



*GST Updates*



*Ind-AS*



*Excel Tips*



*Recent Judgements*



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**CASC BULLETIN**

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13.07.2023 (Thursday)	Recent amendments in Income Tax Act, 1961 in relation to charitable trusts	CA. Suraj Nahar
20.07.2023 (Thursday)	Recent Judicial Pronouncements in Income Tax	Adv. Hema Muralikrishnan*

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

\* Speaker yet to provide a confirmation regarding the date

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

## **The positive vibes around Indian Economy**

India is emerging as a dominant force in the global economic sphere with the vigor and speed hitherto unseen. IndiGo, the country's largest airline created history on Monday (June 19) by placing a mega aircraft order — for 500 Airbus A320neo family planes - at the Paris Air Show. This is the largest-ever order placed by an airline in one go (in terms of the number of aircrafts ordered) and trumps Air India's February order for 470 Airbus and Boeing aircraft.

The orders emanating from India for aircrafts indicate the buoyancy in the economy and the positive attitude of the industrial captains. These huge orders indicate the newer cities of the country will be air connected and related infrastructure growth augurs well for the economy in the coming decade. This will also curtail India's dependence on Gulf carriers for its outbound trips.

In the last decade, the Indian Government has effectively used

technology to deliver the services to its citizens. The PM, during his recent visit to US, met the tech giants of the world and it appears that many are keen to have an Indian foot hold.

Another good news is the India's admission into the Mineral Security Partnership (MSP), a US-led collaboration of 14 countries that aims to catalyse public and private investment in critical mineral supply chains globally. India's inclusion assumes significance given that one of the key elements of its growth strategy is powered by an ambitious shift in the mobility space through the conversion of a large part of public and private transport to electric vehicles.

Another significant news is the pausing of the repo rate hike by RBI indicating that the inflation will ease further. The RBI has also retained the expected growth rate of GDP at 6.5%. All these indicators create a reasonable expectation that India will once again be the fastest growing economy of the world in 2023 also.

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## **New Scheme of Education and Training by ICAI has been notified**

The Institute of Chartered Accountants of India (ICAI) has formulated the New Scheme of Education and Training in lines with International Education Standards and National Education Policy, 2020 (NEP) vide Gazette Notification dated 21.06.2023. The new scheme of education reduces the period of articleship training to 2 years. Further, the articleship can commence only after completion of both groups of CA Intermediate examination. The impact of the reduction in training period will be significant for the students as well as to the practicing professionals. It must be noted that under the draft regulations notified in 2022, amendments were proposed to the regulations relating to eligibility for applying for a certificate of practice whereas in the notification issued on 21.06.2023, those proposed amendments do not find a place at all.


### **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](mailto: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](mailto:admin@casconline.org).

Let me conclude wishing my fellow professional brethren a happy tax season.

For and on behalf of the Editorial Board



**Sricharan R**

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### ANNOUNCEMENTS

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

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## RECENT JUDGMENTS IN VAT / CST / GST

**Defreezing of Bank account:** Bank account of the petitioner has been frozen on 06.04.2022 for non-payment of Rs.16,35,917/-. According to the Writ Petitioner, they were never put on any notice about any proceedings or impugned notice and for the first time, the petitioner came to know about the same only when their bank account was frozen. Respondents submitted that notice has been issued on 08.03.2022 and only thereafter, further proceedings were taken to freeze the bank account. However, the petitioner vehemently denied the receipt of any such notice. While so, the learned counsel for respondents would fairly admit that the said notice appears to have been returned. Considering the above facts and circumstances, this Court directed that it would be fair and equitable to give one more opportunity to the Writ Petitioner subject to being put on terms. Accordingly, this Writ Petition is allowed on condition that the



**CA. V.V. SAMPATHKUMAR**

petitioner shall pay a sum of Rs.6,00,000/- within a period of six weeks from the date of receipt of copy of this order. On such payment, the respondents shall ensure that the bank account of Writ Petitioner with Indian Overseas Bank, Saidapet Branch, Chennai shall be defrozen with immediate effect. Thereafter, it is needless to state that fresh enquiry shall be conducted by the 1st respondent and the petitioner shall be given opportunity of his personal appearance and also for providing documentary and oral evidence in respect of the alleged arrears due. **M/s.Srikals Graphics Private Ltd., Vs. 1. The Assistant Commissioner (ST), Chepauk**

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**Assessment Circle, Integrated Commercial Taxes and Registration Department Building, Chennai-35..**  
**2. The Manager, Indian Overseas Bank, Saidapet, Chennai-15.**  
**W.P.No.15320 of 2023 DATED:**  
**11.05.2023**

**Cancellation of registration and its Revocation:** It is submitted by the learned counsel for the petitioner that due to health issues, the GST monthly returns were not filed continuously for a period of three months. Subsequently, the monthly returns until March, 2021 were filed belatedly. Due to the above reasons, the petitioner was not able to file an appeal in time as stipulated under the Tamil Nadu Goods and Service Tax Act, 2017 against the cancellation of the registration. In identical circumstances, this Court, in the case of *Tvl.Suguna Cutpiece vs. Appellate Deputy Commissioner (ST) (GST) and others* reported in 2022 (2) TMI 933, issued certain directions ( para 229) as to filing of pending returns, making payments, and eligibility

of ITC., etc and granted opportunity to revoke the cancellation of GST registration. **Tvl.Sri Sastha Canteen, Vs. 1.The Commissioner of GST & Central Excise, Madurai-2.**  
**2. The Superintendent, Thirupparankundram Range, Madurai-2. W.P.(MD) No.7300 of 2023 DATED : 10.04.2023**

**Purchases and sales - Mismatch:** The Impugned orders dated 02.01.2023 for the periods 2012–2013 to 2015–2016 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 are set aside and remitted back since the officer has not supplied the details on the basis of which he has drawn the inference that there is mis-match in returns filed by the petitioner with the third party returns and not followed the procedure in the cases of Mis-Match set out in Circular No. 5 of 2021 dated 24.02.2021. **Tvl.Abhivairavans Plumbing Co., Vs The Assistant Commissioner (ST),Kodambakkam Assessment Circle,Chennai-6.**  
**W.P.Nos. 9276 etc., of 2023 DATED:**  
**03.04.2023**

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**No infirmity of Writ petition order :**

The appellant submits that the order impugned in the writ petition is a cryptic order and does not contain sufficient reasons warranting detention. Consequently, he states that interference is warranted by this Court. The Writ Court took note of the fact that the order impugned herein is subject to a statutory appeal under Section 107 of the CGST Act and also noticed that Section 129 of the CGST Act enables the appellant to seek provisional release of goods subject to fulfilment of conditions specified therein. The appellant has completely failed to establish that there is any infirmity in the impugned order warranting interference by this Hon'ble Court. Stating so, the Writ Appeal is dismissed by affirming the order passed by the Writ Court. As a corollary, it is open to the appellant to approach the appellate authority under the CGST Act within a period of ten(10) days from the date of receipt of a copy of this order and it

was also made open to the appellant to file an appropriate application u/s 129 of the CGST Act before the second respondent for provisional release. **Trichy Royal Steels, Vs 1. The Deputy State Tax Officer, Roving Squad -3, Salem, 2. The State Tax Officer, Adjudication-2, Salem (Intelligence) Salem Writ Appeal No.1106 of 2023 Dated: 17.05.2023**

**Goods Detention :** It appears that the respondents have detained the goods on the ground that the supplier, from whom the petitioner has purchased the goods, had wrongly passed on the Input Tax Credit and thereby entailing the petitioner to avail and utilize the same for discharging tax liability on the supplies made by the supplier. The respondents submit that as long as an appeal is said to be pending before the appellate authority, the respondents cannot release the goods and therefore, the petitioner will have to mandatorily approach the

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appellate authority, before whom the appeal is pending. Mandatory pre-deposit was made so that the interest of the revenue can be safeguarded as the appeal would take longer time for final disposal. Although the Officer who detained the goods has become functus officio, once there is a mandatory pre-deposit, the order has no force and all further recovery proceedings will be subject to the final outcome of the appeal. Therefore, to balance the interest of the revenue and the petitioner, the Court is of the view that there can be a direction to the petitioner to deposit the maximum penalty of 200% of the tax to safeguard the interest of the revenue. The petitioner is directed to pre-deposit 200% of the maximum penalty after adjusting the amount already deposited. In the alternative, the petitioner can be directed to furnish Bank Guarantee in terms of Section 129(c) of the respective GST enactments and the Rules made thereunder. On furnishing Bank

Guarantee for the balance amount of penalty or payment of the same in cash, the goods shall be released forthwith. **Haresh Kumar, Proprietor, Mahalaxmi Metal Company, Vs. 1.The Assistant Commissioner (ST), Adjudication, Coimbatore-641 108. 2.The Deputy Commissioner of ST (Appeals),Coimbatore-641 108. W.P.No.14628 of 2023 DATED : 05.05.2023**

**Circular:** Paragraph 6(b) of Circular No.12/2022 dated 26.09.2022 reads as below:

“Grant of reasonable time to file reply and dealing with adjournments: The person to whom show cause notice is issued should be given sufficient and reasonable time, to prepare their reply. What is reasonable time depend on the facts and circumstances of each case, however, giving too short time for compliance of a notice will amount to denial of reasonable opportunity. Therefore, the show cause notice shall be issued

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granting a minimum of 15 days' time or such time, as prescribed in the provisions of the Act, to file reply. Further extension of time/ adjournment shall be granted by the Assessing / Adjudicating Officer, on case to case basis, according to the facts and circumstances of the case and duly recording the reasons thereof. Where the Assessing/ Adjudicating Authorities refuses any adjournment, such decision shall be exercised with sound reason and not in an arbitrary or capricious manner. Further, the communication of granting time or refusal to grant time shall also be sent to the assessee." The impugned orders do not discuss the reasons for extension of time at all, leave alone giving its finding either granting or refusing the adjournment. In such circumstances, the Court held that it is clear that there is a clear violation of the circular of the respondent themselves and it would be just and proper that the petitioner is afforded a fair opportunity to submit its explanation

in respect of three pending queries within a reasonable time and thereupon, the respondent may pass fresh orders considering the entire explanation submitted by the petitioner, including the earlier explanations submitted by it. Stating so, the impugned orders dated 10.02.2023 were set aside and the respondent is at liberty to fix a date for enquiry, giving a minimum of 30 days- time to enable the petitioner to submit its explanation with regard to the three pending queries or any further explanation that may be required by the respondent and thereupon, pass final orders, on merits, after affording personal hearing to the petitioner. **Exide Industries Limited V The Deputy Commissioner (CT), LTU -I, South Tower, Nandanam W.P.Nos.15405 and 15406 of 2023 DATED: 11.05.2023**

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

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## CASE LAWS - SERVICE TAX AND GST

### 1. 1. ST – SEZ – SUPPLY FROM DTA UNIT – DEPARTMENT’S CONTENTION TO PAY TAX FIRST AND THEN CLAIM REFUND – NOT SUSTAINABLE



**CA. VIJAY ANAND**

In Eclerx Services Ltd. v. CCGST & CE, Navi Mumbai 2023 (72) GSTL 99/4 Centax 89 (Tri.-Mumbai), the adjudicating authority rejected the claim of ab initio exemption on the appellant’s services to SEZ units against which appeals were filed the Tribunal which observed as under:-

1. The issue to be decided is whether the notifications relied upon by the adjudicating authority can invalidate exemption accorded under the SEZ Act.
2. It is on record that the required documentation was not available

for the entire period of the dispute but, at the same time, it cannot be denied that at some point, the eligibility did exist. The procedural infirmities, for a shorter or longer time, does not in any way supplant the exemption accorded to the impugned supply of services.

3. Furthermore, the findings of the adjudicating authority do not arrive at a conclusion that, but for the said procedural infirmities, the eligibility of the appellant to render such services without payment of tax was in question.

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4. In the light of, the overriding nature of the exemption afforded by section 26 of Special Economic Zones Act, 2005 and the breach of conditions being procedural, the demand for setting aside the demand pertaining to the rendering of services to SEZ units cannot sustain.
  5. The next issue concerns the finding that the services had been rendered in India and consumed in India.
  6. Section 51 of Special Economic Zones Act, 2005, have to be read in the context of the exemption afforded by section 26 of Special Economic Zones Act, 2005 and not in terms of Finance Act, 1994. Hence, the prism through which the adjudicatory perception has been enunciated does not apply to the facts of the service rendered by the appellant consequent to which the demand

for allegedly rendering of services within India does not sustain.

Hence, the appeal was allowed and the impugned order set aside.

2. **ST- LIQUIDATED DAMAGES/ COMPENSATION CHARGES – NON-SATISFACTION OF MINIMUM GUARANTEED TONNAGE (MGT) – NOT TAXABLE UNDER SERVICE TAX**

In Krishnaptnam Port Co. Ltd. v. CCEX & ST., Guntur 2023 (72) GSTL 259/4 Centax 105 (Tri.-Hyd.), the appellant is engaged in rendering 'Port Services' to importers and exporters and *vide* Agreement dated 12-7-2011, entered into a contract with M/s. Simhapuri Energy (P) Ltd. (hereinafter referred to as the 'service recipient') wherein the service recipient agreed to import a specified quantity of

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coal in a specified period of time and the Appellant agreed to render 'port services' for the same for a consideration. The said Agreement also provides for payment of penalty/liquidated damages/'compensation charges' of Rs. 100/MT by the services recipient in the event of failure to achieve the 'Minimum Guaranteed Tonnage' [hereinafter referred to as MGT].

The adjudicating authority confirmed the demand on the liquidated damages/'compensation charges' received by the Appellant towards the breach and non-compliance of 'MGT' as per Agreement dated 12.7.2011 holding that the same are 'consideration' for "declared service" as contemplated under section 66E(e) of Finance Act, 1994 for the purpose of charging Service Tax. On appeal, the tribunal observed as under:

1. The penalty clause is provided in the impugned Agreement to safeguard the commercial interest of the Appellant - (1) to compensate the Appellant for financial damage/injury in case of failure to achieve the MGT and also (2) to discourage the service recipient from repeatedly breaching the terms and conditions of the Agreement dated 12.7.2011 and the penal clause is invoked only in cases where the service recipient does not adhere to the contractual condition of 'MGT' as per Agreement dated 12.7.2011.
2. The basic element to charge Service Tax is the element of service *i.e.* there should be an activity in the form of 'service' or 'declared service'. However, in the instant case, the said amount has not been collected towards any activity liable for Service Tax but as compensation/penalty for breach of terms and conditions of

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the contract [Agreement dated 12.7.2011] i.e. non-compliance of 'MGT'. Thus, such 'compensation charges' are not covered within the definition of taxable service under the Finance Act, 1994 and hence not liable for Service Tax.

3. The parties entered into the said Agreement dated 12.7.2011 for import of a specified quantity of coal and for availing various port services for the same and not for flouting the terms of the agreement so that the penal clauses were the reason for the execution of the Agreement dated 12.7.2011 for an agreed consideration. It is only in situations where the condition of 'MGT' is not satisfied by the service recipient, the Appellant's claim for penalty/compensation/liquidated damages as contemplated in Agreement dated 12.7.2011 arises so as to make good the financial
4. damages/injuries arising from such non-fulfillment of 'MGT' and does not emanate from any obligation on the part of the Appellant to tolerate an act or a situation' of the defaulting party and cannot be considered to be a payment for any service.
4. Reliance in this regard is placed on the recent decision of the Tribunal in the case of *M/s.South Eastern Coalfields Ltd. v. CCE & ST, Raipur* [2020 (12) TMI 912]/ [2021] 124taxmann.com 174/2021 (55)G.S.T.L. 549 (Tri. - Delhi).
5. The term service is defined to mean any activity carried out by a person for another for consideration. The recovery of liquidated damages/penalty from the other party in the instant case cannot be said to be towards any service per se, as the Appellant did not carry on any activity to receive the 'compensation charges'. Hence,

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scope of levy of Service Tax cannot be extended to apply to situations where the actual activity was non-existent.

6. The activities that are contemplated under section 66E(e) are activities where the agreement specifically refers to any of the activities mentioned in Para 6 above and there is a flow of consideration for such activity. Thus, a service conceived in an agreement where one person, for a consideration, agrees to an obligation to refrain from or tolerate or do an act, would be a 'declared service' under section 66E(e). Any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable.
7. In other words, the amount charged has to be necessarily a consideration for the taxable service provided under the

Finance Act. In the instant case, the compensation received for making good the financial damages/injury cannot be said to be 'consideration' at all and has no nexus with any taxable service, relying on the decision in the case of *M/s.K.N.Food Industries Pvt. Ltd. v. Commissioner of CGST & Central Excise, Kanpur* [2019-VII-731-CESTAT-ALH-ST] = 2020 (38) G.S.T.L. 60 (Tri. - All.).

8. A service recipient may be required to fulfill certain conditions contained in the contract but that would not necessarily mean that this value would form part of the value of taxable services that are provided. Hence, payment of the impugned 'compensation charges' in the present case merely amounts to fulfillment of the condition envisaged in the Agreement dated 12-7-2011 and not consideration for the said contract [Agreement dated 12-7-2011].

- 
9. The issue of leviability of Service tax on penalty, liquidated damages, compensation, forfeiture amounts, cancellation charges etc. stands settled by various pronouncements wherein it has consistently been held that the said amounts recovered as charges for breach or non-compliance of contractual terms and conditions cannot be construed as 'consideration' for 'refraining or tolerating an act' and were thus not leviable on Service Tax in terms of Section 66E(e) of the Finance Act, 1994 which are mentioned as under:-
- a. *M/s. K.N.Food Industries Pvt. Ltd. v. Commissioner of CGST & Central Excise, Kanpur*[2019-VIL-731-CESTAT-ALH-ST]
- b. *M/s. Monnet Ispat & Energy Ltd. v. CCE & ST, Raipur* [2018 (9) TMI 1514]
- c. *M/s. Lemon Tree Hotels v. Commissioner, GST, Central Excise & Customs 2020* (34)G.S.T.L. 220 (Tri. - Delhi)/[2021] 127 taxmann.com 247 (New Delhi - CESTAT) [2019 (7)TMI 676]
- d. In *M/s. South Eastern Coalfields Ltd. v. CCE & ST, Raipur*
- e. *Commissioner of Service Tax v. M/s. Bhayana Builders (P.) Ltd.* [2018 (2) TMI1325]/[2018] 91 taxmann.com 109/2018 (10) GSTL 118/[2018] 66 GST 320
- f. *Union of India v. International Consultants and Technocrats* [2018 (10) GSTL 401(SC)]
- g. *M/s.M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. v. Principal Commissioner CGST and CE, Bhopal* [2021 (2) TMI 821]/2021 (46) G.S.T.L. 409 (Tri. - Delhi),
- Hence, the appeal was allowed and the impugned order set aside.

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**3. GST - ADVANCE RULING - CATERING SERVICES PROVIDED TO EDUCATIONAL INSTITUTIONS - PROVIDING EDUCATION FROM STANDARD ONE TO PUC - EXEMPT**

In RE: Sri Annapurneshwari Enterprises 2023 (72) GSTL 269/4 Centax 87 (AAR-GST-Kar.) , the applicant is carrying on the business of hotel and they are supplying ready to eat breakfast, lunch to the KLE Independent PU College, Bengaluru for which they are billing the college directly.

An application was filed seeking advance ruling as to Whether providing catering services to Educational Institutions from 1st standard to 2nd PUC is taxable or not according to Notification No. 12/2017-Central Tax Rate - under Heading 9992.

The authority observed as under:

1. Entry No. 66 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 exempts services provided by way of catering to an educational institution, which is providing services by way of pre-school education and education up to higher secondary school.
2. In view of the fact that the Applicant is providing ready to eat food by way of catering to a Pre University College, the services provided by the applicant is also covered under entry No. 66 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended further and hence exempted from GST.

Hence, the authority held that providing catering services to Educational Institution from 1st standard to 2nd PUC is exempted as per entry No. 66 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended further.

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**4. ST - PROFIT SHARING -  
RUNNING AND OPERATING  
BY CASINO - NOT LIABLE**

In CCE & ST.,Goa v. Goa Golf Club Pvt. Ltd. 2023 (72) GSTL 523/(2023) 4 Centax 306 (Tri.-Mumbai), an SCN was issued to the assessee M/s. Goa Golf Club Private Limited, Goa (GGCPL) on the ground that M/s GGCPL is operating and running the casino on behalf of the said joint venture and have thus provided 'Business Auxiliary Service' as per Section 65 (19) (vi) of the Finance Act, 1994 read with Section 65 (105) (zzb) of the Finance Act, 1994 to the business of the joint venture entity. This SCN was dropped on the ground that the profit is shared between the members of the Joint Venture as per the Joint Venture Agreement and there is no Service Provider and Service Receiver existing separately consequent to which the amount

shared as per the joint venture agreement cannot be considered as consideration for providing any taxable service. On departmental appeal, the Tribunal observed as under:

1. A perusal of the aforesaid joint venture agreement indicates that out of the net collections from the clients (after deducting the winning amounts), these are settled, by paying 55% to M/s GGCPL and 45% to M/s. Britto Amusement Private Limited, Mumbai.
2. The adjudicating authority, has found that the service provided by the member to the Joint Venture is liable to service tax only when the member provides some service to the Joint Venture and receives some consideration for this service separately. He had found that there is no such agreement between the Joint Venture and the members

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(noticee) to provide any service to the Joint Venture and no separate payment also made by the Joint Venture to the noticee. The only payment received is the rate of 55% share of the profit as per the Joint Venture agreement.

3. Upon analysis and scrutiny of the joint venture agreement, including the terms and conditions mentioned therein, the adjudicating authority by relying on the circular No. 109/03/2009 dated 23/02/2009 issued by CBIC, had held that there is no relationship of service provider or service receiver between the parties to joint venture agreement and there is no consideration received by either side for the claim of rendering certain service. In conclusion, he had dropped the demand of service tax raised in respect of "Business Auxiliary Service".

4. This precise issue of retaining certain amount by a hospital towards the necessary infrastructure facilities provided by it to the doctors who render medical services, for which the patients are charged as fees, and the total fees paid are settled between the hospital and doctors at the ratio of 22:78 had come up for consideration earlier before two benches of the Tribunal in the case of Sir Ganga Ram Hospital and Ors. v. CCE, Delhi- I 2018 (11) G.S.T.L. 427/[2018] 94 taxmann.com 226 (New Delhi - CESTAT) Commissioner of Service Tax, New Delhi 2020 (11) TMI 536- CESTAT New Delhi = 2020 (43) G.S.T.L. 390 (Tri. - Delhi) wherein it was held that this arrangement was for joint benefit of both the parties with shared obligations, responsibilities and benefits and, therefore, no service was provided by the hospital to the doctors.

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5. On a perusal of the impugned order passed by the adjudicating authority, the demand of service tax for which show cause notice dated 17/4/2014 was issued to the respondent relate to taxable service provided or to be provided, to a client by any person in relation to 'business auxiliary service' under section 65(105) (zzb) of the Finance Act, 1994. From the legal provisions on taxable service relevant to this case, joint venture agreement, the clarification issued by CBIC and the various decisions cited on the issue as discussed above, it transpires that there is no involvement of two persons, to execute the terms of agreement; one is to be considered as service provider and other to be service receiver.
6. The adjudicating authority, upon analysis and scrutiny of the joint

venture agreement, including the terms and conditions mentioned therein, and by relying on the circular No. 109/03/2009 dated 23/02/2009 issued by CBIC, had held that there is no relationship of service provider or service receiver, between the parties to joint venture agreement and there is no consideration received by either side for the claim of rendering certain service. He has further held that the agreement specifically provides that the profit/loss arising out of the business should be shared by both sides.

Hence, the departmental appeal was rejected and the impugned order was upheld.

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## RECENT CASE LAWS AND NOTIFICATIONS IN INSOLVENCY AND BANKRUPTCY CODE

### NCLT

1. Whether CIRP u/s 9 of IBC can be initiated against an arbitration award against which an appeal under Section 37 of Arbitration and Conciliation Act, 1996 is pending before High Court? – *Masyc Projects Pvt. Ltd. Vs. Hiranmaye Energy Ltd.* – NCLT Kolkata Bench

In this case the AA relied on *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, on the pre-existing dispute amongst other points. In view of the law laid down by the Hon'ble Supreme Court of India, it is very clear that we are not here to determine the merits of the dispute. The AA discerned that the facts of the instant case are the exact replica and identical to the cases relied upon. Therefore, sans further probe in



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**RAMYA A & GAJENDRAN RAVI**, Advocates

the mechanics of the dispute, we infer that there is a pre-existing dispute between the Operational Creditor and the Corporate Debtor, which is not feeble in terms of the cited case.

2. The monies held by Bank as margin towards the live bank guarantee reverts to Corporate Debtor only in case where the corresponding Bank Guarantee has expired and in no other case – *Dhiren Shantilal Shah Vs. Indian Bank* – NCLT Mumbai Bench

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The Adjudicating Authority held that it is not the case of the applicant that the bank guarantee(s), against which the respondent bank is holding fixed deposits as margin money, are not live. The Adjudicating Authority notices that the Hon'ble NCLAT in the case of *Indian Overseas Bank Vs. Arvind Kumar* has categorically held that the monies held as margin towards the live bank guarantee reverts to the Corporate Debtor only in case where the corresponding Bank Guarantee has expired and in no other case. Further, it is settled legal proposition that the bank guarantee(s) do not expire with the commencement of moratorium in case of corporate debtor.

**3. In order to club other charges such as interest, legal charges, balance cost of amortization and/or notice period rent with**

**principal amount to meet threshold limit u/s 4 of IBC express stipulation has to be incorporated specifically in the agreement, the purchase order or the invoice and in the absence of the same, neither interest nor any other charges can be clubbed with the principal amount – *North West Carrying Company, LLP Vs. Metro Cash and Carry India Pvt. Ltd. – NCLT Bengaluru Bench***

In this Section 9 application, the petitioner has clubbed, principal amount of Rs. 12,46,204/-, interest upto 28 Feb 2022 of Rs. 1,13,80,361/-, Legal charge of Rs. 21,49,925/-, Balance cost of Amortization of Rs. 1,77,727 and Notice Period Rent of Rs. 14,17,582/- to arrive at the total amount of Rs. 1,63,71,799/-. The Adjudicating Authority held that in order to club other charges with the principal

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amount express stipulation has to be incorporated specifically in the agreement, the purchase order or the invoice and in the absence of the same, neither interest nor any other charges can be clubbed with the principal amount. Therefore, this Tribunal observes that the threshold limit stipulated under section 4 of the Code is not met in this case.

**4. The trigger point of Section 29A of IBC is the date when Resolution Plan was actually submitted by Resolution Applicant to CoC – *Navayuga Engineering Company Ltd. Vs. Mr. Umesh Garg, RP of Athena Demwe Power Ltd. – NCLT New Delhi Bench Court-II***

The Adjudicating Authority held that in view of the Judgement of the Hon'ble Apex Court in *Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors.*, it can be inferred that the

amendment in Section 29(A)(c) i.e., "at the time of submission of the resolution plan" was clarificatory in nature. Hence, the trigger point of Section 29A is the date when the Resolution Plan was actually submitted by the Resolution Applicant to the CoC. In view of the above and therefore, the date of transfer of shares by the Applicant/NECL in Regina (RIPL) during the period when Section 29A of IBC, 2016 was not notified, will/ does not create an escape route for the Applicant, since the date on which the Resolution plan was actually submitted by the Applicant/NECL to the CoC i.e., on 04.06.2018, the Section 29A of IBC, 2016 was in force.

**5. The proviso to Section 31(1) of IBC does not allow the NCLT to approve a Conditional Resolution Plan – *Balady Shekar Shetty RP for Avvas Infotech Pvt. Ltd. – NCLT Bengaluru Bench***

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The Adjudicating Authority held that the Resolution Plan in question is uncertain and conditional and thus the plan cannot be effectively implemented. Therefore, this kind of uncertain amounts provided under the plan cannot be approved under the provisions of the Code. In terms of the amounts provided under the plan, the payments cannot be made conditional. In spite of specific opportunity granted to the Resolution Applicant during the hearing as discussed above to cite any precedence for similar type of situations in the Resolution Plan for the Non-monetary value of attached collateral security mentioned in the relevant columns of Form H, the Applicant could not furnish the same. It is settled law, that conditional Resolution Plans cannot be approved under the Code and such Resolution Plans would diminish the objective

for which the Code was enacted. If at all, this plan is approved it cannot be effectively implemented. The Proviso to Section 31(1) of the Code does not permit us to approve such conditional Resolution Plan.

**6. Whether service of Demand Notice u/s 8 of IBC to official email id of Corporate Debtor available on MCA portal which is not the email address of Whole-Time Director/Key Managerial Personnel is valid or not? – *DHL Supply Chain India Pvt. Ltd. Vs. Eicher Motors Ltd. – NCLT New Delhi Bench Court-II***

In this case, the Respondent stated that the Demand Notice is not served upon the Corporate Debtor at the registered office by hand, registered post, or speed post with acknowledgment due or by electronic mail service to a

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whole-time director or designated partner or key managerial personnel. It is served via official email which is not the email address of a key managerial personnel. The Adjudicating Authority held that no illegality or deficiency in the service of the Demand Notice, which has been duly served through the E-mail addressed to the Corporate Debtor with "Attention to its Managing Director", who is a "Key Managerial Personnel" of the Corporate Debtor. Hence, we would like to proceed ahead in examining the application on its merits.

**7. The delay caused by the Operational Creditor in presenting the cheque for collection cannot be exempted from computation of period of limitation – *Jindal Stainless Ltd. Vs. Zenith Strips Ltd.* – *NCLT Mumbai Bench***

The Adjudicating Authority held that let us assume for argument's sake without admitting that both the above cheques are true and genuine, yet one of the cheques was returned on 06.08.2016 and the above Company Petition being filed on 09.08.2019, is clearly barred in respect of that particular cheque. Even otherwise it is incorrect to say that the limitation would begin to run from the date of dishonour of cheques since the limitation would begin to run from the date of issue of the cheques and not from the date of return of the cheques as contended by the Operational Creditor. The above analogy holds good only for initiating proceedings against Corporate Debtor under Section 138 of Negotiable Instrument Act and not in recovery proceedings or initiating proceedings under the IBC Code. The delay caused by

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the Operational Creditor in presenting the cheque for collection cannot be exempted from computation of period of limitation since no person is entitled to take advantage of his own wrong as per the settled position of law.

**8. Whether Earnest Money Deposit(EMD) paid by Operational Creditor against tender for services would amount to an “Operational Debt” within the meaning of the IBC, 2016? – *Supreme Transport Organisation Pvt. Ltd. Vs. Maharashtra Airport Development Company Ltd. – NCLT Mumbai Bench***

The Adjudicating Authority held that it is very clear from the plain reading of the definition of “Operational Debt” under Section 5(21) of the Code that the EMD deposited by an Operational Creditor is not

included anywhere in the above definition and therefore the amount claimed by the Petitioner being the EMD does not fall within the definition of “operational debt”. The learned Senior PCA appearing for the Operational Creditor tried to convince this Tribunal that it is an advance paid by the Operational Creditor for securing the services by Corporate Debtor and therefore would amount to an “operational debt”. However, this Tribunal is unable to accept the above submission in the absence of any authoritative pronouncement.

**NCLAT**

**9. An arbitration proceedings and insolvency proceedings cannot go on together – *M/s. KK Ropeways Ltd. Vs. M/s. Billion Smiles Hospitality Pvt. Ltd. – NCLAT Chennai***

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NCLAT held that a dispute in existence means and includes raising a dispute before a Court of law or an Arbitral Tribunal, before receipt of Notice under Section 8 of the IBC, 2016. Further, dispute continues at stage where challenge to an Arbitral Award in an appeal is projected by a party, as opined by this Tribunal. So long as a dispute truly exists in fact and it is not spurious or an imaginary and not a hypothetical one an Adjudicating Authority/ Tribunal is to reject the Petition / Application filed under the I & B Code, 2016. It is to be remembered, that an Arbitration Proceedings and I & B Code Proceedings cannot go on together in the considered opinion of this Tribunal.

**10. Whether a Resolution Professional can keep a claim in abeyance on the basis that Arbitration Proceedings are**

**pending, wherein, the counterclaim of the Corporate Debtor is pending for determination – *Anheuser Busch Inbev India Ltd. Vs. Mr. Pradeep Kumar Sravanam RP East Godavari Breweries Pvt. Ltd. – NCLAT Chennai***

In this case, the Appellant is a Financial Creditor who furnished its claim before the Resolution Professional and the same was kept in abeyance by the Resolution Professional, on the basis that Arbitration Proceedings are pending, wherein, the counterclaim of the Corporate Debtor is pending determination. NCLAT held that in the instant case, the very fact that the Appellant's claim cannot be admitted till the counterclaim of the Corporate Debtor is determined which may end in set off of the sum payable to the Appellant / Petitioner, the plea of the Resolution Professional cannot

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be brushed aside and in an emergency and also when a situation arises, the Resolution Professional is within his power and limit to keep the claims in abeyance for plurality of reasons.

**11. Whether an Asset Reconstruction Company (ARC) is required prior approval of RBI for participating as a Resolution Co-Applicant under the IBC – *Puissant Towers India Pvt. Ltd. Vs. Neueon Towers Ltd. – NCLAT Chennai***

In this case, the Adjudicating Authority held that M/s Invent Assets Securitisation & Reconstruction Pvt. Ltd. cannot submit resolution plan as co-Applicant along with M/s Longview Resources (HK) Ltd. Hong Kong, without the prior approval of RBI under Section 10(2) of SARFAESI Act.

NCLAT held that : (i) it is significant to mention that Section 238 of the Code, will prevail over any of the provisions of the SARFAESI Act, 2002, if it is inconsistent with any of the Provisions of the Code, 2016 and therefore the Adjudicating Authority ought not to have placed reliance on Section 10(2) of the SARFAESI Act, 2002. (ii) Keeping in view, the clarification given by the Counsel for RBI that the prior permission is not required, this Tribunal is of the considered view that the Adjudicating Authority ought not to have rejected the Resolution Plan, more so, when the principal objective of the Code is that 'revival of the Corporate Debtor and Resolution'. Liquidation ought to be the last resort, keeping in view the scope and spirit of the Code.

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- 12. NCLAT is not vested with any power to review the judgment, however, in exercise of its inherent jurisdiction NCLAT can entertain an application for recall of judgment on sufficient grounds – *Union Bank of India (Erstwhile Corporation Bank) Vs. Dinkar T. Venkatasubramanian & Ors. – NCLAT New Delhi***

NCLAT held that the three-member bench judgment in *Agarwal Coal Corporation Pvt. Ltd. and K.L.J Resources Ltd. & Anr.* observing that the Tribunal does not have power to recall cannot be approved. The three-member bench judgments of this Tribunal insofar as observation that this Tribunal has no power to review, no exception can be taken to that part of the judgment. The Appellate Tribunal however held that the judgment laying down that this Tribunal has no

power to recall the judgment does not lay down correct law. It is also held that this Tribunal is not vested with any power to review the judgment, however, in exercise of its inherent jurisdiction this Tribunal can entertain an application for recall of judgment on sufficient grounds.

- 13. There should be a direct disbursal of the amount owed, Financial Creditor to the Corporate Debtor for the amount to be construed as a ‘Financial Debt’, the transaction should be a direct transaction between the Financial Creditor and the Corporate Debtor -- *NCLAT Chennai***
- 14. Filing of a claim under a wrong category cannot be a substantial ground for condoning the delay – *Mr. Toral Rathod Vs. Mr. Gopalsamy Ganesh Babu (RP of Milan Textile Enterprises Pvt. Ltd.) – NCLAT Chennai***

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NCLAT held that the ground taken by the Counsel for the Appellant that it was initially filed under Form-B as an Operational Creditor which was rejected, and thereafter the Appellant had resubmitted her Claim under Form-C on 07.08.2022, does not strengthen or substantiate her case as the timelines given under IBC are to be strictly adhered to and any latches on behalf of the Appellant in filing, the claim under a wrong category cannot be a substantial ground for condoning the delay. It is also significant to mention that the Appellant approached the Adjudicating Authority with a further delay of 100 days, and the only reason that was given is that they were seeking legal advise, which the Adjudicating Authority has rightly held is only a bald explanation and does not construe a sufficient cause for the delay.

**15. The Financial Creditor gets rights for filing an application under Section 7 of the IBC when the right to apply against default accrues and for every default there is a fresh period of limitation – *Indiabulls Housing Finance Ltd. Vs. Revital Realty Pvt. Ltd. – NCLAT New Delhi***

NCLAT held that (i) The Financial Creditor gets rights for filing an Application under Section 7 of the IBC when the right to apply against default accrues and for every default there is a fresh period of limitation (ii) It is not necessary for the Appellant to file an application under Section 7 of the Code, on the happening of first default of amount due and it is discretion of the Financial Creditor to decide filing an Application under Section 7 as per the facts and his legal rights (iii) It is also settled law that

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every subsequent default gives fresh right and counting of limitation period.

**16. Whether copy of Resolution Plan, which has been approved by the CoC but awaits the approval of Adjudicating authority, can be given to a party who is neither a Claimant nor a Creditor or a participant? – *Rupinder Singh Gill Vs. Three C Universal Developers Pvt. Ltd. Through RP Rakesh Kumar Gupta – NCLAT New Delhi***

The issue involved in this case is as to whether copy of the Resolution Plan, which has been approved by the CoC but awaits the approval of the Adjudicating authority, can be given to the Appellant who is neither a Claimant, nor a Creditor or a participant? The

other question also arises in this case as to whether there is any provision in the Code for the purpose of giving a copy of the Resolution Plan to the Appellant who is neither a Claimant, nor a Creditor or a participant, even before the approval of Resolution Plan by the Adjudicating Authority?

The NCLAT held that the answer to this question is no more *res integra* as it has already been answered in *Association of aggrieved Workmen of Jet Airways (India) Ltd. Vs. Jet Airways (India) Ltd.* and by the Hon'ble Supreme Court in the case of *Vijay Kumar Jain Vs. Standard Chartered Bank & Ors.* Neither of the judgments, cited at the instance of the Appellant, either of this Tribunal or the Hon'ble Supreme Court has held that the copy of the Resolution Plan,

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which is still in the process of approval or rejection by the Adjudicating Authority, be given to a party who is neither a Claimant nor a Creditor or a participant. Therefore, the Appellate Tribunal did not find any error on the part of the Adjudicating Authority in rejecting the application of the Appellant by way of the impugned order.

**17. Interest on loan is not the only binding criterion for determining time value of money for Financial Debt under IBC – *Shivam Agrioids Pvt. Ltd. Vs. Shree Krishna Vanaspati Industries Pvt. Ltd.* – NCLAT New Delhi**

NCLAT observed that in this case, the Appellant had paid an amount on behalf of the Corporate Debtor to the SBI

with an intent to gain from the land, plant and machinery and factory building changing hands from the Corporate Debtor to the Appellant. The expectation to benefit from acquiring the entire right, title and interest over the subject property at a lesser rate compared to the market value has to be factorized as time value of money. It is trite law that under the IBC once a debt which becomes due or payable, in law and in fact, and there is incidence of non-payment of the said debt in full or even part thereof, CIRP may be triggered by the financial creditor as long as the amount in default is above the threshold limit. It is also well accepted that debt means a liability in respect of a claim and claim means a right to payment even if it is disputed.

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**18. When agreement is executed between the parties, signed by both the parties, and acted upon, mere fact that it not being engrossed on stamped papers shall have no adverse consequence on the claim of the Operational Creditor- *M/s. Smartworks Coworking Spaces Pvt. Ltd. Vs. M/s. Turbot HQ India Pvt. Ltd. – NCLAT New Delhi***

NCLAT observed that when the Corporate Debtor has accepted the agreement and acted upon by using the premises and have utilized services in the office space provided by the Appellant, even accepting the argument of Learned Counsel for the Respondent that it was not duly stamped, do not negate and do not oblige the Adjudicating Authority to ignore the agreement for

finding out as to whether the claim made by the Appellant was an Operational Debt. In Section 9 Proceeding, the Adjudicating Authority has to find out as to whether the Operational Debt is due on the Corporate Debtor. In the present case, when Agreement was admittedly executed between the parties, signed by both the parties and acted upon, mere fact that it not being engrossed on stamped papers shall have no adverse consequence on the claim of the Operational Creditor. We thus are of the view that the Adjudicating Authority erred in determining the 3rd point against the operational creditor.

**19. Viability and feasibility of Resolution Plan is required to be considered at the stage when Plan is to be approved**

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**by the CoC, after the Plan has been approved, the issue of viability and feasibility cannot be allowed to be raised – *State Bank of India Vs. MBL Infrastructures Ltd. – NCLAT New Delhi***

NCLAT held that (i) the object of the Code especially in a case where Resolution Plan has been approved and which approval also received the confirmation from Hon'ble Supreme Court, it is obligatory on all stake holders to initiate the implementation of the Plan, trying to find excuses for refusal to implement by either of the parties cannot be justified. (ii) All stake holders had to act in a manner so as to implement the Resolution Plan. The Lenders cannot absolve themselves from carrying out their obligation in the

Resolution Plan by raising one or other pretext. Viability and feasibility of the Plan is required to be considered at the stage when Plan is to be approved by the CoC. After the Plan has been approved, the issue of viability and feasibility cannot be allowed to be raised by the Appellant. (iii) The implementation of the Resolution Plan being obligation and duty of all stake holders as per the scheme of the IBC, as observed above, the Resolution Applicant shall also carry out its obligation under Resolution Plan promptly, while the Lenders will discharge their obligations in the Plan and as per directions issued in the impugned order by the Adjudicating Authority.

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## GROWTH CONTINUES TO DECELERATE BUT INDIA REMAINS A BRIGHT SPOT

India started off year 2023 with a robust 9.7% growth in eight infrastructure industries in January 2023. But the country has been consistently witnessing a deceleration in the pace of growth in Eight Infrastructure Industries to 7.2% in February 2023, 3.6% growth in March 2023, which gave way for further moderation in growth to 3.5% in April 2023, over the same month of the previous year. The production data of Eight Core Industries tracked are Coal, Crude Oil, Natural Gas, Refinery Products, Fertilizers, Steel, Cement and Electricity. These eight core industries together constitute 40.27% of the weight of items included in the Indian Index of Industrial Production (IIP).

Perhaps, IIP shows that the bottoming out happened in March 2023. The country recorded 5.8% growth in IIP in January 2023 and February 2023, only to record a steep



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deceleration to a mere 1.7% growth in March 2023, which has since been scaled up to 4.2% in April 2023, on a y-o-y basis. Use based analysis indicates that both primary goods (34.0486% weight in IIP) and Capital Goods (8.223% weight in IIP) continue to record a sharp deceleration in the pace of growth from 9.8% to 6.9% to 3.3% to 1.9% for January 2023, February 2023, March 2023 and April 2023, in respect of Primary Goods. A similar trend of deceleration in Capital goods was also witnessed with a robust 10.5% growth recorded in January 2023 and February 2023 making way for 9.1% growth in March 2023 which further decelerated to 6.2% in April 2023.

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The peak Whole Sale Price Index in the current series was achieved at 155.4 in June 2022, and there has been a general deceleration in WPI, which reached 149.6 by May 2023. The inflation based on changes in WPI peaked at 16.6% in May 2022, which turned negative at -0.9% in April 2023 and -3.5% in May 2023. In this background, RBI, which has paused the interest rates in the past two Monetary Committee Meetings, may even brace for a cut in interest rates going forward.

Indian merchandise exports fell by 10.3% to US\$ 34.98 billion in May 2023, during which period imports fell by 6.6% to US\$ 57.10 billion. As a result, the merchandise trade deficit was range bound at US\$ 22.12 billion in May 2023 from about US\$ 22.13 billion in May 2022. The service exports inched up by 0.67% to US\$ 25.3 billion, while the service imports fell by about 11.0% to US\$ 13.53 billion. The overall exports fell by 5.99% to us\$ 60.29 billion while overall imports fell by 7.45% to US\$ 70.64 billion in May 2023. As a

result, there was a 15.16% fall in India's overall trade deficit to US\$ 10.35 billion in May 2023 from US\$ 12.20 billion in May 2022.

The way forward is to invigorate the investment climate and enhance capacities and step up investment in infrastructure. The focus is on improving India's global competitiveness, not only to garner greater share of the global pie, but also to improve the market share of domestic players in the Indian market! The buoyancy in the services sector can be taken to the next orbit of growth, if India can significantly step up the share of computer software product revenues in their total IT/ITES revenues!

There are hopes that the El Nino factor may not be significantly affecting Indian rainfall, which should augur well for India on two fronts. With good production, prices may not show a run away rise, and with better revenues, rural spending can improve. On both these fronts, India stands to gain from a normal monsoon. The third dimension

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comes from the increased spending during the electioneering, which is the country is bracing for Assembly elections of Rajasthan, Chhattisgarh, Madhya Pradesh and Telangana in the second half of 2023, followed by Union Elections in 2024. In this background, and amidst benign crude oil prices, the possibility of cut in petrol and diesel prices is not ruled out.

India has a three-pronged approach to sustainable and equitable growth. Firstly, while cities generate over 80% of global GDP, unplanned and rapid urbanization are acting as a major constraint in optimally harnessing / realising their economic potential. According to global estimates, the number of people living in cities is estimated to double by 2050. Secondly, India is committed to a tectonic shift away from carbon-intensive energy towards renewable energy. Thirdly, India is the world's third-largest producer of renewable energy, with further expansion towards use of green hydrogen for fuel, fertilizer etc. India is in the

forefront. to embrace low-cost, highly effective solar technologies, battery energy storage, and incentive mechanisms for supporting renewable energy.

The burgeoning aspirations of the middle class population is set to steer the country ahead towards better growth prospects, going forward. India's long term growth remains robust, but the pace of growth continues to decelerate in recent times. After recording healthy 9.1% growth in GDP in FY 2021-22, the country witnessed a decelerated pace of 7.2% growth (revised) in GDP in FY 2022-23. RBI has projected that India's GDP growth is likely to decelerate further to 6.5% in FY 2023-24. Despite such a deceleration in the pace of growth, India remains a bright spot amongst major economies, as it is set to embrace technology for a sustainable medium-term, socially responsible and equitable growth in the economy!

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## AMENDMENTS TO SEBI (LODR) REGULATIONS 2023

Securities Exchange Board of India, (SEBI) has published amendments to LODR Regulations on 14<sup>th</sup> June 2023, called SEBI (LODR) (Second Amendment) Regulations 2023. Some of the provisions come into effect immediately on publication in official Gazette. The following are some of the Changes which is important for the listed enterprises and for enterprises which are in the process of listing.

### COMPLIANCE OFFICER

- 1 Every Listed Company shall appoint a Qualified Company Secretary as its COMPLIANCE OFFICER
- 2 Every Vacancy in the office of the Compliance officer shall be filled at the earliest but not later than 3 months from the date of vacancy
- 3 The listed entity shall not fill such vacancy by appointing a person in an interim capacity,



### CA. G. SUBRAMANIA SARMA

unless such appointment is made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person.

### KEY MANAGERIAL PERSON

- 4 Any vacancy in the office of the Managing Director, whole time director, CEO, CFO or Manager shall be filled at the earliest and not later than 3 months from the date of the vacancy
- 5 The listed entity shall not fill such vacancies by appointing a person in an interim capacity,

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unless such appointment is made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person

**THE NEED FOR THE STRICT COMPLIANCE OF FILLING UP OF THE ABOVE MANAGERIAL PERSONNEL IS MADE DUE TO ADDITIONAL COMPLIANCE REQUIREMENTS ARE MADE IN THE REGULATIONS**

**APPROVAL OF SHAREHOLDERS FOR APPOINTMENT OF DIRECTORS**

- 6 Effective from 01.04.2024, the continuance of every director serving on the board of directors is subject to approval of the shareholders in general meeting at least once in 5 years from the date of their appointment or reappointment

Above requirement is not applicable to

- whole time director, MD, Independent director or a director required to comply with retirement by rotation, if their appointment complies with the requirements of the Companies Act 2023 with regard to approval etc.,
- Director appointed pursuant to the order of the Court or Tribunal,
- Nominee director of the Government on the board of Listed non PSU entity
- Nominee director of financial Regulator on the Board of Listed entity

**CRITERIA FOR MATERIALITY OF EVENTS OR INFORMATION**

- 7 Regulation 30(4) specifies the criteria for determination of material information or event, which are required to be

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disclosed vide regulation 30(1)

The omission of an event or information, whose value or the expected impact in terms of value, exceeds the lower of the following thresholds.

- 2% of turnover, as per the last audited consolidated financial statements of the listed entity.
- 2% of net worth, as per the last audited consolidated financial statements of the listed entity, except in case the arithmetic value of the net worth is negative.
- 5% of the average of the absolute value of profit or loss after tax, as per the last three audited consolidated financial statements of the listed entity.
- In case the above criteria is not applicable, any information which the Board of directors considers such event or information is material

- 8 New Proviso has been inserted to the effect that the policy for determination of materiality shall not dilute any requirement specified in the regulations

### **SHORTER TIMELINES FOR THE DISCLOSURE OF MATERIAL INFORMATION**

- 9 All the information which are considered material shall be disclosed to the STOCK EXCHANGE as SOON AS REASONABLY POSSIBLE but within the timelines prescribed below:
- thirty minutes from the closure of the meeting of the board of directors in which the decision pertaining to the event or information has been taken;
  - twelve hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity

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- twenty four hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity
  - Explanation for the delay in furnishing the information to be furnished if the disclosures are made beyond the above mentioned timelines
- 10 The above timelines is not applicable to events for which timelines have been prescribed in PART A of Schedule III

### **ADDITIONAL MATTERS TO BE DISCLOSED IN THE QUARTERLY CORPORATE GOVERNANCE COMPLIANCE REPORT**

- 11 Details of cyber security incidents or breaches or loss of data or documents shall be disclosed

#### **NEED FOR SUCH ADDITIONAL DISCLOSURE**

- 12 With the advent of new information technology being used and implemented, instances of cyber security incidents or breaches or loss of data / documents has become a major concern and such events may hamper the continued operations of the entity.

### **RESPONSE TO REPORTED MARKET INFORMATION OR EVENTS**

- 13 *Effective from 01.10.2023, the top 100 entities are required to promptly confirm, deny or provide any clarification regarding reported events or information in the "mainstream media".*
- 14 *Effective from 01.04.2024, the top 250 listed entities are required to promptly confirm, deny or provide any clarification regarding reported events or information in the "mainstream media".*

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15 *The time limit to comply this requirement is 24 hours from the time of reporting of the event or information.*

**MAIN STREAM MEDIA** has been defined **to include print or electronic mode of:**

- i. **Newspapers registered with the Registrar Newspapers in India**
- ii. Newspapers registered with the Registrar of Newspapers for India;
- iii. News channels permitted by Ministry of Information and Broadcasting under Government of India;
- iv. Content published by the publisher of news and current affairs content as defined under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021; and

v. Newspapers or news channels or news and current affairs content

vi. registered similarly or permitted or regulated, as the case may be, in Jurisdictions outside India

**NEED FOR SUCH AMENDMENTS:**

*BOTH THE PRINT OR DIGITAL MEDIA IN RECENT TIMES IS FOCUSING MORE INFORMATIONS OF COMPANIES NOW A DAYS AND HENCE SUCH ADDITIONAL REQUIREMENTS*

**STATUS OF PAYMENT OF INTEREST OR DIVIDEND OR REPAYMENT OR REDEMPTION OF THE PRINCIPAL OF NON-CONVERTIBLE SECURITIES**

16 *Every company shall submit to the stock exchange a certificate regarding the status of payment of interest or dividend or repayment or redemption*

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*of the principal of non-convertible securities within 1 working day of it becoming due in the manner and format specified.*

### **AMENDMENT TO SCHEDULE III PART A PARA 15**

17 *The regulation now requires to furnish under a separate section of the website the schedule of details of meeting of the analysts or institution investors at least TWO WORKING DAYS [EXCLUDING THE DATE OF THE MEETING AND DATE OF INTIMATION*

18 *THE Presentation made by the entity to the analysts and institutional investors*

### **CERTAIN AGREEMENTS ARE TO BE DISCLOSED:**

19 *Clause 5A of para A for Part A of Schedule III requires the following agreements entered into or recessions thereof are to be disclosed to the Stock Exchanges within 2 working days*

*It include Agreements entered in to by the shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel, employees of the listed entity or of its holding, subsidiary or associate company, among themselves or with the listed entity or with a third party, solely or jointly, which, either directly or indirectly or potentially or whose purpose and effect is to, impact the management or control of the listed entity or impose any restriction or create any liability upon the listed entity, shall be disclosed to the Stock Exchanges, including disclosure of any rescission, amendment or alteration of such agreements thereto, whether or not the listed entity is a party to such agreements*

*(The author is a Chennai based Chartered Accountant. He can be reached at lcochennai1@gmail.com)*

## EXCEL TIPS

### IFERROR Function

Microsoft Excel offers various functions that simplify complex tasks, enhance productivity, and streamline data analysis. Among these the IFERROR function is a particularly powerful tool that can help you manage errors in your worksheets more efficiently. This function helps mitigate the negative impacts of errors, such as #N/A, #VALUE!, #REF!, #DIV/0!, #NUM!, #NAME?, or #NULL!.



**CA. DUNGAR CHAND U JAIN**

The IFERROR function is used to return a custom result when a formula generates an error, and a standard result when no error is detected. The structure of the function is quite simple:

#### **IFERROR(value, value\_if\_error)**

where 'value' is the expression or reference checked for an error and 'value\_if\_error' is the return value in case an error is found.

#### **Example 1: Basic IFERROR function**

Assume we have a list of numbers in column A (A2:A6) and we want to find the reciprocal (1 divided by the number) of each number in column B. However, one of the cells in column A contains zero, which leads to a #DIV/0! error.

	A	B	C
	Number	Output	Formula used in Column B
1			
2	1	1	=1/A2
3	2	0.5	=1/A3
4	0	#DIV/0!	=1/A4
5	3	0.3333333333	=1/A5
6	4	0.25	=1/A6
7			

To avoid the error, we use the IFERROR function as follows in column B:

=IFERROR(1/A2, "Error")

The formula will return "Error" if an error is found, such as for A4 where the division by zero occurs.

## Example 2: Using IFERROR with VLOOKUP

A common use case of the IFERROR function is with the VLOOKUP function. Assume we have a product list in cells A2:B5 and we want to lookup the price of a product. If the product is not in the list, VLOOKUP returns an #N/A error. To avoid this, we use the IFERROR function.

	A	B	C	D
1	Madurai	1.2		
2	Mumbai	0.5		
3	Chennai	2		
4				
5		Delhi	#N/A	=VLOOKUP(B6, A1:B3, 2, FALSE)
6		Delhi	City not found	=IFERROR(VLOOKUP(B6, \$A\$1:\$B\$3, 2, FALSE), "City not found")
7		Madurai	1.2	=IFERROR(VLOOKUP(B7, \$A\$1:\$B\$3, 2, FALSE), "City not found")
8				

The formula in cell C6, for example, would be:

```
=IFERROR(VLOOKUP(B6, A1:B3, 2, FALSE), "City not found")
```

If the value in B6 is not found in column A, the formula will return "City not found".

## Example 3: Using IFERROR with INDEX MATCH

The IFERROR function can also be useful when combined with the INDEX MATCH function. This powerful combination allows you to search for a specific value in a column, and return a corresponding value from a different column. If the function cannot find the value, it will return an error.

For instance, suppose you have the following data set:

	A	B	C
1	Mani	Engineer	
2	Raj	Doctor	
3	Ratan	CA	
4			
5		CA	=IFERROR(INDEX(B1:B3, MATCH("Ratan", A1:A3, 0)), "Name not found")
6		Name not found	=IFERROR(INDEX(B1:B3, MATCH("Prakash", A1:A3, 0)), "Name not found")
7			

You could use the following formula to search for a job title based on a person's name:

```
=IFERROR(INDEX(B1:B3, MATCH("Ratan", A1:A3, 0)), "Name not found")
```

---

This formula will return "CA". If you replace "Ratan" with "Prakash", who isn't on the list, the formula will return "Name not found".

#### **Example 4: Using IFERROR with Mathematical Operations**

It can be used with mathematical operations. For instance, you have a data set in column A with some numerical values and text strings. You want to square the numbers in column B

	A	B	C
1	Input	Output	<b>Formula in Column B</b>
2	10	100	=IFERROR(A2^2, "Not a number")
3	20	400	=IFERROR(A3^2, "Not a number")
4	abc	Not a number	=IFERROR(A4^2, "Not a number")
5	30	900	=IFERROR(A5^2, "Not a number")
6			

In this case, for cells where there are numeric values in column A, column B will show the square of those numbers. If there's a text string, it will return "Not a number".

#### **Example 5: Using IFERROR with Statistical Functions**

Consider a scenario where you have to find the average of numbers in a range. However, the range may sometimes be empty, leading to a #DIV/0! error. To avoid this, wrap the AVERAGE function with IFERROR.

=IFERROR(AVERAGE(A1:A10), "No data")

Here, if there are no numbers in the range A1:A10, the formula will return "No data".

The IFERROR function provides a clean, error-free approach to dealing with potential errors that can occur in Excel formulas. By handling these errors gracefully, you can keep your worksheets clean, while ensuring that your data analysis remains robust and accurate.

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## TCS IS BECOMING TEDIOUS

Until introduction of the section 206C(1H) and related sections to the Income tax Act, 1961, provisions relating to tax collected at source ('TCS') were seldom discussed by professionals / industry bodies and other organizations disseminating knowledge. It was further complicated with issuance of FAQs after FAQs clarifying the position what the Board proposes to intend to cover under the gamut of TCS. In most of cases it amplified the intention with which the section was introduced. By the time Industry managed to grapple and implement the TCS provisions relating to goods, to douse the fire created, section 194Q was introduced into the provisions of the Act.

The fire relating to TCS provisions was re-ignited with recent amendment in the Finance Act 2023 to section 206(1G) of the Act relating to foreign remittances. While the Foreign Exchange Management Act had liberalized certain payments



**CA. GIRISH SUNDAR**

under LRS, the Income tax Act has tightened the rope on LRS by increasing the tax rate. The Finance Budget increased the rate of collection of tax at source from "five per cent" to "twenty per cent" to certain categories of payment effective from 01-July-2023. Although one of the goals of the change is to make it easier to trace large-value international transactions, not sure how the increased rate would serve the purpose. On the contrary it would only involve burden to the exchequer where it would have to refund the taxes so collected with interest, in case such individual do not have adequate tax liability to cover up the TCS collected on their behalf. Probably, it will open the

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pandora box for such individuals, where the tax authorities would go back to them to identify the source for such remittances. There was uproar among people impacted because of this increase in rates. In fact, this proposed change would have possibly increased the outward foreign remittances prior to 01-07-2023 in order to mitigate higher TCS rates.

The policy of the Government making changes between the Finance Bill and Act has become the order of the day. When the Lok Sabha passed the Finance Bill 2023 few additional amendments were made to Income tax and GST law, one among them was removal of the words “out of India” in provisions of section 206C(1G) relating to remittances made under LRS. Under the LRS, currently resident individuals are allowed to undertake current or capital account transaction or a combination of both up to \$250,000 in a year. Generally, remittances under LRS are foreign remittances, it

is not clear why the words “out of India” are removed, probably Board felt that such words are superfluous alternatively to cover instances where resident individuals transfer money to NRO account of non-residents within India which was originally outside the TCS net or transactions of similar nature.

The structure of TCS levy under 206C(1G) as per Finance Act 2023 has been provided in the ensuing part of this article.

The process of issuing clarifications / notifications by the Ministry or Board time and again is also the new trend. Hitherto, use of International Credit card while outside India were not covered within the purview of LRS limit as per Rule 7 of FEMA (Current Account Transactions) Rules, 2000. However, on 16<sup>th</sup> May 2023, the Ministry of Finance notified the Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023 to amend the Foreign Exchange Management

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(Current Account Transactions) Rules, 2000. In the said notification, Rule 7 relating to Use of International Credit Card while outside India was omitted thereby bringing use of international credit cards within \$250,000 limit prescribed for LRS. This again led to lot of representation before the Ministry on applicability of TCS rates for those remittances after 01-07-2023 with increase in rates proposed after such date. Immediately on 19<sup>th</sup> May 2023, the Ministry of Finance clarified that any payments by an individual using their international Debit or Credit cards upto Rs 7 lakh per financial year will be excluded from the LRS limits and hence, will not attract any TCS. While the rule only omitted usage of international credit card while outside India, the clarifications issued included use of international debit cards as well. There seem to be an ambiguity in that front as well.

While the noise of applicability of higher TCS rates was increasing as the date for applicability of revised rates were nearing as latest as day

before yesterday i.e. 28-06-2023, the MOF issued a fresh press release clarifying the following relating to LRS remittances:

- i) To give adequate time to Banks and Card networks to put in place requisite IT based solutions, the Government has decided to postpone the implementation of its 16th May 2023 e-gazette notification. This would mean that transactions through International Credit Cards while being overseas would not be counted as LRS and hence would not be subject to TCS. The Press Release dated 19<sup>th</sup> May 2023 stands superseded.
- ii) Threshold of Rs. 7 Lakh per financial year per individual in clause (i) of sub-section (1G) of section 206C shall be restored for TCS on all categories of LRS payments, through all modes of payment, regardless of the purpose: Thus, for first Rs 7 Lakh remittance under LRS there shall be no TCS. Beyond this Rs 7 Lakh threshold, TCS shall be

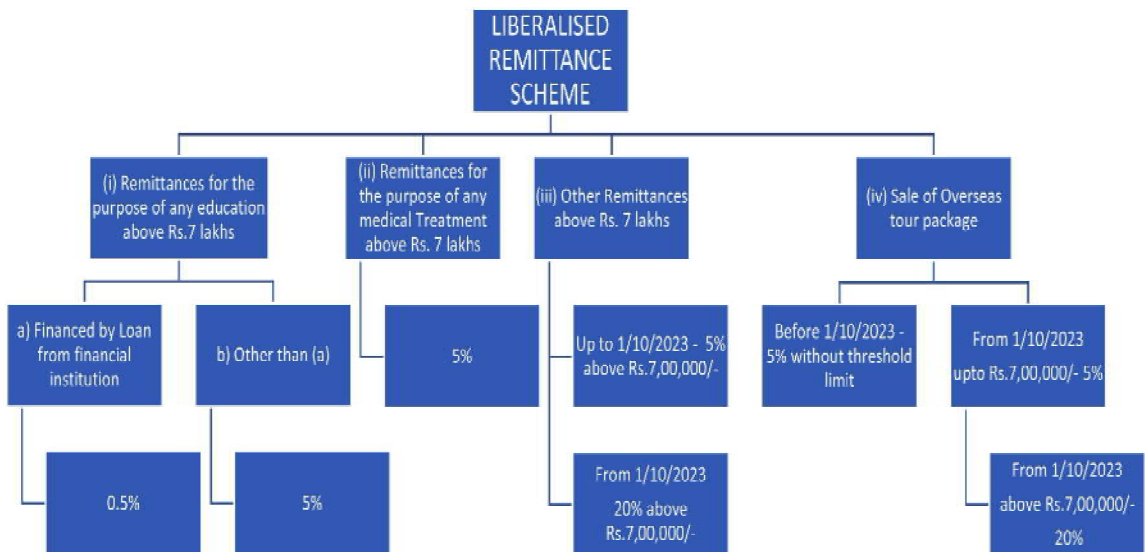
- a) 0.5% (if remittance for education is financed by education loan);
- b) 5% (in case of remittance for education/medical treatment);
- c) 20% for others.

apply for expenditure above this limit.

iii) Increased TCS rates to apply from 1<sup>st</sup> October, 2023;\_

For purchase of overseas tour program package under Clause (ii) of Sub-section (1G), the TCS shall continue to apply at the rate of 5% for the first Rs 7 lakhs per individual per annum; the 20% rate will only

The icing of the cake is that last sentence in the press release which states “Circular and Frequently Asked Questions (FAQs) shall be issued to clarify various practical issues in implementing this provision”. Let us all gear up for more drama in this regard!!



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## SUMMARY OF AAR / AAAR

1. The incentives received by distributors based on performance goals cannot be treated as trade discounts.

In case of Re: M/s. MEK Peripherals India Pvt Ltd (“Appellant”) [Order No. MAH/AAAR/DS-RM/04/2023-24] – Maharashtra Appellate Authority For Advance Ruling, Maharashtra (‘AAAR’ or ‘Authority’).

### Fact of the case

- The Appellant is a reseller of Intel products based in Maharashtra, India. The Appellant purchases products from distributors registered under GST in various states. The distributors import the products from “Intel Inside US LLC”(IIUL) and sell them to the Appellant, who further sells them to retailers.



**CA. AMAN GOYAL &  
CA. PRIYANKA PRABAGHAR**

- The Appellant has an agreement with IIUL under the Intel Authorized Components Supplier Program (IACSP). According to the agreement, the Appellant receives a non-binding Plan of Record Target (POR Target) and can earn incentives based on performance goals.

### Issue before AAAR

- Whether the incentives received based on performance goals be treated as trade discounts. If not, whether the same qualify as a supply. Further, in case it is a supply whether the same constitute as export sales.

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## **Ruling Pronounced by AAR**

- The Appellant has applied before the Authority for Advance Ruling (“AAR”) wherein the AAR has held that the incentives received by the Appellant from IIUL cannot be considered as “Trade discount” because the goods are supplied by the distributors and not directly by IIUL.
- The AAR also held that the present activity will not qualify as an export of service since place of provision of services is in India due to the physical availability of goods made to the appellant.
- Aggrieved by the decision of AAR, the Appellant has appealed before the AAAR.

## **Submission of Applicant**

- The appellant submitted that the incentive received from IIUL

under IACSP should be considered as a pre-agreed trade discount, according to Section 15(3) of the CGST Act, 2017. The Appellant placed reliance on the decision of the Hon’ble Mumbai Tribunal in the case of *Sharyu Motors v. Commissioner of Service Tax [2016 (43) S.T.R.158 (Tri. Mumbai)]*., wherein it was held that incentives received for achieving sales targets are trade discounts and not liable to tax.

- The appellant disputes the observation made by the AAR that the incentives cannot be considered trade discounts because the supply of goods is made by distributors, not IIUL. The appellant asserts that there is a direct nexus between the purchases made from the distributors and the incentives received from IIUL.

- The appellant argues that even if the incentives are considered as

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consideration for supply, the entire supply should be classified as an export of service. The appellant claim that the appellant is not providing any services to IIUL, and the agreement between them is solely a conditional incentive agreement.

### **Discussion and Findings by AAAR**

- The AAAR observed that in order to qualify as a trade discount, three conditions should be satisfied:
  - an agreement between the buyer and the supplier
  - a specific invoice linked to the discount and
  - the reversal of input tax credit.
- In this case, the agreement exists only between the manufacturer (IIUL) and the appellant, not

between the distributor and the appellant. Further, the incentive is received based on the volume of sales by the appellant and is not directly linked to a specific invoice. Therefore, the incentives received from IIUL does not qualify as a trade discount.

- The incentives are not considered as consideration for any supply between IIUL and the appellant, as no supply of goods or sale transaction of goods has taken place. Instead, the incentives are seen as payment for marketing and technical support services provided by the appellant to enhance the sales of Intel products.
- Regarding the condition of export of service, the transaction between IIUL and the appellant does not fulfill the requirements specified in Section 2(6) of the IGST Act.

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## Ruling by AAAR

The AAAR upheld the order of AAR

2. Requirement of reversal of ITC proportionately to the extent of financial/ commercial credit note issued by supplier

In case of Re: M/s. Vedmutha Electricals India Private Limited [AAR No. 05/AP/GST/2023] (referred as 'Applicant') – Andhra Pradesh State Authority of Advance Ruling ('AAR' or 'Authority').

## Fact of the case

- The Applicant is engaged in business of supply of various electronic items.
- Applicant received various incentives in the nature of "discounts" from its supplier by way of commercial credit notes under various schemes without any reduction in their liability.

## Issue before AAR

- Whether the applicant is duly eligible to take full credit of GST charged in the tax invoice issued by supplier even though commercial/ financial credit note is issued for part amount of invoice?
- Whether the applicant is required to reverse the ITC proportionately to the extent of financial/commercial credit note issued by supplier?

## Applicant's Interpretation of Law

- The applicant submits that all the conditions laid in Section 16 of the CGST Act, 2017 for the availment of Input Tax Credit are satisfied in the present case.
- The applicant further submits that 'amount towards the value of supply' to be the commercial price, which is mutually agreed upon between the supplier and the buyer.

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Section 9 provides that GST shall be levied on the value as determined under Section 15 of the Act which shall be the transaction value, i.e., is the price actually paid or payable for the said supply to unrelated recipients.

- In the present case, the supplier, who has paid duty, has not filed/claimed the refund on account of reduction in price and hence, the Applicant will also not be required to reverse the credit to the extent of the reduction in price vide financial/commercial credit note.

### **Discussion and Findings of the AAR**

- For applicability of provisions of 15(3)(b) of the CGST Act, 2017 there should be prior agreement and a link established with the relevant invoices of the discount given. No such co-relation

between the credit notes issued by the supplier to the applicant is found except credit note mentioning the scheme and the goods for which the credit note is being given.

- In absence of such specific information, the benefit of reducing the value of discount from the transaction value as per the provisions of 15(3)(b) is not allowed.
- In the present case, no adjustment in price is done by the supplier nor any adjustment of GST made in the credit note. Therefore, the corresponding reduction in Input Tax Credit is also not warranted.

### **Ruling of AAR**

The Applicant is eligible to take full credit of GST charged in the tax invoice and not required to reverse

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the ITC to the extent of financial/commercial credit notes issued by the supplier.

3. The sale of duty credit e-Scrips does not fall under the exempt supplies' turnover for the purpose of export refund formula

In case of Re: M/s. Kaveri Exports A.R.Com/20/2022 TSAAR Order No. 12/2023, Dated May 24, 2023 (referred as 'Applicant') – Telangana State Authority of Advance Ruling ('AAR' or 'Authority').

### **Facts of the Case and question before AAR:**

- The Applicant deals in the export of cotton lint – fully pressed cotton bales.
- The Applicant is in receipt of duty credit e-scrips under the

scheme for remission of duties and taxes on exported products (RoDTEP) from the Directorate General of Foreign Trade (DGFT) which are used for clearing imports and are also freely transferrable if the exporter does not have any corresponding imports.

### **Question before AAR**

- Whether the sale of duty credit e-Scrips is only other income and not form part of Turnover for applying Rule 42, Rule 89(4) and Rule 89(4B) of the CGST Rules, 2017?

### **Contention of the Applicant before AAR**

- The applicant argued that these e-scrips are exempted from tax vide Notification No. 02/2017 dt: 28.06.2017.

- 
- The applicant also contended that e-scrips are in nature an incentive and the same should be excluded from the total turnover for the purpose of rule 89(4) and 89(4B) of the CGST Rules, 2017. Therefore, that the reversals of input tax credit to be effected under Rule 42 to the extent of exempt supplies, need not be made.

### **Observation of AAR**

- The duty credit scrips being exempted attracted the provisions of Section 17(2) read with Rule 42 of the CGST Rules t i.e., reversal of all common inputs used for supply of exempt goods/services in the proportion of value of supply of such exempt goods and services to the total value of supplies
- Post July 05, 2022, in view of the explanation inserted under Rule

43 of the CGST Rules, Common ITC is not reversible against the sale of RODTEP scrip.

- In the export refund formula under Rule 89 of the CGST Rules, the value of exempted supplies is excludible in both numerator and denominator, hence export refund formula is not affected by the sale of RODTEP scrips (which is GST exempt).

### **Ruling of the AAR**

The AAR held that the value of 'Duty credit scrips' shall be excluded from the value of exempt supply for the purpose of applying Rule 42 of the CGST Rules.

The AAR also held that the turnover pertaining to sale of 'Duty credit scrips' should be reduced from the total turnover in the state as defined under clause (112) of section 2 for

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computation of the Adjusted Total Turnover as per Rule 89(4) of CGST Rules'2017.

4. Facilitator receiving stipend amount reimbursement from NEEM Trainer not acting as 'pure agent'

In case of Re: M/s. Beepup Skills Foundation GST ARA – 122/2019-20/B-54 (referred as 'Appellant') – Maharashtra Appellate Authority of Advance Ruling ('AAAR' or 'Authority').

**Facts of the case**

- The appellant has obtained registration as 'Facilitator' under National Employability Enhancement Mission (NEEM) as per Section 23(1) read with Section 10 of the All India Council for Technical Education, Act, 1987 (AICTE Act) read with NEEM Regulations, 2017.

- The Appellant has further partnered with various companies/ industries who are desirous of registering themselves with the Appellant under AICTE Regulations as NEEM Trainer for deployment of NEEM Trainees and facilitation of their on-job training. Agreements have been entered with LG Electronics India Private Limited ("Trainer/ Trainer industry") and with Interplex Electronics India Pvt. Ltd. ("Trainer/ Trainer industry") for deployment of NEEM trainees and provide on-job training.
- It appears from the terms of agreement that the Trainer shall pay to the appellant amount as per applicable SOW enclosed to the agreement, which is inclusive of 18% GST on the entire consideration (including stipend).

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### Question before AAAR

Whether reimbursement amount received by the appellant from Trainer towards “Stipend and other expenses” incurred by the appellant in accordance with AICTE Regulations to ensure wealth, safety and health of NEEM trainees is in the capacity of pure agent and hence not includible in the value of taxable supply made by the appellant to the trainer for the purpose of GST.

### Contention of the Applicant before AAAR

- The Applicant states that employees are appointed and working for the company as whole and not employed for head office or branch specifically, which is a distinct person under GST.
- Salary and benefits paid to employees are in relation to

employment, which is neither a supply of goods nor services under para 1 of the schedule III of CGST Act

### Observation of AAAR

- The AAAR observed from the Appellant’s facts of the agreement that the trainee has registered with the Appellant/ NEEM Facilitator. It is the responsibility of the Appellant to deploy the trainee in a suitable industry to undergo training at the industry for a specific period and pay the stipend during the training period.
- It is observed from the copies of the tax invoices submitted that regular invoicing is made along with tax amount on the entire value.
- Other than deployment of trainees as per the NEEM

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Regulations, no other service is supplied by the Appellant. Even the stipend paid to the Appellant, albeit for the sole purpose of disbursing to the trainees, is only a consideration paid to the Appellant for the deployment of the trainees.

- The appellant is licensed by AICTE as a Facilitator for the very purpose of training NEEM Trainees at the industry premises. The stipend amount paid to the Appellant is to be utilized only for the purpose of paying the trainees, but this does not make the Appellant a pure agent of the Company since the NEEM Regulations does not require the Company/industry to pay a stipend to the trainees. Therefore, the Appellant does

not satisfy clause (c) of the definition of pure agent as given in the explanation to Rule 33.

### **Decision of AAR**

In view of extensive discussion surrounding the question posed to and answered by the Authority of Advance Ruling, the AAAR has held that the appellant does not fulfil the conditions and clauses of meaning of “pure agent” prescribed under rule 33 of the CGST Rules, 2017 and hence is not allowed to claim deduction of the reimbursement of the amount of stipends and other expenses received from the NEEM trainer from the value of supply.

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## ABOUT OURSELVES

### The Chartered Accountants Study Circle (Regd.)

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.

The organization is proud that many of its members have become men of great eminence including three of its members being occupants of coveted position of the President of the Institute of Chartered Accountants of India and a number of members have been serving in the Regional and Central Councils of ICAI, ICSI, Chambers of Commerce and other Bodies. The members of CASC are interspersed in the society and more particularly in practice and in the industry.

The membership of CASC is in the form of Life, Corporate and Annual Membership.

The Composition of the members includes lawyers, company secretaries, consultants and members of the other allied and related professions. Besides our regular meetings, the CASC organizes with regularity, workshop, refresher courses, seminars and group discussions on all professional related subjects and topics in its self owned fully Air-Conditioned Premises at central location in Chennai with the state of the art infrastructure.

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