurisdictional Commissioners would consume atleast 6 months and could even take years together. In this context, the judiciaries have allowed deduction on the pendency of application on the following premise:

- Application has been filed within the time prescribed before the jurisdictional commissioner and hence, it is immaterial when such approval has been accorded, in as much as approval would relate back to the date of application of such approval. (*Calcutta HC - Continental commercial co. ltd. [1991] 192 ITR 66*)
- No rejection of application even after reasonable time period (*Rajasthan HC - Rajasthan State Seed Corporation Ltd. [2017] 88 taxmann.com 445*)

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- Employer does not have control over fund created by LIC for benefit of its employees and hence, the real intention of the provision is met (*Chennai ITAT - Narasu's Spinning Mills [2016] 66 taxmann.com 277*)

On the other hand, *Gujarat HC* in the case of *National Dairy Development Board [2022] 143 taxmann.com 282*, wherein the original approval got expired owing to a change in the terms of trust deed and application for approval of amended terms was filed with the jurisdictional officer, disallowed the gratuity payment.

Given the contradictory rulings, payment made towards gratuity fund pending approval is a risky affair for the employers, that could lead to unnecessary penal exposures.

Challenge 4: Whether gratuity payments made during the period in which approval was not effective is deductible?

In some circumstances, the jurisdictional commissioner may accord approval effective from a date later than the date of application / set up of fund. Say, for instance, a fund set up on 1st April 2023, applies for approval on 2nd April 2023, but was accorded approval with effect from 1st June 2023. The question arises as to the deductibility of gratuity payments made during the intervening period (i.e.. 1st April 2023 to 31st May 2023 in the above case).

Firstly, it is notable that the provisions of the IT Act does not provide any guidance on the effective date of approval for gratuity funds. Given that, a possible view exists that the jurisdictional commissioner is empowered to approve the gratuity fund with effect from a date at its discretion.

In this regard, it is interesting to note the ruling of *Prakash Software Solution (P.) Ltd. [2018] 89 taxmann.com 130*, wherein the

Ahmedabad ITAT unequivocally observes that the effective date of approval cannot be beyond the date of set up of such fund unless in a scenario where approval is sought for amendment in trust deed. In this case, even if the effective date of approval as stated in the Commissioner's order was later than the date of set up of fund, the ITAT deemed the effective date to be the date of set up and allowed deduction in respect of gratuity payments.

One may take recourse to the above ruling in the context of obtaining approval for a newly set up trust. While the judiciary has not touched upon the reasonable date within which application has to be made, the company employer shall be mindful of the same.

In this context, even if approval is accorded for a subsequent period,

reliance can be placed on the *Gujarat HC* ruling in the case of *Gujarat State Co-op. Marketing Federation Ltd.* [2021] 129 *taxmann.com* 53, wherein deduction was allowed in respect of gratuity payments made before the effective date of approval on the premise that the employer had no control of whatsoever on said fund, thus, situation for utilization of such fund by diverting to business of employer could not arise.

Challenge 5: Is a gratuity fund created by the group of sister concerns comply with the condition of 'exclusive benefit to employees'?

Practically, a group of sister concerns may together set up a single trust under which gratuity funds of all group companies can be managed. However, question arises as to whether such fund is for the 'exclusive benefit to employees'

given that the sister concerns' employees would also be beneficiaries.

In this regard, the *Chennai ITAT* in the case of *Stanmore (Anamallay) Estates Ltd. [1982] 1 ITD 519* upheld that the word "exclusive" in section 36(1)(v) does not qualify the 'beneficiaries' but only the 'benefit'. Hence, as long as the fund is created for the sole purpose of providing for gratuity benefits, deduction is to be granted.

Takeaway:

As an employer, the company shall ensure that a gratuity trust is set up and approved by the jurisdictional commissioner so as to claim deduction at the instance of contribution to such fund. Obviously, for practical reasons, an employer cannot wait until payment

is made to the employee for claiming deduction under the IT Act.

Now that the economy is widening, more employers could come within the lens of gratuity compliance. With the promise of the Indian Government to promote tax transparency and tax certainty as a part of Taxpayers' charter, the CBDT can ameliorate the situation, by imposing a deadline for disposal of pending applications (similar to section 12AA, 80G etc.) for fund approval, clarifying on the effective date of approval and deductibility of gratuity payments made during the intervening period when approval was not effective.

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ABOUT OURSELVES

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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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