



GST Updates



Ind-AS



Excel Tips



Recent Judgements



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CASC BULLETIN

INDEX

Subject	Author	Page No.
Recent Judgments in VAT / CST / GST	CA. V.V. Sampathkumar	9
Case Laws - Service Tax and GST	CA. Vijay Anand	17
Indian Economy Round Up	CA. Kandaswamy	26
Transport Services along with Goods - Ind AS 115	CA. Vinay Nahar	29
Summary of AAR / AAAR	CA. Debasis Nayak & CA. Aman Goyal	34
Excel Tips	CA. Dungar Chand U Jain	43
Recent Case Laws in Insolvency and Bankruptcy Code	CA. B. Ramana Kumar Advocate	47

Date	Topic	Speaker
11.05.2023 (Thursday)	Audit Trail	CA. Monica Jain
25.05.2023 (Thursday)	Chat GPT - An Insight	Eminent Speaker

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

***CASC Annual Members are requested to renew their
subscription for 2022 - 2023***

New Foreign Trade Policy

While Foreign Trade Policies are generally notified with a duration of five years, the duration of the earlier Foreign Trade Policy 2015-20 was extended upto 2023. That being the case, there was a lot of buzz on what was to be expected from the new Foreign Trade Policy. Finally, the new Foreign Trade Policy 2023 has been notified and this new policy's duration has been left open ended unlike the earlier policies and a separate chapter has been included which focuses on Promoting Cross Border Trade in Digital Economy. An amnesty scheme has also been introduced for one time settlement of default in export obligation by Advance and EPCG Authorisation Holders with some exceptions. The scheme is seen as a welcome measure among fellow professionals. The deadline for availing the benefit under the scheme has been fixed as 30.06.2023 and the deadline for payment has been fixed as 30.09.2023.

Know Your Members

ICAI had recently started an initiative of 'Know Your Member' (KYM), wherein members are expected to submit certain particulars every year. ICAI has made this exercise compulsory by preventing a member from paying the membership fee without submitting KYM form. ICAI has not explained the need for such an exercise that too on an annual basis. Even in the case of financial institutions wherein the 'know your customer' norm is very important from the national security perspective, it is not an annual exercise. It is pertinent to note that Aadhar which is a basic document of a citizen of this country is not one among the proof one can attach to establish his identify with ICAI.

While the technology is changing the lives of human kind including the accounting profession, rather than focussing on updating and upskilling the members, the focus on compelling

members to comply with KYM norms is unwarranted that too when ICAI has enough information in its fold since someone enters as a student and then becomes a member. One is also not sure whether any other accounting body has a compelling know your member norm.

Recent concerns over data theft

In today's world where even people of the older generation are adopting technology, the million-dollar question that is facing us is whether the data we provide online for subscribing to various services are safe. Leave alone online subscriptions, whether our data with government agencies are safe is also a concern. Recently, a person in Hyderabad was found to be in possession of data and he was arrested for stealing, holding and selling personal and confidential data of a whopping 66.9 crore individuals and organisations. Allegedly, the person had collected the data from Amazon, Netflix, Paytm, PhonePay,

GST, RTO, etc and the data includes names, phone numbers, DMAT account holders, high net worth individuals, etc. E-Commerce is the norm today and a consumer-oriented business is more likely than not be in the e-commerce space. Therefore, the need to protect data by business organisations is imperative as sensitive information such as credit card details are provided to them and it is also imperative for auditors of these businesses to ensure that the data collected by their clients are obtained, dealt with and disposed off in a safe manner. The new Digital Personal Data Protection Bill that is expected to be introduced in the Parliament in the coming months may cast additional responsibilities on the organisations and also on the auditors either directly or indirectly. In such a scenario, it is important that we gear up for what is coming. As part of the said efforts to equip our members, CASC has been organising meetings on technology related topics regularly and members may watch out for such programmes in the future also.

Need for Chartered Accountants' Protection

In the light of recent attacks on lawyers inside and outside Courts, the Bar Council of Delhi decided to constitute a committee to draft an Advocates Protection Bill to be enacted by the Delhi Government. We are given to understand that a law with similar object has been enacted in Rajasthan. Few of our fellow members feel that similar laws for protection of Chartered Accountants are also required. Are Chartered Accountants subject to physical attacks like the case of lawyers? Chartered Accountants being attacked outside Tribunals is unheard of and thus "No" is the clear answer that comes to our mind to the said question. However, Chartered Accountants are not immune to attacks as they face a different form of attack. There is a possibility of the disciplinary proceeding before the Institute of Chartered Accountants of India (ICAI) being used as a ground to settle scores between the client and

auditor, persons connected with the client and auditor, previous auditor and the current auditor, etc. It is unclear if such a situation has arisen before the ICAI and how such a situation was dealt with. The Chartered Accountants Act, 1949 and the rules and regulations made thereunder are silent on these aspects and need amendments to cover these aspects.

GST on Membership Fee

Members would be aware that recently ICAI has requested members to update their firm's GSTN in the SSP portal latest by 15.04.2023 and it was also stated that any updation made after that date will not be considered in the tax invoice for the financial year 2023-24. If a member pays the membership fee beyond 15.04.2023, and when there is no restriction under the GST laws to issue an invoice with GST number, the reason behind imposing such a condition on members is unknown.

New CPE requirements

The Institute of Chartered Accountants of India has prescribed new CPE hours requirements wherein a member below 60 years of age holding certificate of practice is required to obtain 2 Structured Hours each on the topics of "Standards on Auditing" and "Code of Ethics". It is the prerogative of a member to practice in any area he chooses from the vast spectrum of practice areas. If someone chooses not to practice audit at all, why should ICAI compel him to undertake an updation on Standards on Auditing, just because he holds a COP and that too on a yearly basis. One may observe that the Standards on Auditing or the Code of Ethics do not undergo frequent changes warranting yearly updation.

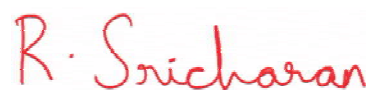
Appeal

We are proud to share with you that we have joined hands with the Bombay Chartered Accountants Society (BCAS) and seven other organisations spread across the length and breadth of the country to conduct the virtual Direct Tax Home Refresher Course – 4 for the second time in a

row. The complete details of the same are carried somewhere else in this bulletin.

We, at Chartered Accountants Study Circle, request members to contribute articles for the bulletin and you may contact the editorial board regarding the same. We have been regularly conducting technical programmes every month. Members are requested to attend the programmes conducted by CASC and are also requested to send their suggestions and / or value additions to the services provided by CASC including this Bulletin. The same can be sent as hard copy to the office of the CASC or emailed to admin@casconline.org or any of the members of the Management Committee of the CASC. Any member interested in using the CASC platform for addressing our members on technical topics may kindly feel free to contact us by way of email at admin@casconline.org.

For and on behalf of 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.

READER'S ATTENTION

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

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RECENT JUDGEMENTS IN VAT/CST/GST

Limitation and Rectification :

Undoubtedly, this writ petition holds no merit insofar as the challenge is to an order of assessment passed under the provisions of Tamil Nadu Value Added Tax, 2006, which is dated 20.05.2022 and the writ petition has been instituted on 02.03.2023 which is far beyond the period of statutory limitation. No adequate or worthwhile explanation has been set out in this regard and thus the Hon'ble Court was not inclined to consider the challenge to impugned order. Be that as it may, the petitioner has admittedly filed an application for rectification executed on 05.08.2022. There is an acknowledgement of receipt as well dated 05.08.2022. Thus, and notwithstanding that the petition does not specifically refer to the provisions of Section 84, the learned Government Advocate acquiesced to the position that the same would be disposed as though it were an



CA. V.V. SAMPATHKUMAR

application for rectification. Hon'ble Court directed the disposal of the same within a period of eight weeks from date of receipt of this order, after hearing the petitioner and in accordance with law. **M/s.Udhayan Agencies vs The Deputy State Tax Officer, Polur Assessment Circle W.P.No.6923 of 2023 DATED: 06.03.2023**

Condonation of Delay : The provisions of Section 107 of the CGST Act deal with Appeal and provide that an appeal be filed as against any order of the State Goods and Services Tax Act within a period of 90 days. There is a period of one month after the aforesaid

period of 90 days, for which the authority may grant condonation, if convinced by the explanation set out by the assessee. The appeal of petitioner has been filed after a period of 6 months, over and above the statutory limitation of 90 + 30 days. In light of the above admitted position, the dismissal of the appeal by R1 is seen to be in order. The petitioner, to be noted, has set out no explanation, let alone justifiable explanation, for the condonation of even the one month extension statutorily provided and thus the further delay of 6 months over and above the statutory limitation is fatal to its case. Stating so, the impugned order is confirmed and this Writ Petition dismissed. **M/s.Jony Electricity India Engineering Private Limited, Vs. 1.The Appellate Authority, The Joint Commissioner of GST & Central Excise, Appeals-I, Chennai- 600 034. 2.Superintendent of GST & CE, Egmore Division, Chennai North Commissionerate Chennai. W.P.No.7000 of 2023 Dated: 07.03.2023**

Opportunity to the Petitioner and Gross Profit : The petitioner is a dealer under the provisions of the Act, a civil work contractor . The petitioner, in its wisdom and based on trade practice, has adopted a certain rate of GP to arrive at the deemed sale value and it is, not appropriate for the Assessing Officer to have adopted a substantially higher rate, without affording the petitioner an opportunity to explain the rates adopted by it. The conclusion in the impugned orders, is that no materials were provided by the petitioner in support of the G.P. adopted by it. Such failure is a direct consequence of the failure of the authority to have granted an opportunity to the petitioner. For the aforesaid reason, the Court was of the view that the impugned orders suffer from a serious and fatal infirmity. That apart, it is a settled position that the reports of the officials of the Enforcement Wing cannot be adopted mutatis mutandis by the Assessing Officer who are expected to apply their minds,

independently to the matter though having regard to the opinion of the Enforcement officials as well. In the present case, it is an admitted position that the authority has had nothing new to bring to the table but has merely adopted the rate as put forth by the Enforcement Officers. Stating so, the impugned orders were held to be unsustainable and were quashed and these writ petitions were allowed. **M/s.Pushkar Properties Private Limited Vs The State Tax Officer, Amaindakarai Assessment Circle, Chennai – 600 102. W.P.Nos.5158,5159,5160,5161 & 5162 of 2020 DATED: 07.03.2023**

Non-Consideration of Submissions

: The petitioner sought rectification under Section 84 that has come to be rejected by the appellate officer on 15.11.2019 on the ground that there was no discussion in the order dated 03.05.2019 and hence no rectifiable error. This conclusion of

the appellate authority is clearly contrary to law insofar as the very non-consideration of submissions dated 23.01.2019, would constitute an error apparent on record liable to be rectified under Section 84 of the Act. In light of this, the impugned orders need to be set aside. Stating so, the petitioner is directed to appear before the appellate authority on 24.03.2023 at 10.30 a.m. with materials in support of the request of rectification and without anticipating any notice afresh for the hearing scheduled as aforesaid. After hearing the petitioner, orders shall be passed on the Section 84 application within a period of four weeks from the date of personal hearing as fixed aforesaid. **M/ s.Mondelez India Foods Pvt Ltd., Vs State of Tamil Nadu, 2.The Joint Commissioner (CT), Appeals, Chennai – 6. 3.The Deputy Commissioner (CT) – III, Large Tax Payers Unit, Chennai – 8. W.P.Nos.1305, 1309, 1311, 1314 & 1318 of 2020 DATED: 09.03.2023**

Revision propped and Limitation :

The year in question for which the impugned order of revision of assessment under the provisions of TNVAT Act, 2007 dated 10.02.2021 is passed 2006 – 2007. The date of deemed assessment is thus 31.10.2012. The main plank of challenge is the bar of limitation. The counter filed on behalf of the respondent would accede to the position that errors were located by the Audit Wing during the year 2010 – 2011, such as the revision of assessment on contract value. However, and admittedly as per paragraph 6(c) of the counter, notice was issued only on 14.09.2020 long past the period of six years from date of assessment, as provided for under Section 27 of the Act. Since limitation expired on 31.12.2018, and the first notice has been issued only on 14.09.2020 culminating in the impugned order, the proceedings are seen to be barred by limitation and are set aside. This writ petition was allowed. **M/s.Kadhir Constructions Vs The Assistant Commissioner**

(CT), Gandhipuram Assessment Circle, Coimbatore. W.P.No.6481 of 2021 DATED: 09.03.2023 w

Justification for the delay : The maintainability of the Writ Petition is itself subject to the petitioner having complied with the statutory timelines for availing of the remedies provided. Though wide discretion is available to entertain matters even beyond the period of statutory limitation, the exercise of such discretion is wholly dependent on the petitioner establishing a justification or warrant for the delay. In this case, the affidavit filed is silent on the aspect of delay. Despite repeated probing, learned counsel for the petitioner also has no explanation to offer for the intervening delay. In such circumstances and seeing as there is no explanation, let alone justifiable explanation for the delay despite this Court repeatedly seeking such reasons, the impugned order is found to be valid in law and is confirmed. **M/s.Shree G G Enterprises, Vs The Deputy Commissioner (ST), GST-**

Appeal, Chennai-I, Chennai-6. 2. The Assistant Commissioner (ST), Madhavaram Assessment Circle, Chennai-3 W.P.No.7390 of 2023 Dated: 10.03.2023

TNVAT Reversal of ITC u/s 19(2)(v): Ld Government Advocate (Taxes) appeared for the respondent states that the issue that arises for determination in this writ petition relates to reversal of ITC under Section 19(2)(v) of TNVAT Act 2006. The Court ruled that in view of the decision of Division Bench of this Court in the case of State of Tamil Nadu vs Everest Industries [W.A.No.1260 of 2017 dated 31.03.2022], the revival of ITC is set aside. To be noted that the State has filed an appeal against the aforesaid decision pending in S.L.P.Dairy No. 58115 of 2023. Stating so, the impugned order is set aside and this writ petition is allowed. **Mudhra Fine Blanc Private Limited, Chennai-4. Vs The Commercial Tax Officer, Mylapore Assessment Circle. W.P.No.9574 of 2020 DATED: 09.03.2023.**

Natural Justice : A Pre-assessment notice was issued to the petitioner on 30.09.2019, wherein the respondent proposes to deny the exemption claimed on stock transfer. Dual opportunity is set out under the same notice for the petitioner to file objections to the proposals with documentary evidence within 15 days from the date of receipt of the notice and to appear on any working day within the aforesaid 15 days. The aforesaid opportunity has been extended under threat of confirmation of the proposal based on records. In response, the petitioner has written back on the same date asking for 15 days' time to submit the Forms. This letter has, admittedly, been received by the Assessing Officer, who has acknowledged the same. Ld Government Advocate also confirmed receipt of this request. Despite this, the Assessing Authority has merely proceeded to pass the impugned orders of assessment on 20.11.2019 without either intimating the acceptance or

rejection of the request for adjournment and most importantly, without affording an opportunity of personal hearing fixing the date and time, as required by the statute and several circulars that have been issued by the Commissioner of Commercial Taxes. Court held that there is violation of principles of natural justice that vitiated the assessments. This is specifically so for the reason that the officer has, in the impugned order, stated that upon receipt of preassessment notice the petitioner has neither filed objections nor sought any adjournment, the latter seen to be contrary to the materials on record. The impugned orders are set aside and these writ petitions are allowed.

**Muthoot Exim Private Limited, Vs
The State Tax Officer, Kilpauk
Assessment Circle, Chennai – 600
102 W.P.No. 6336 of 2020 DATED:
08.03.2023**

TRAN Refund :A reading of the trajectory of events that have transpired in this matter would

reveal the tortured attempts by the assessee and the Department, the former seeking to avail CENVAT credit that was available to it and the latter calling on every provision under the Act, to deny its eligibility. The GST came into effect from 01.07.2017. The petitioner has credit of CENVAT of a sum of Rs.10 lakh (approx.) for the months of April, May, June, 2017. The law entitles an assessee to seek refund of CENVAT credit within a period of one year from year from the date of export. With the onset of GST, the petitioner was required to make a debit to the CENVAT credit account at the time of effecting the claim. This is not even statutory requirement and only flows from Notification No.27 / 2012 – CE(NT) dated 18.06.2012. Hence the claim was rejected. The Court stated that the eligibility of the petitioner to refund on a substantive basis has itself, never been questioned. The denial is based solely on a technical basis. That CENVAT account was disabled with the onset of GST and for the

authorities to have insisted on compliance of Notification No.27/2012 is itself a patent error. The Court was of the considered view this should not stand in the way of the petitioner, being entitled to relief, if it is otherwise so entitled and was of the considered view that the impugned order has no legs to stand and the same is set aside and this writ petition is allowed. The petitioner is entitled to and will receive the refund of the CENVAT credit in cash within a period of six weeks from date of receipt of a copy of this order. **M/s.Datamark Prodapt India BPO LLP Vs The Joint Commissioner of GST, Ambattur Division, III Range, Chennai – 37. W.P.No.17732 of 2020 DATED: 10.03.2023**

Show cause notice: The impugned order levies interest u/s 50 as well as penalty u/s 73(9) of the GST Act, over and above, reversal of Input

Tax Credit (ITC). Admittedly, there was no proposal in the pre-assessment notice either for levy of interest or penalty. To this extent the impugned order has travelled beyond the scope of the show cause notice. Stating so, the Court set aside the impugned order subject to the petitioner appearing before the respondent with a response to the show cause notice as well as to the levy of interest under Section 50 and penalty under Section 73(9) of the Act as contained in the impugned order on Thursday, 23rd March, 2023 at 10.30 a.m. without expecting any further notice in this regard. **K.Baskaran Vs The Assistant Commissioner (ST), Thirumullaivoyal Assessment Circle. Writ Petition No.12897 of 2020 DATED: 13..03..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. ST - LEGAL SERVICES DEMAND UNDER RCM FROM 01.04.2016 TO 05.06.2016 - SERVICE PROVIDED BY SENIOR ADVOCATE - NOT LIABLE



CA. VIJAY ANAND

In *Madhu Sudan Mittal v. UOI* 2023 (70) G.S.T.L. 124 (Jhar.) / (2023) 2 Centax 307 (Jhar.), the writ petitioner is a Senior Advocate practicing in this Court and being aggrieved with the Notification NO.18/2016-ST dated 01.03.2016 and Notification No. 9/2016-ST dated 01.03.2016 to the extent that it seeks to recover service tax directly from Senior Advocates for the legal services provided by them and to the further extent that it envisages the relationship between a Senior Advocate and an advocate / firm as that of a client and counsel. On a writ petition, the high court observed as under: -

1. The provision as contained in Notification No.30/2012 dated 20.06.2012 has been amended by virtue of Notification No.18/2016-ST dated 01.03.2016 by way of substitution through amendments dated 01.03.2016 and 06.06.2016. The Hon'ble Apex Court in *Zile Singh v. State of Haryana* [2004 (8) SCC 1] and *Government of India and Others v. Indian Tobacco Association* [2005 (187) E.L.T. 162 (S.C.)] held that both the amendments by way of substitution of the provision as contained in the original notification will be deemed to have applicable with effect from the date of notification dated 20.06.2012.

-
2. Since both the amendments relate back to the original document, the demand notice issued by the authority concerned for payment of service tax on legal services provided by a Senior Advocate for the period from 01.04.2016 to 05.06.2016 was held to be not sustainable in the eyes of law.
 3. Consequently, the demand notice dated 20.10.2021 was quashed and set aside.

Hence, the writ petition was allowed to the extent of quashing of demand notice dated 20.10.2021.

2. GIFT AND CASH BACK VOUCHERS - TRANSACTION IN MONEY - EXCLUSION FROM DEFINITION OF GOODS AND SERVICES

In Premier Sales Promotion Pvt. Ltd. v. UOI (2023) 3 Centax 64 (Kar.), the Assessee is a

registered Company engaged in the transactions of procuring Pre-paid Payment Instruments of Gift Vouchers, Cash Back Vouchers and E-Vouchers from the issuers and supplying them to its clients for specified face value. The clients issue such Vouchers to their employees in the form of incentive or to other beneficiaries under promotional schemes for use as consideration for purchase of goods or services or both as specified therein.

An application was submitted seeking advance ruling as to whether the Pre-paid Payment Instruments or vouchers themselves, or the act of supplying them is taxable, and at what stage, for each of the three categories of transactions undertaken by the Assessee and if the transaction were liable to tax, under which category and what would be the rate of tax applicable?

The authority, vide Order dated 30.07.2021, has ruled that the supply of vouchers is taxable as goods and the time of supply in all the three cases would be governed by Section 12(5) of the CGST Tax Act, 2017 and the rate of 6% as per Entry.

On a writ petition, the High Court observed as under: -

1. The Assessee is a Company engaged in the transaction of procuring PPIs of Gift Vouchers, Cash Back Vouchers and E-Vouchers from the issuers and supplying them to its clients for specified face value. The clients issue them to their employees in the form of incentive or to other beneficiaries under promotional schemes for use as consideration for purchase of goods or services or both as specified therein. The Assessee receives orders for supply of e- vouchers wherein the Assessee sources e-vouchers for such clients as per the orders received and acts as an intermediary between the Assessee and the supplier of e-vouchers.
2. The definition of 'vouchers' as defined under the CGST Act, makes it clear that vouchers are mere instruments accepted as consideration for supply of goods or services. They have no inherent value of their own. As vouchers are considered as instruments, they would fall under the definition of 'money', defined under the CGST Act. The CGST Act excludes 'money' from the definition of goods and service and therefore not leviable to tax.
3. It is clear that, mere transaction of money or actionable claim do not involve the levy of Service Tax, consequent to which no tax

is leviable, relying on the decision in the Delhi Chit Fund Association v. Union of India S.P.(C) No.4512 of 2012, [2013 (30) S.T.R. 347 (Del.)].

4. It is clear from the above authority that mere transaction of money or actionable claim, no services are involved and therefore no tax is leviable.
5. It is not in dispute that the vouchers involved in the instant petition are semi-closed PPIs in which the goods or services to be redeemed are not identified at the time of issuance. Vouchers are distributed to its employees or the customers which can be redeemed by them. These PPIs do not permit cash withdrawal, irrespective of whether they are issued by banks or non-banking Companies, and they can be issued only with the prior approval of RBI.

6. In substance, the transaction between the Assessee and his clients is procurement of printed forms and their delivery. The printed forms are like currency. The value printed on the form can be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers to Assessee's client. Therefore, the issuance of vouchers is similar to pre-deposit and not supply of goods or services. Hence, vouchers are neither goods nor services and therefore cannot be taxed.

Hence, the High Court allowed the petition and quashed the ruling of the advance ruling, which was sustained by the Appellate Authority, holding that vouchers do not fall under the category of goods and services, and they are exempted from levy of tax.

3. GST – AAAR – RENTING OF IMMOVABLE PROPERTY SERVICE RENDERED BY SEZ TO UNIT OF SEZ – ZERO RATED SUPPLY AND SUBJECT TO LUT – NO RCM OF RECEIVING SUPPLIES FROM SUPPLIERS ALLOTTED IN DTA FOR AUTHORISED OPERATIONS SUBJECT TO LUT

In RE: Portescap India Pvt. Ltd., [(2023) 2 Centax 309 (App. A.A.R. - GST - Mah.)], the Appellant is an SEZ Unit and is engaged in exports of the manufactured goods outside India. The Appellant procures Rental Services from “Santacruz Electronics Export Processing Zone” (hereinafter referred to as “SEEPZ”) SEZ Authority, which is a Local authority and other services like Advocate Services and Gate Pass Services from SEEPZ wherein GST is presently being discharged by the

Appellant under the Reverse Charge Mechanism.

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

- i. Whether an SEZ unit is required to comply with the reverse charge mechanism as a service recipient for local/domestic renting of immovable property services procured by the unit from SEEPZ Special Economic Zone Authority (Local Authority) in accordance with Notification No. 13/2017 - Central Tax (Rate), dated 28.06.2017 read with Notification No. 03/2018 - Central Tax (Rate), dated 25.01.2018?
- ii. Whether an SEZ unit is required to pay tax under reverse charge mechanism on any other services in accordance with Notification No. 13/2017 - Central Tax (Rate), dated

28.06.2017 read with Notification No. 03/2018 - Central Tax (Rate), dated 25.01.2018?

This application was rejected as being non-maintainable, since the Appellant are the recipient of services under consideration, and not the supplier thereof. Hence, they are not eligible to seek advance ruling in terms of the provision of section 95(a) of the CGST Act, 2017, which envisages that only the suppliers of the goods or services or both are entitled to seek advance ruling on matter or questions specified under section 97(2) of the CGST Act, 2017, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by them.

On further appeal, the Appellate Authority has observed as under:

1. The moot issues for consideration are as under:
 - i. Whether the impugned supply of renting of immovable property services provided by the SEZ Authority is zero-rated supply in terms of section 16(1) of the IGST Act, 2017.
 - ii. Whether the supply of any other services by the suppliers located in DTA to the SEZ unit is zero-rated supply in terms of section 16(1) of the IGST Act, 2017.
2. A perusal of the provisions of the zero-rated supply contained in section 16(1) of the IGST Act, 2017 makes it clear that, any supply of goods or services or both made to a SEZ developer or SEZ unit for carrying out the authorized operation in SEZ will be considered as zero-rated supply. That is, the said supply will not attract any GST whatsoever. These provisions of

zero-rated supply will cover even the supply of services which are specified under (the reverse charge Notification 10/2017-I.T. (Rate), dated 28.06.2017 as amended by Notification No. 03/2018-I.T. (Rate), dated, 25.01.2018. This is so because it is a settled proposition of the law that the specific provisions made in the Act will have greater legal force than that of a notification issued under the same or any other provisions of the same Act.

3. Hence, the provisions laid down u/s 16(1) of the IGST Act, 2017, will supersede the Notification issued under section 5(3) of the IGST Act, 2017 which enumerates the services which attract GST under reverse charge basis. Section 16(1) merely mentions the supply of goods or services or both to the SEZ developer or SEZ unit and does not mention anything about the

type of the supplier. That is, whether the supplier supplying the services is located in DTA, or in the SEZ area.

4. As long as the supply is being made to SEZ developer or SEZ unit for carrying out the authorized operation in SEZ, the same will be treated as zero-rated supply, and will not be subject to GST. Therefore, it will not matter in the present case that the impugned services of renting of immovable property is being provided by the SEZ developer, i.e. SEEPZ SEZ to the Appellant, and not by a supplier located in DTA as observed by the advance ruling authority while holding that the provisions of section 16(1) will not be applicable in the Appellant's case as the impugned services of renting of immovable property is not being provided by the supplier located in DTA rather the same

is being supplied by the SEZ developer, i.e., SEEPZ SEZ, hence the facility of LUT is not available to the Appellant as proposed by them.

5. Thus, the contention put forth by the Respondent that the said services are being supplied by the SEZ developer, and not by the supplier located in DTA does not hold water, and hence not sustainable.
6. Section 16(1) and section 5(3) of IGST Act makes it very clear that the intention of the legislature is not to tax the supplies made to a unit in SEZ or a SEZ developer, which has been made zero-rated under clause (b) of section 16(1) of the IGST Act, 2017. By virtue of deeming provision under section 5 (3) of the IGST Act,

2017, the levy on procurement of services specified in Notification 13/2017-CT (Rate), falls upon the unit in SEZ or SEZ developer.

7. Therefore, a unit in SEZ or SEZ developer can procure such service for use in authorised operation without payment of integrated tax provided the actual recipient i.e., SEZ unit or SEZ developer, furnishes a LUT or bond as specified in condition (i) of para 1 of notification No. 37/2017-CT. The actual recipient here in the subject supplies is a deemed supplier for the purpose of the aforesaid condition. The Appellant will not be required to pay any GST under RCM on the impugned supply of renting of immovable property services received SEEPZ SEZ, if Appellant furnishes LUT.

-
8. As regards any other services supplied by the DTA to the SEZ unit or developer, it is stated that the aforesaid principle will also be applicable in such cases. That is, all the supply of services procured by SEZ unit from the suppliers located in DTA for carrying out the authorised operation in SEZ will not attract any GST in accordance with the provision of section 16(1) of the IGST Act, 2017, and the Appellant will not be required to pay any GST under RCM on the services received from DTA supplier for carrying out the authorized operation in SEZ, subject to LUT.
- i. The Appellant is not required to pay GST under RCM on the impugned services of renting of immovable property services received from SEEPZ SEZ for carrying out the authorised operation in SEZ subject to furnishing of LUT or bond as a deemed supplier of such services.
 - ii. The Appellant is not required to pay GST under RCM on any other services received from the suppliers located in DTA for carrying out the authorized operation in SEZ subject to furnishing of LUT or bond as a deemed supplier of such services.

Hence, the Appellate Authority set aside the order of the advance ruling authority and held as under:

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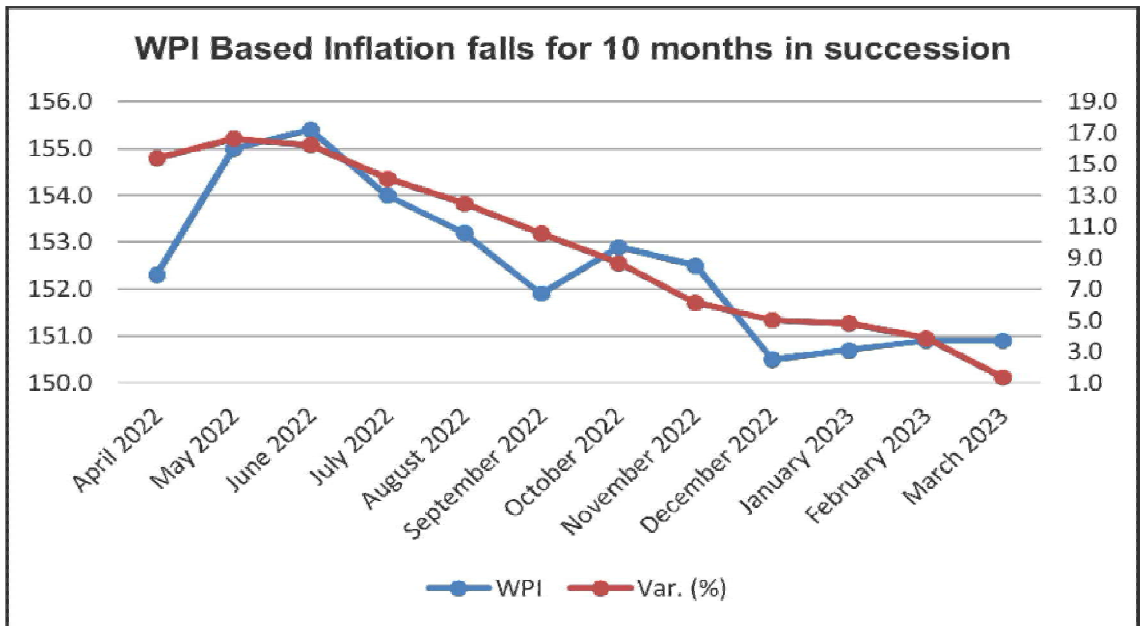
INDIAN ECONOMY ROUND UP

RBI pauses after 250 basis points hike in FY 2022-23

India started 2023-24 on a better note, and icing on the cake came from RBI opting to pause, in its meeting on 6th April 2023, after 250 basis points hike effected in FY 2022-23. The WPI based inflation has been consistently falling for 10 months in succession, from a recent peak of 16.6% in May 2022 to a recent low of 1.3% in March 2023.



CA. KANDASWAMY



RBI has indicated that, taking into account the baseline assumptions, survey indicators and model forecasts, real GDP growth is expected at 6.5 per cent in 2023-24 – 7.8 per cent in Q1; 6.2 per cent in Q2; 6.1 per cent in Q3; and 5.9 per cent in Q4 – with risks evenly balanced around this baseline path. Going forward, for 2024-25, assuming a normal monsoon and no major exogenous or policy shocks, the structural model estimates indicate real GDP growth at 6.5 per cent, with quarterly growth rates in the range of 5.5-7.0 per cent.

RBI has enumerated a few upside and downside risks to this baseline growth path. RBI indicated that the upside risks emanate from a stronger-than-expected rebound in the contact-intensive services as they emerge more fully from the pandemic; a restart of private investment activity boosted by the government's capex push, given healthier corporate balance sheets; a favourable terms of trade shock in the case of a sharper-than-anticipated correction in crude and commodity prices; a better-than-expected global growth prospects; and an early resolution of geopolitical conflicts.

On the flipside, RBI indicated that the downside risks to its baseline growth can emanate from, an escalation in geopolitical tensions, a further hardening of international crude oil and other commodity prices, sustained disruptions to supply chains, persistence of global financial market volatility, a sharper loss of momentum in global trade and demand and weather-related disruptions pose downside risks to the baseline growth path.

India's growth is powered by strong capital formation or capital expenditure. Within this, the capex of private sector has been relatively moderate, but is expected to accelerate, going forward. The Government is also hopeful of stepping up Capital expenditure on its front. While there has been deceleration in the pace of capital formation, they still remain healthy, and may leave way for acceleration in the pace, going forward.

The possible El Nino factor, and its adverse effect on Indian Agricultural production is a cause for concern. Fortunately, the Indian Meteorological Department (IMD) has come out with a long range forecast for 2023 South West Monsoon Rainfall, which is encouraging. IMD has indicated forecasted that, "The 2023 Southwest Monsoon Rainfall southwest monsoon seasonal (June to September) rainfall over the country as a whole is likely to be 96%of the Long Period Average (LPA) with (Normal). The LPA of the season rainfall over the country as a 2020 is 87 cm.

A normal monsoons, can not only boost agricultural incomes, but will also help in keeping food inflation lower. This coupled with favourable geo-political situation can help in bringing down the interest rates, in the medium term.

Impact of gyrations of Indian Rupee on India's GDP

RBI indicated that the Indian Rupee depreciated relative to the US\$ in H2:2022-23 amidst tightening global financial conditions, an uncertain global environment and portfolio outflows. The 'higher for longer' interest rate scenario and slowing global growth could keep risk aversion elevated and impinge upon capital flows to EMEs.

RBI has indicated that if Indian Rupee depreciates by 5% below the baseline, then inflation could edge up by around 35 bps while GDP growth could be higher by around 25 bps through the stimulus to exports. On the other hand, as India's growth performance and outlook is relatively better than peers, it could become attractive for foreign investors. Furthermore, with the current account deficit narrowing, the Indian Rupee could appreciate relative to the baseline. With 5% appreciation, inflation and GDP growth could moderate by around 35 bps and 25 bps, respectively.

Outlook

India remains the fastest growing economy amongst major economies. The country has to re-orient itself towards high end technology, green energy, electric vehicles and move up the value chain. De-carbonization is not only bringing in ecology benefits, but also economies of scale, and is becoming an entry card to capture greater share of the global markets. The focus is to improve the global competitiveness, through judicious use of technology. Lots of initiatives have already been taken on these lines, but the full benefit thereof will come only in the medium to long term. Perhaps, India has started off year 2023-24 on a decent note, and depending on geo-political events, and extent of impact of El Nino factor, the country appears well poised to improvise upon its forecasted growth in the current fiscal. Perhaps, the best is yet to come.

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TRANSPORT SERVICES ALONG WITH GOODS - IND AS 115

Analysis of Transport Services provided to Customers in addition to Goods transferred under Ind AS 115



CA. VINAY NAHAR

Many manufacturing and trading entities provide transportation services to their customers in addition to the goods supplied. In this case will the transport services be treated as a separate performance obligation? How will the revenue be recognised for the transport services – “at a point in time” or “over the period of time”?

Let us understand the accounting for the transport services provided to the customer under Ind AS 115: Revenue from Contracts with Customers, through a case study:

A. Facts of the case:

An entity ABC Ltd is in the paper manufacturing industry. Paper products are designed and manufactured by ABC Ltd and has a large customer base and varied uses. Their customers are the wholesalers and retailers in each state. ABC Limited in addition to providing various paper products also ensures that it transports the goods to the customers location. The cost incurred to transport are then added in the invoice (margin may be 0% to 3%) to the customer.

B. Query:

Will the transport services provided be treated as a separate performance obligation and how will the revenue be recognised in the following situations:

- i. Control of the goods is transferred to the customer once the goods move out of ABC Ltd.'s factory / warehouse gate.
- ii. Control of the goods is transferred to the customer only when it reaches the customers location.

In both the above cases ABC Ltd takes travel insurance to protect against the damage / theft of goods in transit.

C. Analysis and Conclusions:

An entity shall recognize revenue when the entity satisfies a performance obligation by transferring a promised good or service to a customer. An asset is transferred when the customer obtains control of that asset.

Control of an asset (good or a service) is transferred to the customer when:

1. The customer has the right to direct the use of the asset,
2. Obtain substantially all the remaining economic benefits form the asset, and
3. Has the ability to prevent another entity to direct the use of the asset and obtain economic benefits form the asset.

For each performance obligation identified, an entity shall determine whether it satisfies the performance obligation over time or satisfies the performance obligation at a point in time based on when the control is transferred to the customer.

Query B(i):

The control of the paper products has been transferred to the customer once the goods move out of the factory / ware house gates of ABC Ltd.

In this case as the control for the goods is transferred to the customer before the transport service is provided. The promise of transfer of goods is distinct form the transport services as the customer can get the benefit from the goods on its own or when combined with the resources they already have: they can sell the goods to another party when they are in transit and the customer can potentially use another transport carrier at its disposal.

The fact that ABC Ltd takes insurance for the goods in transit would not impact the above analysis as the control has been transferred to the customer once the goods leave the factory / warehouse gates.

Performance obligations:

1. Provide paper products
2. Transport of paper products

Revenue recognition:

1. Provide paper products:

Analysis based on the paragraph 35 of Ind AS 115 dealing with recognizing revenue over the period of time:

- Customer does not simultaneously receive and consume the benefits provided by ABC Ltd.'s performance as it performs i.e., during the manufacturing of the paper products; This clause is generally applicable to services provided.
- ABC Ltd.'s performance does not create or enhance the asset which the customer controls as and when the asset is created or enhanced, as the goods are fully manufactured (during which the customer has no control over the paper products) and then sold to the customer.
- ABC Ltd has alternative use for its products.

All the three cases mentioned in paragraph 35 of Ind AS 115 to recognize revenue over time are not be applicable and thus the revenue will be recognized at a point in time when the control is transferred i.e., when the goods leave the factory / warehouse gate.

2. Transport of paper products:

Customer consumes the benefits of the transport service as and when ABC Ltd provides it i.e., as and when the transport vehicle covers distance, it comes closer to the customer location.

As per para B4 of Ind AS 115 a performance obligation is satisfied over time if an entity determines that another entity would not need to substantially re-perform the work that the entity has completed to date if that other entity were to fulfil the remaining performance obligation to the customer.

In determining whether another entity would not need to substantially re-perform the work the entity has completed to date, an entity shall make both of the following assumptions:

- disregard potential contractual restrictions or practical limitations
- presume that another entity fulfilling the remainder of the performance obligation would not have the benefit of any asset that is presently controlled by the entity and that would remain controlled by the entity if the performance obligation were to transfer to another entity.

Thus, for the transport service which is treated as a separate performance obligation, revenue will be recognized over the period of time.

Query B (ii):

The control of the paper products has been transferred to the customer only when it reaches the customers location. The promise of providing goods is not distinct from the promise of providing transport services as the control of the goods will be transferred only at the customer location and the customer cannot get the benefit from the goods on its own until it is transported to its location.

Performance obligations:

1. Provide and transport paper products

Revenue recognition:

1. Provide and transport paper products:

Analysis based on the paragraph 35 of Ind AS 115 dealing with recognizing revenue over the period of time:

- Customer does not simultaneously receive and consume the benefits provided by ABC Ltd.'s performance as the entity performs i.e., during the manufacturing of the paper products; This clause is generally applicable to services provided.
- ABC Ltd.'s performance does not create or enhance.
- the asset which the customer controls as and when the asset is created or enhanced as the goods are fully manufactured (during which the customer has no control over the paper products) and then sold to the customer.
- ABC Ltd. has alternative use for its products.

All the three cases mentioned in paragraph 35 of Ind AS 115 to recognize revenue over time will not be applicable and thus the revenue (for both the goods and transport services) will be recognized at a point in time when the control is transferred i.e., when the goods reach the customer location.

Relevant paragraphs in Ind AS 115 for the article and the case study : 24 to 40; 31 to 38, B3 & B4.

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SUMMARY OF AAR / AAAR

1. Service taken by way of renting of Residential dwelling used as guest house by the Applicant is subject to GST under Reverse Charge Mechanism ("RCM").



CA. DEBASIS NAYAK & CA. AMAN GOYAL

In case of Re: M/s. Indian Metals and Ferro Alloys Limited ("Applicant") [Order No. 04/Odisha-AAR/2021-22] (referred as 'Applicant') – Odisha State Authority of Advance Ruling ('AAR' or 'Authority').

Fact of the case

- The Applicant has taken on rent certain premises in different locations to provide accommodation and food to its employees who visit for official purposes
- Accommodations are used for guest house purposes for its employees and situated in the residential area.

Issue before AAR

Whether service received by a registered person by way of renting of residential premises used as guest house of the registered person is subjected to GST under Forward Charge Mechanism ("FCM") or RCM.

Submission of Applicant

- The Applicant submitted before the Authority that the term "Residential dwelling" is not defined anywhere in GST law or erstwhile Service tax law.

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- However, Central Board of Indirect Taxes and Customs in its education guide dated 20.06.2012 has explained the phrase “residential dwelling” in clause 4.13.1 which defines it as, *in normal trade parlance, any residential accommodation but does not include Hotel, Motel, Inn, Guest house, Campsite, Lodge, Houseboat, or like places meant for temporary stay.*
 - Given the above submission, the Applicant is of the view that the dwelling taken on rent to be used as guest house is not covered within the term ‘residential dwelling’ and therefore, such transaction is not liable to GST under RCM.

Discussion and Findings

- Renting of an immovable property/ residential dwelling is considered as Supply of service in GST as per Schedule II of CGST Act. Prior to July 17, 2022, such renting for use as residence was exempt and for use as commercial purpose was taxable.
- Sl. No. 5AA was inserted vide Notification No. 05/2022- Central Tax (Rate) (“The Notification”) which provides service by way of renting of residential dwelling by any person to a registered person shall attract GST under RCM with effect from July 18, 2022.
- The Authority noted that the Notification has not specified any condition to the entry 5AA. The authority also noted that type or nature/purpose of use of residential dwelling i.e. for residence or otherwise by the recipient, has not been a condition in the said RCM notification. Hence, service of renting of residential dwelling to a registered person, would attract RCM irrespective of the nature of use.
- The Authority has also tabulated the implications of the Notification as below.

S. No	Property	Used for	Recipient	Earlier	Now
1	Residential	Residence	Unregistered	Exempt	Exempt
2	Residential	Residence	Registered	Exempt	RCM
3	Residential	Commercial	Registered	FCM	RCM
4	Residential	Commercial	Unregistered	FCM	FCM
5	Commercial	Commercial	Any person	FCM	FCM

Decision of AAR

The authority ruled that the service received by the Applicant (Registered) by way of taking residential premises on rent for use as its guest house, is subject to GST under RCM in view of the Notification No. 05/2022-Central Tax (Rate) dated 13th July, 2022

- Amount recovered from employees for canteen services and transportation facilities does not fall under the ambit of 'Supply' and hence GST is not applicable on collection of such expenses

In case of Re: M/s. Brandix Apparel India Private Limited [AAR No. 02/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 the business of manufacturing of apparels and exporting the same outside India.
- The Applicant has hired a third-party contractor for providing canteen services and transportation facilities to the employees.
- The contractor is raising an invoice to the applicant and the applicant is recovering a part of such expenses from the employees.

Issue before AAR

- Whether GST would be applicable on the amount recovered from employees for canteen facility provided?
- Whether GST would be applicable on the amount recovered from employees for transportation facility provided?

Applicant's Interpretation of Law

- The applicant in the present case is engaged in the business of manufacture of apparels and not in the business of providing canteen facility and transportation facility.
- The applicant submits that they arranged a canteen and transportation facility for its employees which is run by a third-party service provider. In this regard, the applicant is not a provider of canteen and transportation facility but a receiver of such services and no profit element in the recovery of charges from employees.
- In this regard, the applicant further submits that the services are not falling within the ambit of 'supply' and hence the same shall neither be treated as goods nor services.
- Therefore, the amount of partial cost recovered from the employees during course of employment is not be liable to be taxed under GST law.

Discussion and Findings of the AAR

- It is clearly seen that the provision of service of canteen and transportation facility is by the third-party to the applicant and not by the applicant to their employees.

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- The canteen service & transportation facility is not an output service of the applicant as the applicant is in the business of apparel manufacture. In fact, the canteen services & transportation facility are being received by the applicant from the third-party providers.
 - Therefore, it can be concluded that the provision of canteen and transportation facility by the applicant to the employees is not a supply as it is not in the course or furtherance of business.
 - Further, it is also to be noted that the applicant is merely collecting a part of the canteen expenses from the employee and hence does not tantamount to supply as per Section 7 of the CGST Act.
 - Circular No. 172/04/2022 clarifies that any perquisites provided by the employer to its employee are in lieu of the services in relation to the employment and therefore the perquisites provided by the employer to the employee will not be subjected to GST.

Decision of the Andhra Pradesh Authority of Advance Ruling

The authority concluded that the GST is not applicable for the recoveries from the employees on account of canteen and transportation services provided to them.

3. Liquidated damages collected for non-performing of an act constitute as supply as per Section 7 of CGST act and taxable at 18% under chapter head 9997-Other Services

In case of Re: M/s. AP Power Development Co. Ltd AAR No. 04/AP/GST/2023, Dated 31st March 2023 (referred as 'APPDCL' or 'Applicant') – Andhra Pradesh te Authority of Advance Ruling ('AAR' or 'Authority').

Facts of the Case and question before AAR:

- The Applicant has entered an agreement with Chettinad logistics Private Limited (referred as “service provider”) for supply of certain services which includes liasoning, supervision of coal loading, transportation, crushing of boulders and other handling activities at Paradip port as well as the movement between the designated ports and Sri Damodaram Sanjeevaiah thermal power station by ensuring minimum transit loss.
- In the event of failure in performance of job assigned to the service provider, the service receiver (Applicant) will collect liquidated damages for increase in moisture of raw coal over the loading end, for increase in ash percentage, penalties for late transportation of coal and penalty for short supply of coal, as per the penalties clause of the contract.

Question before AAR

- Whether liquidated damages collected by the Applicant from service provider for non-performing of an act constitute as supply as per Section 7 of GST act. If yes, then what is its classification and applicable rate of GST?

Contention of the Applicant before AAR

- The Applicant submits that, Schedule II Para 5(e) makes it amply clear that in order to invoke the above activity as taxable activity, there needs to be an agreement to tolerate a situation between applicant and service provider
- The Applicant submits that the ‘liquidated damages’ is an amount paid only to compensate the loss or damage suffered by applicant due to breach of the contract. There is no agreement, express or implied, by the applicant receiving the liquidated damages, to refrain from or tolerate an act or to do anything by service provider.
- Liquidated damages received by applicant is merely a flow of money from the service provider, who causes breach of the contract to applicant, who suffers loss or damage due to such breach. Hence, such payments do not constitute consideration for a supply.

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- The Applicant also made references to the circular 178/10/2022 and contended that the case is covered by the circular and the circular had provided that the damages collected by the appellant are not taxable as per the said circular.

Observation of AAR

- On the contract or agreement part, the AAR highlighted that on combined reading of the provisions (1) & (2) of Section 55 of the Indian contract Act, 1872, it can be noted that that a failure to perform the contract at the agreed time renders it voidable at the option of the opposite party and alternatively such party can recover compensation for such loss occasioned by non-performance. Similarly, section 73 & 74 of the Indian Contract Act, 1872 enables recipient of supplies under a contract to be compensated with damages for breach of any provision of the contract.
- On the consideration aspect the AAR observed that the amount so paid is neither ad-hoc, unconditional nor at the whims of any service provider nor the company. There is a clear mathematical formula as to calculation of such an amount and the conditions/scenarios contingent upon which the amounts are payable are clearly narrated in the agreement itself.
- The circular 178/10/2022 only meant to clarify the position of law and shall be applied reasonably having regard to the facts of the case. Where it is said that the payment towards damages is incidental to the main supply and if the main supply is taxable, they shall also be taxable. If the principal supply is exempt then the incidental supply shall also be exempt.

Ruling of the AAR

The AAR after held that liquidated damages paid by defaulting party to the non-defaulting party for tolerating the act of non-performance or breach of contract have to be treated as consideration for tolerating of an act or a situation under an agreement and hence such an activity constitutes supply of service. The supply is taxable under chapter head 9997 serial no. 35 of Notification No.11/2017- Central/State tax rate.

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4. Service provided by the branch office in one state to head office in another state through employees who are common to the company constitute supply of service in terms of Section 7 of the Act

In case of Re: M/s. Profisolutions Private Limited - 2023 (4) TMI 541 (referred as 'Applicant') – Tamil Nadu Authority of Advance Ruling ('AAR' or 'Authority').

Facts of the case

- The Applicant is registered under the Companies Act 2013 in the State of Karnataka.
- The Applicant is having a branch office at Chennai and the same is registered in the State of Tamil Nadu under GST Act for providing engineering services for industrial and manufacturing projects.
- The branch office of the applicant is providing support services like engineering services, design services, accounting services, etc to the Head Office at Bangalore.
- Till date, no invoice is issued and no GST is paid for provision of the said services from branch to head office.

Question before AAR

Whether providing service by branch office in one State to head office in another State through employees who are common to the company constitute supply of service in terms of Section 7 the Act, if so, whether such services attract GST liability.

Contention of the Applicant before AAR

- 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.

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- 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 AAR

- The AAR noted that Applicant from branch office has supplied, apart from accounting services, various technical services to head office in other State where the factory is located to fulfill the product design requirement of the customers
- The AAR highlighted that service of an employee working in a branch flows only through the branch to the head office or customer. As long as the employee is deployed in a branch of an entity, his services that is rendered directly to head office will be in his representative capacity as an employee of the branch.
- The AAR analyzed provisions of Section 25 (4) and Section 7 read with Schedule I and Section 15. The AAR highlighted that any supply of service between two registrations of the same person in the same State or in different States attract GST
- The AAR also highlighted that Even the services of employees deployed in a registered place of business to another registered premises of the same person will be treated a supply between distinct person and attract GST.

Decision of AAR

Services, including the services of common employees of a person, provided by branch office to head office and vice versa, each having separate GST registration, will attract GST liability under respective Acts, viz IGST Act, 2017 or CGST Act, 2017 and SGST Act, 2017 or UTGST Act, 2017.

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EXCEL TIPS

SORTBY Function

Excel 365 comes with a range of powerful functions that can help you sort and manipulate data with ease. One such function is the SORTBY function, which is particularly useful when working with large data sets.



CA. DUNGAR CHAND U JAIN

The SORTBY function is used to sort a range of data based on the values in one or more columns. This function allows you to sort data in ascending or descending order, and it also lets you sort data by multiple columns simultaneously. The basic syntax of the SORTBY function is as follows:

=SORTBY(array, by_array1, [sort_order1], [by_array2], [sort_order2], ...)

The SORTBY function takes one mandatory argument (array) and one or more optional arguments (by_array and sort_order). Here's what each argument means:

array: The range of cells to be sorted. This range must include all the columns you want to sort, including the headers.

by_array1: The range of cells containing the values to sort by. You can sort by one or more columns by including additional by_array and sort_order pairs.

sort_order1: Optional. A number that specifies the sort order for by_array1. 1 for ascending order and -1 for descending order. If this argument is omitted, the function sorts by ascending order by default.

by_array2, sort_order2, ...: Optional. Additional ranges and sort orders for sorting by multiple columns.

The SORTBY function is particularly useful when working with large data sets that require sorting based on multiple criteria. It simplifies the process of sorting data and allows you to focus on analyzing the data rather than spending time on manual sorting.

Example 1 : Sorting a single column of data

Suppose you have a table with a list of products and their prices, and you want to sort the table by price in ascending order. Here's how you can use the SORTBY function to do that:

The screenshot shows an Excel spreadsheet with the following data:

	A	B	C	D	E
	Product	Price		Forumula used in Cell D3 : =SORTBY(A2:B10, B2:B10, 1)	
1	Apple	25.00			
2	Banana	10.00		Banana	10
3	Orange	20.00		Orange	20
4	Mango	35.00		Apple	25
5	Pineapple	32.00		Pineapple	32
6	Grapcs	33.00		Grapcs	33
7	Watermelon	100.00		Mango	35
8	Kiwi	150.00		Papaya	55
9	Papaya	55.00		Watermelon	100
10				Kiwi	150
11					

Select a blank cell where you want the sorted data to appear, say in cell D3

Type the formula = **SORTBY(A2:B10, B2:B10, 1)** and press Enter

Example 2: Sorting by multiple columns

Suppose you want to sort the data by Price in descending order, and then by product in ascending order. Here's how you can use the SORTBY function to do that:

The screenshot shows an Excel spreadsheet with the following data:

	A	B	C	D	E	F	G
1	Product	Code	Price		Formula used in Cell E3 : =SORTBY(A2:C10, C2:C10, -1,A2:A10,1)		
2	Apple	APP	25.00				
3	Banana	BAN	10.00		Kiwi	KIW	150
4	Orange	ORA	20.00		Watermelon	WAT	100
5	Mango XYZ	MAX	35.00		Papaya	PAP	55
6	Mango ABC	MAA	35.00		Mango ABC	MAA	35
7	Grapes	GRA	33.00		Mango XYZ	MAX	35
8	Watermelon	WAT	100.00		Grapes	GRA	33
9	Kiwi	KIW	150.00		Apple	APP	25
10	Papaya	PAP	55.00		Orange	ORA	20
11					Banana	BAN	10

Select a blank cell where you want the sorted data to appear, say in cell E3

Type the formula =SORTBY(A2:C10, C2:C10, -1,A2:A10,1) and press Enter. Sorted data will appear.

Example 3 : Sorting by a custom list

Suppose you have a table with a list of employees, and you want to sort the data by their job titles in a specific order. Here's how you can use the SORTBY function to do that:

Create a custom list of job titles in the order you want them to appear. For example, you might create a list that looks like this: "Manager", "Assistant Manager", "Supervisor", "Salesperson", "Intern".

Select a blank cell where you want the sorted data to appear, say in cell F3

	A	B	C	D	E	F	G	H
	Names	Job Title		Order of display		Forumula used in Cell F3 : =SORTBY(A2:B6,MATCH(B2:B6,D2:D6,0))		
1								
2	Rahul	Assistant Manager		Assistant Manager				
3	Raj	Intern		Manager		Rahul	Assistant Manager	
4	Shalini	Manager		Supervisor		Shalini	Manager	
5	Ramesh	Salesperson		Salesperson		Suresh	Supervisor	
6	Suresh	Supervisor		Intern		Ramesh	Salesperson	
7						Raj	Intern	
8								
9								

Type the formula = **SORTBY(A2:B6,MATCH(B2:B6,D2:D6,0))**

Press Enter, and the sorted data will appear from the selected cell.

These are just a few examples of how to use the SORTBY function in Excel. With this powerful tool, you can sort data in a variety of ways to suit your needs.

In conclusion, the SORTBY function in Excel 365 is a powerful tool that allows you to sort data based on multiple criteria. With its simple syntax and ability to sort large data sets, this function is a valuable addition to any Excel user's toolkit.

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RECENT CASE LAWS IN INSOLVENCY AND BANKRUPTCY CODE

NCLAT

- IBC proceeding cannot be used for recovery of Success Fee/ Brokerage Fee where the Corporate Debtor denies the claim by giving notice of disputes – BNK Securities Pvt. Ltd. Vs. Sebacic India Ltd. – NCLAT New Delhi**

This appeal was filed against the order issued by the adjudicating authority (NCLT Ahmedabad) on January 11, 2023, on the ground of pre-existing dispute under section 9 of the IBC the appellant's application is rejected. According to the appellant, he and the corporate debtor have a Success Fee Agreement, and following the completion of his part, the appellant sent the corporate debtor an invoice. But because no payment was made,



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a notice under Section 8 of the IBC was given on February 18, 2019, and a section 9 application was filed. On February 28, 2019, the Corporate Debtor responded right away to the Section 8 Notice and denied the Appellant's claim. A Section 9 Application filed by the applicant is dismissed. Every assertion made by the Appellant was disputed by the Corporate Debtor, who also stated that the Appellant's invoice was refused by the Corporate Debtor. The NCLT held that there is Pre-existing dispute and that the

adjudicating authority did not err in rejecting the Section 9 Application. IBC proceedings cannot be used in the current situation, where the Corporate Debtor has notified the Appellant of any disputes, to collect Success Fees or Brokerage Fees.

2. The National Company Law Tribunal held in the case of Jain Irrigation Systems Ltd. vs. Pragyawan Technologies Pvt Ltd. that when the dispute made by the parties arises out of a contract that can be arbitrated, it will not be proceeding under the Section 9 Proceedings.

The Scheme for insolvency proceedings stipulates that the proceedings will continue in the event of an admitted debt and default; it is not the duty of the forum to resolve contractual dispute between the parties”.

In the instant case, the Corporate Debtor had already sent letters before the Section 8 Notice, and in response to the Section 8 Notice, a detailed reply had been submitted, rejecting the appellant’s claim. The claim being contested, the instant case did not qualify for admission under Section 9, and the adjudicating authority correctly denied the Section 9 Application.

3. The word used in CIRP Regulation 9(2) is ‘may’ as against ‘shall’ in Regulation 9(1) which means that Regulation 9(2) is provided more as a matter of convenience for the workmen or employees but still demands a declaration in respect of claim with proof and verification of the Form ‘Particulars’ mentioned therein – Fort Gloster Industries Ltd. Vs. Resolution Professional,

Fort Gloster Industries Ltd.- NCLAT New Delhi

First of all, the application CA (IB) No. 650/KB/2019's Annexure B attests that no such claims have been made by the workers/employees separately in accordance with Regulation 9(1) of the Regulations by using form-D. Additionally, the Respondent has made the case that even this list was never delivered to the RP because it was stated in the letter dated 11.03.2019 (Annexure A4) that the office holders of the Appellants were to send the list by registered mail. However, there is no evidence on file to support this claim, and the RP has categorically denied it in an affidavit. Evidently, Regulation 9(1) of the Regulations is completely disregarded. In a similar vein, Annexure A4 dated 11.03.2019 does not in any

way constitute an authority granted to the "authorised representative"; rather, it is more of a covering letter from the office bearers of the trade unions of the workmen and the clerks association, which is in violation of Regulation 9(2) of the Regulations. As a result, even the requirements of Regulation 9(2) of the Regulations have not been followed. Contrarily, it is documented that the RP satisfied the claims of all 11 employees who had submitted their applications in Form-D in accordance with Regulation 9(1) of the Regulations and even took into account the claims of four workers who had submitted their applications after the 90-day deadline. However, it cannot be said that the amount that has been admitted has not been paid or made a provision in the

resolution plan by the RP/SRA. It has also come to light that a provision has been made to the extent of 20% of the total amount of Rs. 12.78 Crore in order to satisfy any amount in the future which is yet to be claimed.

4. If an incomplete or improper authorisation is found in CIRP application, Adjudicating Authority, incompliance of proviso to Section 7 of IBC, 2016 is required to issue notice and provide an opportunity to rectify the defects – Rupesh Anand Vs. Anup Tripathi – NCLAT Chennai

Legal action could be rendered invalid by an incomplete or improper authorization, which would invalidate the entire process. Rectification is therefore considered to be of the utmost significance and is

something that cannot be overlooked. In accordance with Section 7 of the Code, the application must be complete in all material respects, and if there are any defects, the adjudicating authority (Tribunal) shall afford the applicant a reasonable chance to correct such defects before accepting or rejecting the application.

The contested order is cryptic, devoid of qualitative or numeric discussions, and smacks of a speaking order. It is therefore obviously unsustainable. Even the Respondents in this case haven't given any information to clarify the questions posed by the Appellant in this case, either in the appeal or in the reply/rejoinder in the original petition before the adjudicating authority.

Based solely on the evidence presented and in light of the provisions of the I & B Code, 2016, the contested order cannot be upheld on this specific issue of defects. As a result, the contested order, dated October 20, 2022, in CP No. 122/BB/2021, issued by the Adjudicating Authority (NCLT), Bengaluru Bench, deserves to be reversed and is as a result overturned in order to further the interests of justice.

5. An Unsuccessful Resolution Applicant has no locus to assail a Resolution Plan or its implementation – M.K. Rajagopalan Vs. S. Rajendran, RP Vasan Health Care Pvt. Ltd. – NCLAT Chennai

Due to the forthcoming fact that the Petitioner/Appellant is an Unsuccessful Resolution Applicant and is not a Stakeholder under Section 31(1)

of the IBC, 2016 in relation to the Corporate Debtor, this Tribunal concludes without any hesitation that the Petitioner/Appellant is not an aggrieved person falling under Section 61(1) of the IBC, 2016, especially in light of the fact that he is not a Stakeholder.

6. The negligence on the part of Corporate Debtor not to have executed lease deed cannot be allowed to become a ruse for fraudulent transaction u/s 43, 49 and 66 of IBC – Jagdish Kumar Parulkar, Liquidator for Kapil Steels Ltd. Vs. M/s Indore Steel & Alloys Pvt. Ltd. – NCLAT New Delhi

It cannot be overlooked or allowed to be used as an excuse for a fraudulent transaction that the Corporate Debtor was negligent in failing to perform the lease deed. This Bench will refrain from recording a finding of a

preferential or fraudulent transaction solely based on a likelihood of a possible collusion without evidence in the record. The current transaction between MPIDCL and ISAPL/Respondent No. 1 is not illegal and does not involve any procedural or substantive irregularities, so we are satisfied with the Adjudicating Authority's findings that the Appellant is not permitted to disrupt the transaction by invoking Sections 43, 49, and 66 of the IBC, or to interfere with the possession of or affect the leasehold rights of Respondent No. 1.

7. There is no power to enjoin upon NCLAT to condone even a single day beyond the condonable period prescribed as per Section 61 of the Insolvency and Bankruptcy Code, 2016 – Employees Provident Fund Organisation

Vs. Nethi Mallikarjuna Setty – NCLAT Chennai

Given the crystal-clear position of Section 61(1) of the Insolvency and Bankruptcy Code and Rule 150 of the NLCT, NCLAT held that the delay of 289 days provided by the Petitioner/Appellant from 10.03.2022 to 23.12.2022 in filing the instant Company Appeal cannot be excused because there is no power to enjoin upon this Appellate Tribunal to excuse not even a single day beyond the condonable period prescribed as per section 61 of IBC,2016.

8. Nclt An application under Section 9 of the Code is only maintainable when the contention of the defendant is rejected in its entirety in the civil matter and goes past the appellate stage – M/s Damani Shipping Ltd.

**Vs. M/s Hindustan Zinc Ltd. –
NCLT Jaipur Bench**

When the defendant's claim is completely rejected in the civil case and moves past the appellate stage, it is assumed that there are no legal issues at issue between the parties, and only then is an application under Section 9 of the Code maintainable. The Operational Creditor's actions show recovery as the driving force behind the instant application as a dual opportunity to recover debts. Whatever the result of the lawsuit between the parties, the existence of a pending dispute is an undeniable reality. This Adjudicating Authority does not need to consider the grounds of the pre-existing dispute, and the claim of the Operational Debt cannot be brought up in front of this

Adjudicating Authority for CIRP of the Respondent Company.

NCLT

- 9. The word “may” used in Section 30(4) of IBC is directory and not mandatory and it is only an enabling provision and does not impose any mandate on the CoC to distribute payments to creditors based on the value of security held by them – Canara Bank Vs. Sri. Nitin Vishwanath Panchal RP of M/s. Galada Power and Telecommunication Ltd. – NCLT Hyderabad Bench**

While examining the language used by the Legislature in the amended Section 30(4) with regard to taking the security interest into consideration demonstrates that the word “may” is directory instead of mandatory. Apart from that, the mentioned provision serves

only as an enabling provision and doesn't require the COC to pay creditors based on the worth of the security they hold. While approving the resolution plan, Section 30(4) of the IB Code only authorizes the COC to decide on the order of priority among creditors as stipulated in sub-section (1) of Section 53 of the IB Code, including the priority and value of security interests of secured creditors. As an outcome the argument that the impugned resolution plan is not valid as the COC failed to consider the pre-CIRP preferential financial bargains made by the Applicants with the Corporate Debtor is not supported. As a consequence, it is significant to note from the finding that under the 2016 IB Code's Scheme, any dissatisfaction, including that of the Applicants in this case, does

not have the status of a legal grievance and cannot be raised as a basis for an appeal. Accordingly, the widely recognized legal position regarding the priority in payment among different categories of creditors, which is essentially the Committee of Creditors' commercial judgment, and a dissenting secured creditor like the Applicants herein cannot seek a greater sum to be paid to them on the basis of the value of their security interest by claiming dissatisfaction.

10. The filing of suits and proceedings does not restrict the financial creditor for initiation of CIRP of the Corporate Debtor – Jammu Kashmir Bank Ltd. Vs. Ace Engineering (India) Pvt. Ltd. – NCLT Chandigarh Bench

The petitioner further filed a civil proceeding against the respondent-Corporate Debtor, but this suit is not related to the CIRP proceedings. In view of the decision of the Hon'ble NCLAT in the case of Harkirat S. Bedi vs Oriental Bank of Commerce [2019] ibclaw.in 62 NCLAT and Karan Goel vs. M/s. Pashupati Jewellers & Anr. [2019] ibclaw.in 163 NCLAT, we are of the view that the filing of suits and proceedings does not restrict the financial creditor for initiation of CIRP of the corporate debtor. The liability of the principal borrower and the guarantor(s) is joint and several in a guarantee contract, still Therefore, even if the guarantor or principal borrower has been released, the other party would not stand discharged until the obligation gets fulfilled .

11. A Resolution Plan passed by a CoC, which is comprised of related parties of the Corporate Debtor, is void ab initio as it violates Section 21(2) read with Section 30(2)(e) of IBC, 2016 – M/s. Punjabi Accessoriezz Pvt. Ltd. Vs. M/s. Kredo Beauty Pvt. Ltd. – NCLT New Delhi Bench Court-II

According to the adjudicating authority, Without the involvement of any CoC members, a vote by show of hands could not have been conducted to approve an Ordinary Resolution for the appointment or removal of a Director in the Corporate Debtor, Kredo Beauty Pvt. Ltd. We therefore firmly believe that the aforementioned two shareholders, who are also CoC members of the Corporate Debtor, had the ability to influence the make-up of the Board of Directors of the

aforementioned Corporate Debtor. Therefore, we conclude that both the CoC members and the CoC as a whole are “related parties” to the Corporate Debtor in accordance with Section 2(l) of IBC, 2016 and as a result, the entire constitution of the CoC is unlawful in the eyes of the law due to their ability to control the composition of the Board of Directors of the Corporate Debtor. We further understand that a Resolution Plan approved by a CoC made up of associates of the Corporate Debtor is void from the start as it ignores Sections 21(2) and 30(2)(e) of the IBC, 2016. Considering the aforementioned, we are confronted with no alternative option but to deny the present application, IA No. 611 of 2021. We are forced to order the corporate debtor’s liquidation

because the CIRP period’s utmost permissible duration has already passed. arranged suitably.

12. Whether application under Section 43, 44 and Section 66 of IBC would survive in absence of Transaction Audit Report/ Forensic Audit Report – Mrs. Vaishali Arun Patrikar, RP, M/s Panama Systems Pvt. Ltd. Vs. Mr. Hemant Khinvasara, Director (Suspended) of M/s Panama Systems Pvt. Ltd. – NCLT Mumbai Bench

In spite of the Respondent’s alleged lack of cooperation, the Applicant took the necessary actions to complete the procedure using the information at her disposal. Additionally, with regard to the concealment of information pertaining to the missing assets (phone, laptops,

and desktops), the Applicant/ Liquidator has not conducted any audit to conclusively demonstrate the value of the missing assets as claimed or provided any concrete proof with regard to the determination of the amount claimed for the concealed property/missing assets. Because of the aforementioned facts and circumstances, the bench is of the opinion that the applicant has failed to provide the necessary information or any concrete evidence in support of the claims made. As a result, the bench is holding off on taking any action regarding the conduct of the respondent in the absence of any conclusive evidence.

- 13. The object of IBC is to ensure that the insolvent company is put back on its feet and not to disarray a solvent and financially sound company –**

Prism Johnson Ltd. Vs. Doosan Power Systems India Pvt. Ltd. – NCLT New Delhi Bench Court II

A financially sound and solvent business is not object of the IBC rather, it is meant to guarantee that the insolvent company is brought back to its feet. The provisions in the IBC relating to the commencement of CIRP at the request of an Operational Creditor whose dues are undisputed are rigid and inflexible, as it was noted above that the financial strength as well as nature of business of Financial Creditors and Operational Creditors are different, as well as the tenor and terms of agreements/ contracts with Financial Creditors and Operational Creditors. The Corporate Debtor is required to pay any fees that have been acknowledged as owed to the Operational

Creditor. A CIRP must be started if it doesn't. There is a bit more flexibility in the context of a financial debt. The decision on whether or not to approve the Financial Creditor's application has been given to the Adjudicating Authority (NCLT). The Adjudicating Authority has the authority to reject the application or, if the facts and circumstances justify it, keep the admission under suspension. Of course, in the event of rejection of an application, the Financial Creditor retain the right to reapply for the initiation of CIRP if its dues stay unpaid.

Supreme court

14. The Hon'ble Supreme Court in the case of – Srei Multiple Asset Investment Trust Vision India Fund Vs. Deccan Chronicle Marketeers ruled that the CoC's approval, which was obtained with 81.39% of the vote, makes it clear that

the Corporate Debtor has a perpetual, exclusive right to use the brands "Deccan Chronicle" and "Andhra Bhoomi," and that it makes no mention of the Corporate Debtor's ownership of the trademarks/brands "Deccan Chronicle" and "Andhra Bhoomi." But the Adjudicating Authority, in deciding Application I.A. No.155 of 2018, not only upheld the exclusive right to use the trademarks "Deccan Chronicle" and "Andhra Bhoomi," but also stated in its order dated August 14, 2019, that the trademarks belong to Corporate Debtor/ DCHL. In our opinion, this was a modification or alteration to the Resolution Plan that was approved, which is unquestionably illegal under the law.

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