

THE MONTHLY MAGAZINE FROM CASC

GST UPDATES

A graphic featuring the Indian Rupee symbol (₹) and the letters 'GST' in large, bold, yellow 3D font. The background is dark blue with several gold coins floating around the text. There are also faint images of Indian banknotes in the background.

₹ GST

GROWTH



RECENT JUDGMENTS



INDIAN ECONOMY ROUND UP



VOLUME-2

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CASC BULLETIN

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16.11.2023 (Thursday)	Key issues in filing Form GSTR-9 and Form GSTR-9C	CA. Shravan Gehlot*
30.11.2023 (Thursday)	Digital Personal Data Protection Act, 2023	Adv. K Vaitheeshwaran*

*Subject to confirmation by speakers

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 2023 - 2024**

Recent developments affecting the Indian Economy

The Israel Hamas conflict is far more serious than the Russian-Ukraine war. If uncontrolled, it could lead to a situation where entire Middle East could be drawn into this conflict with wider ramifications. Speculations are galore as to why Hamas suddenly attacked Israel. This war will ensure that inflation remains high among the nations thereby affecting the common man. The prices of petroleum products will stand at elevated levels. As far as India is concerned, there is no headroom to raise the petroleum prices because it remained quite high despite the lower global prices and also because of the impending elections across the states as well as parliamentary elections which are only a few months away. One hopes that Government of India will be able to manage its fiscal deficit reasonably.

The elections in the five states saw many a poll promises which border on dole to common man. If implemented it could make the common man dependent on government plus it will cause a serious economic consequence on the finances of the state governments. The freebie culture needs to be stopped for the good of our nation.

MCA creates new integrated portal

A new integrated portal is very soon likely to go live which is expected to reduce the efforts involved in checking the status of shareholding and unclaimed dividend that has been transferred to the Investor Education and Protection Fund Authority. It is expected that the portal will have two features, namely search and the claim process. In the first phase of going live, the portal is expected to provide a comprehensive search capability

module to enable people claim what is rightfully theirs. The search facility is likely to be based on name, folio number, district to which a person belongs to and many other attributes. The large amount which is lying as balance and the unclaimed shares with the Investor Education and Protection Fund Authority shows that there is very little awareness among the investors in the existence of the Investor Education and Protection Fund Authority and that they can reclaim their shares and unpaid dividends.

TreDS - A growing avenue for small business working capital finance

The Trade Receivables Discounting System platforms introduced by Reserve Bank of India to facilitate the financing or discounting of trade receivables of MSMEs are witnessing tremendous growth in recent times. Such platforms are increasingly witnessing participation from MSMEs which aim to address the liquidity

challenges faced by them. These platforms are aimed at creating a marketplace, enabling price discovery, timely payments to MSMEs and low interest due to competition in the form of bidding. In a Trade Receivables Discounting System platform, an MSME seller uploads an invoice and once the buyer accepts it, multiple financial institutions make bids to finance the invoice and the seller then accepts the most favourable bid. On the due date, the buyer pays the money to the financial institution. The bidding process has increased the bargaining power of the MSMEs in terms of obtaining collateral free financing at lower interest rates as lenders from across the country can bid for a particular transaction.

Technological changes - Are professionals living a better world?

As far as Indian tax administration and compliance is concerned, we are living in a time where the rate of

change is faster than the yesteryears and it will be faster in the times to come. Due to technological advancements, the tax administrators are ushering the changes as and when they like with more emphasis on compliance. Similarly, the audit compliance and reporting had undergone phenomenal changes in its scope, reporting and regulatory actions. With the certainty of fast changes around, if one pauses and thinks, he will find it difficult to answer as to whether the professional life is easier now or harder!

Appeal

We, at Chartered Accountants Study Circle, request members to contribute articles for the bulletin and you may contact the editorial board regarding the same. We have been regularly conducting technical programmes every month. Members are requested to attend the programmes conducted by CASC and are also requested to send their suggestions and / or value additions to the services provided by

CASC including this Bulletin. The same can be sent as hard copy to the office of the CASC or emailed to admin@casconline.org or any of the members of the Management Committee of the CASC. Any member interested in using the CASC platform for addressing our members on technical topics may kindly feel free to contact us by way of email at admin@casconline.org.

With the busy tax season coming to an end, it is time to relax for a while, then plan for future. The areas that require updating are ESG reporting skills, adoption of technology in conduct of audits, preparing oneself for the opportunities that may arise in the GST Tribunal practice.

We wish all our members a very safe and Happy Diwali!

For and on behalf of the Editorial Board

R. Sricharan

Sricharan R

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ANNOUNCEMENTS

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

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

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For updates on monthly meetings and professional news.
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RECENT JUDGEMENTS IN VAT/CST/GST

Revision and Limitation: The petitioner has challenged the impugned assessment order dated 26.10.2021 by the respondent to the assessment year 2010-2011. The impugned order has been passed purportedly u/s 27 of the TNVAT, 2006. As per Section 22 of the Act, the assessment was deemed to have been completed on 30.06.2012. It appears that the Office of the Assistant Commissioner (ST), Ambattur had issued a notice dated 27.03.2014 intra-Department. However, the same was not communicated to the petitioner. A notice of offer issued u/s 27 of the Act ought to have been issued under the limitation described under Section 27 of the Act. Considering the above, The Hon'ble court was of the view that the impugned order, confirming the demand for the assessment year 2010 - 2011 is liable to be quashed. Stating so, this WP was allowed.

M/s.Dhacshin Audio Visuals



CA. V.V. SAMPATHKUMAR

**Vs. Sales Tax Officer (ST), Padi
Assessment Circle, W.P.No.16827 of
2022 DATED: 17.08.2023**

Appealable Order: The petitioner is aggrieved by the impugned Order No.56/2023~2024 dated 09.05.2023 passed by the first respondent u/s 129(3) of the SGST Act, 2017 read with corresponding provisions of the CGST/IGST Act, 2017. The impugned order is an appealable order u/s 107 of the CGST/SGST Act, 2017. Therefore, this Writ Petition is dismissed, giving liberty to the petitioner to file a statutory appeal before the Appellate Authority within a period of thirty days from the date

of receipt of a copy of this order. **M/s. Ibus Network and Infrastructure Pvt Ltd., Vs.1.Assistant Commissioner (ST), Adjudication, Intelligence ~I, Chennai - 600 006. 2.Deputy State Tax Officer, Roving Squad - II, Intelligence - I, Chennai - 600 006. W.P.No.23740 of 2023 DATED : 14.08.2023**

Electronic credit ledger and Pre-Deposit: By this common order, both the writ petitions are disposed of at the time of admission after hearing the Ld counsel for the petitioner and the Ld Additional Government Pleader for the respondents by directing the first respondent to number the appeal filed by the petitioner against the order passed by the second respondent, which have been impugned before the first respondent. The first respondent shall number the appeal by permitting the petitioner to debit the amounts that are lying unutilized in the petitioner's Electronic Credit Ledger towards

pre-deposit under Section 107(6) of the Tamil Nadu Goods and Services Tax Act, 2017 and dispose the same on merits and in accordance with law in its turn. **M/s.Larsen & Toubro Limited, Vs.1.The Joint Commissioner (ST), GST Appeals, Chennai - 600 035. 2.The Deputy Commissioner (ST), LTU-DC4, Nandanam, Chennai -600 035. W.P.Nos.24577 and 24579 of 2023 DATED: 21.08.2023**

SCN and Reply: Petitioner was issued with a Show Cause Notice dated 06.01.2023. On 06.01.2023, the petitioner was called upon to file a reply and to appear for a personal hearing on 06.02.2023. The petitioner has also participated in the aforesaid proceeding. Thereafter, by another notice dated 15.05.2023, the petitioner was called for personal hearing and he was also called upon to produce certain documents in support of the case. Petitioner has produced all the documents and appeared for personal

hearing on 01.06.2023. Impugned order has been passed with the following observations: “....., the taxable person was not appeared for personal hearing on 01.06.2023. No reply or any documents filed by the taxable person. No objections filed by the taxable person so far. Hence the dues assessed and determined the liability under the proviso of section 74 of the TNGST Act, 2017 and levied the ITC reversal, interest due u/s 50 and penalty due u/s 74”. The Court stated that a reading of the impugned order makes it clear that the order is non-speaking order in nature and stating so, the impugned order is set aside and the case is remitted back to the respondent to pass a speaking order on merits and in accordance with law. **Tv1. Rajendra Steel Industries Vs. State Tax Officer (ST), Loan square Assessment Circle, Chennai. W.P.No.23367 of 2023 DATED: 10.08.2023**

Writ jurisdiction: In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period prescribed under Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing

so would be in the teeth of the principle underlying the dictum of a three Judge Bench of this Court in ONGC [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47]. In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Act. That would render the legislative scheme and intention behind the stated provision otiose.

M/s.MSR Polymer and Paper Cups Vs 1. The Commissioner (CT), Commercial Taxes Department, Puducherry. 2. The Deputy Commercial Tax Officer, IAC, Commercial Taxes Department, Puducherry. W.P.No.278 of 2020 DATED: 09.08.2023

Notice of Intimation: The petitioner is aggrieved by the impugned Notice of Intimation dated 09.05.2023, issued

to the petitioner under Rule 86-A(1)(a) and (c) of the TNGST Rules, 2017. By the impugned order, credit for a sum of Rs.37,18,106/- has been locked on account of the information gathered by the Intelligence Department of the respondent that the purchases made by the petitioner from Tvl.Agni Traders was bogus and that the said entity was a non-existent or not conducting any business activities in the address for which registration was obtained and have fraudulently availed and passed on ineligible Input tax credit to numerous taxpayers. The learned counsel for the petitioner has placed reliance on the letter of the CBIC dated 02.11.2021 bearing reference No.CBEC-20/16/05/2021-GST and a recent decision of the Delhi High Court in M/s.Balaji Exim Vs. Commissioner, CGST and others in W.P.(C).No.10407 of 2022 dated 10.03.2023. The Court held that the views of the Board regarding Rule 86-A(1)(a) and (c) of the Rules appears to be in order. The provisions do not

permit the registered person to avail input tax credit on invoices or debit notes without actually receiving goods or services or both. Only Credit that is validly availed can be utilised for discharging the tax liability. Stating so, the Hon'ble Court disposed this writ petition at the time of admission by permitting the petitioner to give a representation to the impugned Notice of Intimation dated 09.05.2023, within a period of 15 days from the date of receipt of a copy of this order. **M/s.Madhu Metal Works, Vs The Assistant Commissioner (ST), Review and Appeal, Zone - III, Chennai - 600 003 W.P.No.22916 of 2023 DATED: 04.08.2023**

Pre Deposit and adjustment of ITC :
WP filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent notice dated 20.01.2021 in Na.Ka.No.42/2021/A1 and quash the same to the extend that it requires the

petitioner to pay 25% of the disputed tax and consequently direct the first respondent to take the appeal filed by the petitioner on 18.01.2021 against the second respondent order dated 18.12.2020 in TIN/33222903520/2015-2016 on file and decide the same on merits. The Ld Government Advocate for the respondents submitted that since the credit has been already adjusted towards tax liability of the petitioner for the succeeding years, the question of allowing adjustment of the aforesaid amount for pre-deposit u/s 51 of the TNVAT Act, 2006 does not arise. Stating so, the Court ordered that the Writ Petition has to fail as no amounts remains for being adjusted towards pre-deposit in the Input Tax Credit of the petitioner, however granting time to comply with section 51 and issued further directions to the parties herein. **M/s.Renaatus Projects Private Limited, Vs.1.The Appellate Deputy Commissioner (ST), Erode. 2.The Assistant Commissioner (ST),**

**Kodumudi Assessment Circle,
W.P.No.2692 of 2021 DATED:
16.08.2023**

Violation of the Principles of Natural Justice: Pursuant to the order passed by this Court, the Assessing Authority issued summons, requiring the appellant to appear before them on 13.07.2021 at 11 O- Clock. The appellant received the summons on 23.06.2021 and sent a representation to the second respondent on 10.07.2021 to adjourn the hearing to a date in the next month as he has to collect records from his accountant and has mentioned that he needs fifteen days' time to collect the records from his accountant. However, without considering the said request made by the appellant, the Assessing Authority, by order dated 27.07.2021, determined the taxable turnover and fixed the tax due with penalty. The learned Single Judge found that the appellant has not appeared before the AO within the

requested 15 days and is having an effective alternative remedy of approaching the Appellate Commissioner and disposed off the WP accordingly. The appellant, while submitting his explanation seeking fifteen days' time, may not expect the Assessing Authority to pass an order on the expiry of the fifteen days' time as mentioned in the communication dated 10.07.2021. The appellant cannot be punished for expecting a notice fixing a date for hearing. Stating so, the Court finds that the assessment order impugned in the writ petition is in violation of the principles of natural justice and finds merits in the writ petition. **M/ s.Chandan Paper Stores vs 1.The Commissioner of Commercial Taxes,Chennai-600 005 2.The Commercial Tax Officer, Tirunelveli Town Assessment Circle, Tirunelveli District-627 002 W.A.(MD) No.1362 of 2023 DATED : 24.08.2023**

Notice: The Ld counsel for the petitioner would submit that the Show Cause Notice was not served on the petitioner. Only, Form GST DRC-01A and Form GST DRC-01 dated 18.05.2022 and 28.02.2022 respectively were served on the petitioner. The Court observed that the argument of the learned counsel for the petitioner appears to be highly improbable as the Show Cause Notice would have accompanied Form GST DRC-01 dated 28.02.2022. Considering the fact that the petitioner has not participated in the proceeding, this Court is of the view that the petitioner can be given one last opportunity to give a reply subject to the petitioner depositing 20% of the disputed tax as confirmed vide impugned order with the respondent within a period of thirty days from the date of receipt of a copy of this order. **M/s.AERO Construction and Equipments Vs. The Assistant Commissioner (ST), Manali Assessment Circle, W.P.No.25009 of 2023 DATED : 25.08.2023**

Natural Justice: WP filed praying to issue a Writ of Certiorarified Mandamus calling for the impugned proceedings of the first respondent and quash the same as passed in violation of principles of natural justice and to further direct the 1st respondent to grant a personal hearing to the petitioner as directed by this Court in W.P.No.8401 of 2019 by an order dated 06.11.2019 and also as requested by the petitioner in its letter dated 12.02.2021 and to pass a fresh assessment order in accordance with law. For a pointed query, it was submitted by the Ld counsel for the respondent that the impugned order of assessment does not disclose consideration of the personal hearing asked by the Petitioner. In view of the same, the impugned order dated 15.03.2021 is set aside. The matter is remitted back to the Assessing Officer to redo the assessment in accordance with law. **M/s. Sri Rajaganapathi Textile India (P) Ltd., v. 1. The Assistant Commissioner (ST),**

**Kongunagar Assessment Circle,
Tirupur 641 601. 2.The Assistant
Commissioner (ST) (FAC),
Kongunagar Assessment Circle,
Tirupur 641 601 W.P.No.13893 of 2021
DATED: 11.08.2023**

Delay and Amnesty scheme: The petitioner filed W.P.No.3877 of 2023 challenging the Impugned Order dated 21.11.2022 passed in Appeal No.362 of 2022 declining to condone the delay of 132 days in filing appeal against order dated 06.05.2022 cancelling the petitioners' GST Registration. In the appellants case, the order has been communicated to the appellants on 03.06.2022 through online. The appellants had time till 01.09.2022 to file appeal against the order before this forum. The appellant has filed the appeal before this forum only on 10.11.2022 by a further delay of one month and nine days for which there is no provision under the TNGST Act 2017 to consider the delay

and entertain the appeal filed by the appellant. Hence, the Hon'ble Court had no other option except to dismiss the appeal filed by the appellant, since the appeal has been filed beyond the condonable limit with a delay of 39 days." However, it is noticed that the Government has itself issued a notification giving amnesty to file application vide G.O.Ms.No.36, Commercial Taxes and Registration (B1) dated 05.04. 2023.Considering the above, the Writ Petition in W.P.No.3877 of 2023 is closed by giving liberty to the petitioner to approach the authorities in terms of the above notification. **DDA Tyres and Services, Vs 1. Deputy Commissioner of GST, Commercial Taxes Building, Pitchards Road, Salem - 7. 2. Deputy State Tax Officer, Dharmapuri. W.P.Nos.3877 and 3880 of 2023 DATED: 23.08.2023**

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

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CASE LAWS - GST

1. GST - ADVANCE RULING - SERVICES PROVIDED BY APPROVED TRAINING PARTNER OF NSDL - EXEMPT UNDER ENTRY 69 OF NOTIFICATION NO.12/2017- C.T.(RATE) DT.28.6.2017



CA. VIJAY ANAND

In RE: Interviewbit Software Services Pvt. Ltd. 2023 (76) GSTL 238/(2023)8 Centax 256 (AAR.-GST-Kar.) the applicant has been operating the platform 'Scaler' an outcome based online transformative upskilling platform which aims to enhance the skills of working tech professionals and bridge the gap between the Tech Industry and Tech education. The appellant intends to provide a course in participation with National Skill Development Corporation (NSDC), which is a Non-profit Company.

NSDC implements National Skill Development programs from time to time and also proposes and implements schemes. NSDC approves various entities to carry out the national skill development program. Such approved entities are given the status of 'Approved Training Partner'. The training program shall be subjected to the terms and conditions provided by NSDC.

One scheme implemented by NSDC is 'market led Fee-based Services' (hereinafter referred to as 'scheme') which aims to

establish a framework for aggregate and standardized training in high growth sectors. For implementing this course NSDC has engaged various third party for profit and non-profit entities as its training partners on a service-to-service basis and intends to provide joint certification with the partners to the candidates. Through this Scheme NSDC aims to scale outcome oriented and successful fee-based training programs (such as those of scaler) by providing financial and/or technical assistance, and aggregate data of certified trainees on a single digital platform for creating a repository and reporting and monitoring upskilling/ reskilling by its training partners.

The Applicant had submitted their proposal and the same was accepted by NSDC and that the Applicant is an Approved training partners. As per the

Special conditions, the details of candidates enrolled with the Applicant for the scheme, shall be uploaded on the Skill India Portal (hereinafter referred to as 'SIP') within 15 days on commencing a batch. As part of implementation of the scheme, NSDC will monitor the number of candidates whose information is uploaded on the SIP, and track whether the applicant is meeting the training targets (of enrolled and certified learners) identified in the Business plan of the term sheet. NSDC has the right to terminate the partnership with the applicant, upon a failure of the applicant to meet the aforesaid targets.

The applicant has sought advance ruling in respect of the following question:

- i. What is the applicable GST on the services provided by the applicant under the "Market led Fee-based Services Scheme"?

ii. Whether the applicant is eligible for exemption under entry 69 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017?

The authority observed as under:

1. The applicant has been operating the platform 'Scaler' an online transformative upskilling platform which aims to enhance the skills of working tech professionals that NSDC has come up with a new scheme by name 'market led Fee-based services' (hereinafter referred to as 'scheme') and the Applicant has entered into an agreement with NSDC to execute the above scheme and hence they are now an 'Approved Training Partner' of NSDC.

2. The applicant is of the view that the services provided by them are exempted *vide* Entry 69 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 owing to the following:-

- a. They have to be a training partner approved by the National Skill Development Corporation; and
 - b. Services provided should be in relation to any other Scheme implemented by the National Skill Development Corporation.
3. The Applicant is an approved training partner of National Skill Development Corporation and has submitted a copy of the certificate from NSDC certifying the same. Thus, the applicant has satisfied the first condition.
4. The Applicant has entered into an agreement with NSDC for executing the "Market led Fee-based Services" scheme which is introduced and implemented by the NSDC. Thus, the applicant has satisfied the second condition also.
5. Since the Applicant has satisfied both the conditions, the services

provided by the Applicant in the instant case is exempted.

Hence, the authority passed the following order:

- (i) The applicable GST on the services provided by the applicant under the “Market led Fee-based Services Scheme” is Nil.
- (ii) The applicant is eligible for exemption under entry 69 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017.

2. GST - ADVANCE RULING - RESIDENTIAL PLOT DEVELOPMENT AND SALE - NOT COVERED

In RE: Godrej Properties Ltd. 2023 (76) GSTL 261/(2023)8 Centax 35(AAR-GST-Kar.), the applicant owns non-agricultural undeveloped immovable

property and is now developing the Property III to be registered as “Godrej Woodland-Phase III” which shall comprise of 266 residential plots. The applicant has stated that while obtaining the provisional layout plan, as per the terms of the plan approval, an area measuring 6060 square meters has been relinquished toward satellite Town Ring Road (STRR) and an area measuring 6100 square meters has been relinquished towards civic amenities sites in favour of the Member Secretary, STRR Planning Authority.

The applicant has reserved an extent measuring 20240 square meters towards part and 20255 square meters towards roads in all admeasuring 40495 square meters which shall be relinquished to the concerned authority at the time of obtaining Release Certificate. The

development activities would be completed in the following sequence:

- Conversion of land into non-agricultural use
- Prepare plan for development
- Obtains NOC from different authorities
- Applying with sanctioning authorities for plan/layout approval.
- Registration of project under RERA
- Launch of the project and receiving application along with application money from prospective buyers.
- Booking of plots and entering into an agreement for sale and collecting advance from customers.
- Carry out the development activities and relinquishment of title of roads, drains, park etc (along with land) to local authority.
- Development of basic infrastructure and other common amenities and facilities.
- Verification of development of infrastructure by authorities.
- Release of plots for registration by authorities and registration of plots and collecting balance money.
- Completion of pending other common amenities and facilities and handing over the same to common association/apex body, as the case may be.

The sale consideration of the plots includes consideration towards plot of land, development of basic infrastructure prescribed by

authorities in the approved plan as well as cost for providing all other common facilities, amenities and specifications to be provided within the project.

The cost of electrical connectivity to the common amenities, water line and plumbing till the plot, etc is included in the sale consideration. The applicant upon obtaining the Release Certificate from the competent authority shall offer in writing the possession of the plot, to the purchaser/s in terms of the draft agreement for sale, to be taken within two months from the date of issue of release certificate as per RERA Act.

The applicant has sought advance ruling in respect of the following questions:

(i.) Whether the applicant is liable to charge GST, if the booking of plot, receipt of consideration and

agreement for sale is entered as well as sale deed is executed after the release certificate, on the following components (Under Section 97(2)(e) of CGST/KGST Act):

- a) Sale of Plot;
- b) Basic Infrastructure Development charges; and
- c) Other common amenities and facilities charges.

(ii.) Whether the applicant is liable to charge GST, if the booking of plot and/or receipt of consideration and/or agreement for sale is entered prior to the release certificate and sale deed is executed after receipt of release certificate, on the following components (Under Section 97(2)(e) of CGST/KGST Act):

- a) Sale of Plot;
- b) Basic Infrastructure Development charges; and

c) Other common amenities and facilities charges.

relinquishment of title of roads, drains, park, etc.

(iii.) What is the applicability of GST if the sale price is a consolidated price in the agreement for sale towards land cost, basic infrastructure development charges and other common amenities and facilities charges? (Under Section 97(2)(e) of CGST/ KGST Act)

c) Transfer of other common amenities and facilities like club house etc. to the common association or apex body, as the case may be.

2. As far as consideration towards the plot area is concerned, the same is covered under entry 5 of Schedule III, and hence the transaction shall be treated neither as a supply of goods nor a supply of services.

The authority observed as under:

1. The applicant is launching the project first by calling for application and also booking the plots collecting advance money and then taking up the development activities. Further, the development project involves three activities

3. As far as the consideration separately shown to have been collected towards basic infrastructure charges, it is seen that the same are done to provide the basic infrastructure facilities like electricity access up to the plot, water and sewerage access up to the plot and roads, etc. These are mandatory requirement for release of plots and the plots

a) Sale/Transfer of plots to the prospective plot owners

b) Transfer of basic infrastructure to the local authorities by

become the saleable plots only after the provision of these basic infrastructure and facilities. Hence they are a part and parcel of the consideration for the plot though collected and shown separately. These facilities created are to be handed over to the local authorities and no longer remain the part of the applicant's property. Hence the consideration collected towards basic infrastructure development is part of the consideration towards the plot and is not a consideration for a separate supply. Further, clause (119) of Section 2 of the CGST Act, 2017 defines the works contract as to mean a contract for construction of any immovable property wherein transfer of property in goods is involved in the execution of such contract. In the pertinent situation, the construction of immovable property is present but there is no transfer of property in goods from

the applicant to the plot owners. These constructions are done on the land not transferred to the plot owners but remains in the ownership of the applicant till it is relinquished to the local authorities. Hence the amount collected on account of this only increases the value of the land (plot) and hence do not form a separate supply.

As for as the consideration separately shown to have been collected towards common amenities and facilities, the clauses in the agreement is verified and found the following:

- a) The clause 17.1 of the agreement clearly states that the Promoter is going to construct a Club House at the location reserved for civic amenities in Future Development, which the Promoter has taken on lease/allotment basis from the concerned authorities or on one of the plots in Additional Land.

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- b) The Purchasers are entitled to use the facilities and services of the Club House upon payment of subscription fees as prescribed by the Promoter or its nominees
 - c) The Club House shall be in complete control of the Promoter/ remain in exclusive ownership of the Promoter and the Promoter has the sole right and discretion to sell, lease, mortgage, encumber, construct buildings, complexes, etc.
 - d) The Promoter, at its own discretion, may also hand over the Club House to the Association of Owners/Apex Body for maintenance and management of the Club House.

From the above, it can be seen that the Club House and other common amenities are provided as a service with no transfer of title to land or buildings and hence would not be covered

under entry 5 of Schedule III of the CGST Act. What is provided is only a service of access to the service facilities and hence is liable to tax and does not form part of the consideration for the land or building. These are also not mandatory facilities to be provided as per any law. The ownership rights on the above facilities are found to be still remaining with the Promoter and the Promoter can assign these facilities to anyone of his choice and the Purchaser is only provided with access rights. Hence this provision of access rights for a separate consideration would definitely form a separate supply under the provisions of Section 7(1) of the CGST Act, 2017.

It can be seen that the applicant is collecting Estimated Other Charges on behalf of the future service provider in advance and is treated as deposit in the

invoice. Since the same is not refundable and adjusted towards the future services to be provided to the plot owners, the same is in the nature of advance. Further, the Promoter is in control of the services and is the service provider till the new service provider is employed and handed over, the same is clearly a service provided and hence is a supply by the applicant.

As far as corpus fund is concerned, the same is found to be in the nature of deposit for future expenses and if the future expenses are known when the amount is collected, the same attains the nature of advance and hence becomes taxable at the time of its collection itself. If the nature of expenses are not known at the time of collection and it is for unforeseen expenses, it would be in the nature of a deposit and is not a part of consideration for a

supply at the point of collection but when the same is applied to an expense, the supply would be constituted and would be taxable. The definition of “consideration” in clause (31) of Section 2 of the CGST Act is to be seen for this, which reads as under:

The Applicant wants to know the applicability of GST if the sale price is a consolidated price which includes land cost, basic infrastructure development charges and other common amenities and facilities charges. There is only service of access to club house and common amenities and the same is considered as a supply as explained in para 14 *supra* and hence the value proportionate to club house and common amenities are applicable to GST.

Hence, the authority passed the following order:

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- i.a) The applicant is not liable to charge GST on sale of plot, if the booking of plot, receipt of consideration and agreement for sale is entered as well as sale deed is executed after the release certificate.
- i.b) The applicant is not liable to charge GST on Basic Infrastructure Development charges if the booking of plot, receipt of consideration and agreement for sale is entered as well as sale deed is executed after the release certificate.
- i.c) The applicant is liable to charge GST on Other common amenities and facilities charges if the booking of plot, receipt of consideration and agreement for sale is entered as well as sale deed is executed after the release certificate.
- ii.a) the applicant is not liable to charge GST on sale of plot, if the booking of plot and/or receipt of consideration and/or agreement for sale is entered prior to the release certificate and sale deed is executed after receipt of release certificate.
- ii.b) the applicant is not liable to charge GST on Basic Infrastructure Development charges, if the booking of plot and/or receipt of consideration and/or agreement for sale is entered prior to the release certificate and sale deed is executed after receipt of release certificate.
- ii.c) the applicant is liable to charge GST on Other common amenities and facilities charges, if the booking of plot and/or receipt of consideration and/or agreement for sale is entered prior to the release certificate and sale deed is executed after receipt of release certificate.

(iii.) If the sale price is a consolidated price, then charges proportionate to common amenities and facilities charges are applicable to GST.

3. GST - SATELLITE DERIVED 3D MODEL SERVICES PROVIDED TO FOREIGN ENTITY - NOT LOCATED IN INDIA - EXPORT OF SERVICE

In *Globolive 3D Pvt. Ltd. v. UOI* 2023 (76) GSTL 433/(2023)9 Centax 359(Bom.), the petitioner entered into a Service Agreement dated 09 September, 2019 with M/s. Emirates Defence Industries Co. PJSC, which was in regard to providing of service of production of 3D city models of three cities being Abudhabi, AL Ain, AL Dhafra as per the specifications provided by M/s. Emirates Defence Industries Co. PJSC.

To provide technical service, the petitioner imported Very High Resolution (VHR) stereo satellite images from one M/s. 4 Earth Intelligence Limited. In terms of the scope of the service, the petitioner also processed and digitalized the satellite images. After processing, the 3D city models were sent to Abu Dhabi Digital Authority (ADDA) via file transfer protocol. The petitioner has also placed on record a copy of invoice raised by M/s. 4-Earth Intelligence Limited. The petitioner contends that the aforesaid transaction as undertaken by the petitioner amounted to export of service as defined in Section 2(6) of the Integrated Goods and Services Tax Act, 2017 (for short, "IGST Act").

The petitioner accordingly filed a refund claim for the period 01 September, 2019 to 31 March,

2020 of an amount of Rs. 35,27,745/- of accumulated unutilized input tax credit in the form of GST RFD-01 dated 05 January, 2021 u/s 54(3) of the CGST Act which was also sanctioned by the Deputy Commissioner.

Thereafter, the department reviewing the refund sanction order concluded that the refund order was not legal and proper. The Department's appeal was allowed by the Appellate Authority consequent to which a writ petition was filed before the high court which observed as under:-

1. A perusal of the agreement entered by the petitioner with M/s, Emirates Defence Industries Co. PJSC would indicate that the petitioner is described as one engaged in the business of providing Satellite derived

3D model services and has considered skill, knowledge and experience in the field to perform such services and on such representation, the Emirates Defence Industries Co. PJSC had agreed to engage the petitioner to provide the services as defined in the Agreement to "EDIC and any of its Affiliates" designated by Emirates Defence Industries Co. PJSC.

2. It is clear that supply of service was to be made to M/s. Emirates Defence Industries Co. which was not located in India. Also the place of supply of service was agreed to be outside India, as also the payment of such services was being received by the petitioner/supplier of service in convertible foreign exchange.
3. Further, the establishment of the petitioner (supplier of service) and the recipient of service

(Emirates Defence Industries Co.) were not establishments of distinct person under Explanation 1 below Section 8. The petitioner had received consideration in convertible foreign exchange to which there is no dispute. It is thus clear that the petitioner certainly qualified the requirement of Section 2(6) that it was dealing in export of services in relation to the Agreement in question.

4. The next question would be as to whether the impugned order is correct when it categories the service offered by the petitioner to be online information and database access or retrieval services (OIDAR) within the meaning of Section 2(17) of the IGST Act.
5. A perusal of OIDAR definition indicates that such services have been defined to mean services

whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as advertising on the internet; providing cloud services; provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet; providing data or information, retrievable or otherwise, to any peron in electronic form through computer network; online supplies of digital content (movies, television shows, music and the like); digital data storage and online gaming.

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6. While it is a fact that specialized service being provided by the petitioner under the Agreement wherein the petitioner was required to transfer the files through electronic medium but that would not mean that such services being rendered by the petitioner qua its nature would fall under the definition of OIDAR as such service is not merely a delivery of the nature mediated by information technology over the internet or is a delivery available on an electronic network and the nature of which would render its supply essentially automated without and/or with minimal human intervention. This is different from what is included in any of the electronic services as set out in clauses (i) to (vii) in the definition of OIDAR.
 7. If the interpretation to the Agreement in question as

rendered by the respondents is to be accepted, it would lead to an absurdity inasmuch as any communication of information or providing of service through the medium of emails or any electronic transfer of data would be required to be held as OIDAR service, which is certainly not the purport and meaning an OIDAR service as defined under Section 2(17) of the Act.

8. In the present case, the invoices clearly refer to the payment in US dollars to be when the contract of the petitioner with Emirates. There is no material to disbelieve the case of the petitioner for any reason whatsoever that the recipient of the service is not a foreign recipient.
9. Consequently, the petitioner's services would not amount to OIDAR.

10. In *Bhopal Sugar Industries Ltd. v. Sales Tax Officer* – AIR 1977 SC 1275, the Supreme Court held that it is well settled principle that the Court, while interpreting the terms of the agreement, would be required to look to the substance rather than the form of the agreement and that the true relationship of the parties has to be gathered from the nature of the contract and its terms and conditions. Applying the same, the purport and intent of the agreement in question has been

totally misconstrued by the appellate authority.

Hence, the high court set aside the order passed by the Appellate Authority and held that the Petitioner was entitled to refund on account of export of services and directed the respondents to not to initiate any coercive action or recovery proceeding based on the order of the Appellate Authority.

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SUMMARY OF AAR/AAAR

1. Time of supply and issuance of tax invoice for revision of rates for a work executed during the pre-GST period.

In case of M/s Jaiprakash Associates Limited (“Applicant”) [TSAAR Order No. 19/2023 dated September 30, 2023] – Telangana State Authority For Advance Ruling (‘AAR’ or ‘Authority’).

Facts of the Case:

- The Applicant is a works contractor executing works for the State Government.
- The Irrigation and CAD Department of Government of Andhra Pradesh awarded the applicant with a work for execution of the “Investigation, design and execution of Tunnel 1 and Tunnel 2 on 25 August 2005 vide an agreement.



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CA. PRIYANKA PRABAGHAR**

- During execution it was noticed that the properties of strata encountered were varying than those available for planning during bidding. This has resulted in lower work progress, heavy consumption of spares, consumables, power etc.
- Hence the Applicant has raised a request for revision of rates for underground excavation and lining concrete.
- The Government has agreed to the revision of rates for the changed sight conditions beyond agreement period.

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- With regard to the revision of rates, the Applicant has raised a RA bill for the differential amounts with respect to the work done during the period August 2010 till June 2017 (Pre-GST period).

Question before the AAR:

- What is the time of supply of the work executed from September 2010 to June 2017?
- How to issue tax invoice in this scenario?

Observation and Ruling of the authority:

- The Applicant has received the consideration under revised rates for the work done prior to the GST Period.
- In this regard, Section 142 of the CGST Act states that for any revision in price of a supply of

goods made under an agreement entered prior to the GST Period, the supplier shall issue a supplementary invoice or a debit note within 30 days of such revision which shall be deemed to have been issued for an outward supply made under the CGST Act.

- Hence, the AAR held that the Time of supply shall be as per Section 13 of CGST Act, i.e at the time of receipt of consideration.
- The AAR has also stated that the Applicant shall receive a Supplementary Invoice or a debit note within 30 days of such revision which shall be deemed to have been received for a supply under the CGST Act.

Ruling of the authority

- The time of supply is the date on which such consideration / payment is received.

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- The applicant shall receive a supplementary invoice or debit note, within thirty days of such price revision and such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under CGST/SGST Acts.

2. Taxability on the amounts collected from the members of the residential co-operative society

In case of *M/s. NCC Urban One Apartment Owners Mutually Aided Co-Op Society Limited (NCCLIOMACS) [TSAAR Order No. 18/2 dated September 29, 2023]* referred as 'Applicant') - Telangana state Authority of Advance Ruling ('AAR' or 'Authority').

Facts of the Case:

- The Applicant is a non-profit entity, registered under

Telangana Mutually Aided Co-Op Society Act, and consists of only residential flats/members.

- The Applicant monthly collects maintenance charges from its members to meet the society's maintenance costs.
- The monthly collection charges includes common area electricity charges.
- The actual common area electricity charges are calculated by dividing the total carpet area and pro rata charges and are collected from each of the members as per their flat area.
- In addition to the monthly maintenance charges the Applicant presently has some rental incomes from commercial establishments in the society. The applicable GST is collected on the rent and is deposited with the department on a regular basis.

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- Post the introduction of GST, for the contributions made by members of RWA exemption was granted upto 5,000 per month per member. The exemption limit was later amended as 7,500 vide Notification No.2/18 dated January 25, 2018.

Question before AAR

- Are common area electricity charges exempt from GST?
- For the advance maintenance charges collected by the Applicant whether the GST amount collected in advance to be deposited with the government at the time of collection or to be deposited in the respective months?
- In some existing residential towers, a High Tension Residential electricity supply system is in place, where there's only one meter from the electricity department for the entire tower. Each flat's electricity consumption is measured using individual sub-meters, and residents are billed accordingly. The total cost is deposited by the Applicant with the Electricity department wherein it only facilitates and doesn't make a profit from it. Whether the electricity charges collected and paid to the electricity department are exempt from Goods and Services Tax (GST) since electricity is generally considered an exempted supply?
- Should the RWA collect GST on the total contribution in cases where the monthly contribution exceeds Rs.7500/-or should GST be charged only on the contribution in excess of RS 7500/- per month, in line with the recent judicial pronouncements?

Interpretation of Law by the Applicant

- The Applicant submits that they are collecting Electricity charges incurred for common facilities on actual bill basis and paying the same to the electricity department.
- Hence, the Applicant claims that they are acting as pure agents and their value of supply does not include the amounts collected from its members and as such paid to the electricity department.

Observation of AAR

Whether the common area electricity charges and the charges collected and paid by the Applicant as such to the department is exempt from GST?

- The AAR highlighted that as per the Notification No. 02/2017 dated June 28, 2017 the

Government of India exempted Electrical energy at Serial No. 104 with Chapter heading '2716 00 00' from tax under CGST Act, 2017.

- Further, there are no conditions for this exemption granted, therefore the AAR held that the supply of water and electricity as described in the notification is exempt.
- Further, the rule 33 of the CGST Rules excludes the expenditure or costs incurred by a supplier as a pure agent of the recipient of the supply subject to the conditions prescribed in the rule.
- The applicant being a mutually aided cooperative society and also by his submissions in the application filed before the AAR, will be a pure agent and hence the cost of electrical energy supplied by the applicant to its members as a pure agent is not

taxable at the hands of the applicant.

Time of deposit of GST amounts for the advance collected:

- As per Section 13 of CGST Act, the time of supply of services shall be the earliest of the date of issue of invoice or the date of receipt of payment and that the registered person supplying taxable services shall issue an invoice either before or after the provision of service.
- Vide notification no. 66/2017 – Central Tax dated November 15, 2017, specific exemption from the payment of GST on advance receipt has been granted to the supplier of goods. In other words, when ‘supplier of goods’ receives advance payment, he is not required to pay GST at the time of the receipt of advance payment, however, under this situation, the time of supply

would arise only at the time of issuance of the invoice and the tax liability needs to be discharged only at that time.

- Thus advances received towards the supply of a service have to be reported in the GSTR-1/GSTR-3B for the relevant tax period and the liability needs to be discharged in GSTR-3B.

Taxable value for the Bill amount collected from members exceeding the exemption limit:

- As per Notification No. 12/2017 as amended vide Notification No. 02/2018 dated January 25, 2018 service by an unincorporated body or a non-profit entity to its own members is exempt upto an amount of Rs. 7500 per member for sourcing goods or services from a 3rd person for the common use of its members in a housing society or a residential complex.

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- Therefore, where the aggregate turnover of a RWA exceeds Rs.20 lakhs in a financial year and the amount collected for maintenance per member exceeds Rs. 7500/- then the entire amount is chargeable to GST at the rate of 18%.

Ruling of the AAR

- Electricity being an exempt supply, common area electricity charges included within the monthly maintenance charges are exempt.
- advances received towards the supply of a service have to be reported in the GSTR-1/GSTR-3B for the relevant tax period and the liability needs to be discharged in GSTR-3B.
- The Applicant being a pure agent, the cost of electricity charges collected from its members and paid to the

electricity department shall not be included in the value of its supply and hence not taxable.

- In case the amount collected by the Applicant from its members for monthly maintenance exceeds Rs. 7,500 then the entire amount so collected shall be taxable in the hands of the Applicant.

3. Subsidy received from the Central / State Government to be excluded from the value for the purpose of arriving at the GST liability

In case of M/s. M/S. Hitze Boilers Private Limited, [KAR ADRG 32/2023 dated September 15, 2023] (referred as 'Applicant') - Karnataka state Authority of Advance Ruling ('AAR' or 'Authority').

Facts of the case

- The applicant is a manufacturer of machineries and industrial boilers.

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- The Applicant manufactures and supplies plant and machineries to one of its customers Chinnapuri Silks (herein after referred to as 'Recipient').
 - The recipient of machinery is eligible for 90% subsidy grants from Central Government and State Government.
 - The amount of subsidy will be deposited in an Escrow account opened with Canara Bank where the recipient is the account holder and from this account the funds will be transferred to the Applicant.
 - The recipient insists that the Applicant shall charge GST on the total invoice amount as reduced by the subsidy amount which is sanctioned to him in line with Section 2(31) of CGST Act wherein consideration shall exclude any subsidy given by

the Central Government or a State Government.

- The Applicant has applied for advance ruling to seek clarification on exclusion of subsidy amount from the value of supply.

Question before AAR

- Whether the amount received by the recipient as subsidy from the Central and State Government is includable in the taxable value of supply by the Applicant?

Applicants Interpretation of the Law:

- The Applicant states that the Government invites two forms of bid for the "Silk Samagra" scheme initiated by the Central Silk technological Research Institute (CSTRI), Central Silk Board, Bangalore, a Central Government organization under the Ministry of Textiles, Government of India.

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- One form of bid is where the Government prescribes the opening of an ESCROW account in a nationalized bank through a letter of credit (LC) and monitor the mode of payment in stages wherein the beneficiary (recipient) has to first deposit 10% of the amount payable and the Government deposit remaining 90% as subsidy to the ESCROW account.
 - In this form of bid, the amount of subsidy provided by the Government in the ESCROW account cannot be utilized for any other purpose and the recipient can only take the 10% as expenditure in its books and not the 100%.
 - This form of bid was mainly to ensure that the subsidy reached the Applicant only.
 - Further, as per section 2(93) of the CGST Act, 2017, the term recipient shall mean any person

who is liable to pay the consideration. Hence, for the 90% paid by the Government, the liability rests with the Government and not the recipient.

- Hence, the 90% of the subsidy provided by the Government to the Applicant through ESCROW account is not includable in the “value” as the said amount is not covered within the meaning of the terms “consideration” and “value” and hence not taxable.
- The remaining 10% of the amount paid by the recipient to the Applicant is includable in the “value” for the purpose of calculation of tax.

Observation of AAR

- The AAR has stated that value of supply shall be based on Section 15 of the CGST Act which states that value of the supply of goods or services or both shall be

transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

- In the present case, the Applicant and the recipient are not related and the price is the sole consideration. Thus, the transaction value shall be the value of supply.
- Further the Authority highlighted that Section 15(2)(e) specifically stipulates that the value of supply shall include subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.
- Thus, Section 15(2)(e) seeks to expand the value of supply so as to include subsidies which are

directly linked to the price with a condition that subsidies provided by Central Government and State Governments are to be excluded.

- Further, the AAR stated that the condition for exclusion from value of supply shall be applicable only when the subsidy provided by the Central or state Government is directly linked to the price or affects the price and when such subsidies are to be added to the transaction value.
- In the instant case, it is observed that the contract for supply of machinery is between the Applicant and the recipient i.e. M/s Chinnapuri silks; the applicant supplier raises the invoice for the full contract price and even if the recipient is not provided subsidy, the contract price is still recoverable from the recipient.

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- Subsidies provided by State Government or Central Government in the escrow account are not separately recoverable by the Applicant but are part of the price payable by the recipient.
 - Thus, the subsidies are not added separately to the transaction value or value of supply payable by the recipient and the same is not affecting the price of supply.
 - Only the subsidies provided by Central Government and State Governments which are directly linked to the price and affects the price of supply are not a part of value of supply. Hence the exclusion provided in Section 15(2)(e) is not applicable in the instant case and the subsidies provided by Central Government and State Governments cannot be excluded in determining the value of supply.

Decision of AAR

The AAR has held that the subsidy received from the Central / State Government cannot be excluded from the value of supply as the same is not affecting the price of supply.

4. Disallowance of ITC on expenditure in relation to CSR Activities.

In case of M/S. Adama India Private Limited [GUJ/GAAAR/APPEAL/2023/04 dated September 26, 2023] (referred as 'Applicant') - Gujarat State Appellate Authority for Advance Ruling ('AAAR' or 'Authority').

Fact of the case

- The Appellant is engaged in supply of insecticides, fungicides and herbicides.
- The Appellant complies with Section 135 of the Companies Act, 2013, by spending mandatory

amounts on Corporate Social Responsibility (CSR) activities, which includes donating to relief funds, supporting education, and more.

- In this regard, the Appellant stated that the vendors who supply goods and services for CSR activities charge GST, and the Appellant wishes to avail Input Tax Credit (ITC) for these inputs and input services.
- The Appellant applied before the AAR to seek clarification on whether the inputs and input services procured by the appellant, in order to undertake

the mandatory CSR activities as required under the Companies Act, 2013, qualify as being in the course and furtherance of business and therefore will be counted as eligible ITC in terms of Section 16 of the Central Goods and Services Act, 2017 (CGST Act)?

- Also, if the answer to the above question is in the affirmative, whether the categories of the following inputs and input services being procured by the appellant for the purpose of undertaking CSR activities will constitute as eligible ITC:

Category of inputs/input services.	Expense Items (illustrative)
Books and stationery	Providing Notebooks/ course materials for schools.
All kinds of civil works, whether or not including plant and machinery items	Construction of cement bench at public places, public urinals, auditoriums etc. at educational institutions.
All plant and machinery items	Procurement and installation of oxygen generating plant at hospitals, water filler plants. solar water heaters.
Medical equipment and accessories	Masks, Sanitisers, Oxygen concentrator.
Furniture	Chairs and tables in schools and hospitals.

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- The Gujarat AAR has held that the CSR activities being excluded from the normal course of business of the Appellant and hence not eligible for ITC. Hence, being aggrieved by the order, the Appellant has appealed before the AAAR.

Appellant's Interpretation of Law:

- The Appellant contended that the AAR has denied the eligibility basis the definition of CSR activities which excludes the activities that are done by an entity in its 'normal course of business'.
- However, the AAR has not stated the reasons for considering the CSR activities as not forming part of normal course of business.
- The Appellant contended that the AAR has failed to assign any nexus or relationship between the definition of CSR activities as provided in the CSR Rules and

the criteria for availing the ITC enshrined in Section 16(1) of the CGST Act.

- Further, the Appellant contended that neither the CSR Rules nor the Companies Act state that CSR activities are not in the course and furtherance of business.
- The Appellant further stated that CSR activities undertaken by a company are absolutely in the 'course and furtherance of business' which is a broader term and includes any activity undertaken by a company which directly or indirectly impacts its business.
- The Appellant also stated that the CSR activities as per the Companies Act read with CSR Rules do not include such activities that are undertaken by a Company in its 'normal course of business'. However, that does not mean that the CSR activities

are not undertaken in the "course and furtherance of business'.

- The Appellant further contended that the CSR activities are being mandatory as per the Companies Act and contribute to earning goodwill for a company as there shall also be a penalty levied in case the company has not spent the mandatory amount as specified in the Companies Act, 2013.
- Hence, it shall be said that the CSR activities are to be done in the "course and furtherance of business' and therefore ITC for the same must be allowed to the appellant pursuant to the provisions of Section 16(1) of the CGST Act.

Observation and conclusion of AAAR

- The AAAR has observed that the Appellant has been fulfilling the criteria as per Section 135 of the

Companies Act and been spending the specified mandatory amounts on CSR activities duly.

- The AAAR has stated that as per Section 16 read along with Section 17 of CGST Act, the ITC on inward supplies shall be available only if outward supplies are taxable.
- Under CSR activities the company provides outputs/output services free of cost. Since CSR is made free of cost, and not with the motive to earn profit but to fulfill commitments towards the society, environment etc., expenses incurred cannot be treated as in course of or furtherance of business.
- Therefore, any expenses incurred by an assessee on corporate social responsibility activities as given under Section 135 of the Companies Act, 2013 shall not be

considered to be an expense incurred by the assessee for the objectives of the company or profession. Hence when the same does not amount to business expenditure and ITC cannot be claimed on such expenditure.

- Further as per the recommendations of the Law Committee it was agreed in the 48th GST Council meeting to include expenditure related to CSR activities under Section 17(5) blocked credit.
- Further in Finance Act 2023, vide section 139, amendment in Section 17 of CGST Act, 2017, with regard to blocked credit, is proposed by inserting (b) in sub-section (5), after clause (f), to include goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his

obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013 within the blocked credit with effect from October 01, 2023 in terms of notification No. 25/2023-CT dated July 31, 2023.

- Thus, the legislature has clarified its intent to disallow input tax credit on goods or services or both which are to be used for activities relating to obligations under corporate social responsibility.

Decision of AAAR

The AAAR has rejected the Appeal stating that the credit on any expenditure in relation to CSR Activities shall be disallowed.

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WILL ADVERSE EFFECT OF EL NINO AND SUPER EL NINO AFFECT THE CONSUMPTION GROWTH?

India recorded impressive 10.3% growth in Index of Industrial Production in August 2023, leading to 6.1% growth in the five months ended August 2023. The performance was powered by 15.3% growth in electricity generation, 12.3% growth in mining sector and 9.3% growth in manufacturing sector during August 2023. From a use based calculation, spectacular performance was from infrastructure / construction goods recorded remarkable 14.9% growth, followed by 12.6% growth in capital goods and 12.4% growth in primary goods. Consumer non-durables recorded high single digit 9.0% growth, while the laggard was consumer durables which recorded mere 5.7% growth in August 2023.

But the biggest worry now is that the agricultural production in South



CA. KANDASWAMY

India is affected by El Nino. Worse still, there are possibilities of Super El Nino next year. Already, on a relative basis consumer goods, both consumer durables as well as consumer non-durables recorded single digit growth in August 2023, when other use based industries recorded strong double digit growth.

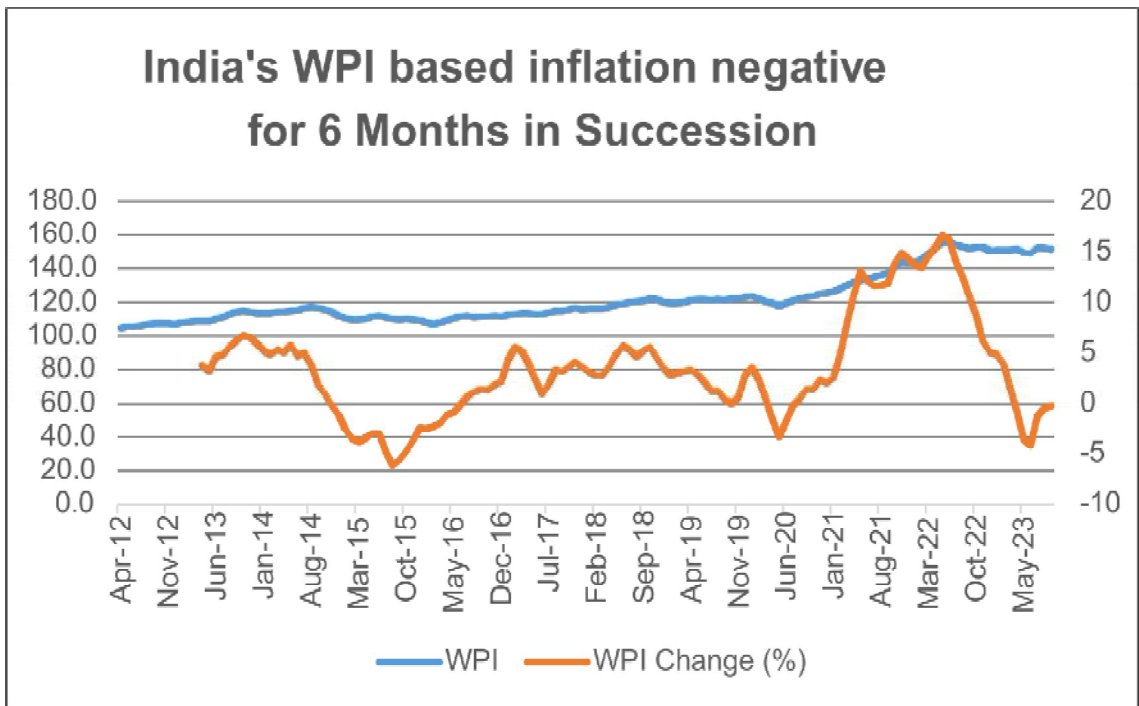
In this background, if India were to see its agricultural production affected either by El Nino in the current fiscal or by Super El Nino in the next fiscal, it will have drastic effect on the demand for both consumer durables as well as

consumer non-durables. The saving grace is that there is strong momentum in capital goods and infrastructure investments.

At a time when the country is expecting RBI to shift to cut in interest rates, the El Nino and Super El Nino appears to be a Damocles' sword in this expectation. India's Whole Sale Price Index (WPI) based inflation is negative in all the six months of current fiscal through September 2023. But then the pace of

negative inflation has been decelerating from 4.2% in June 2023 to 1.2% in July 2023, which gave way for mere 0.5% fall in August 2023 and to just 0.3% in September 2023, on y-o-y basis.

From a medium term perspective, in the last 126 months or 10.5 years, WPI based inflation in India was negative for only 2.5 years or 30 months. India has been used to inflation for 8 out of 10.5 years!



India's total trade deficit remarkably came down by 67% to US\$ 4.91 billion in September 2023 from US\$ 15.03 billion in September 2022. Ironically, this fall in total trade deficit was more due to steeper fall in merchandise imports by 15.0% to US\$ 53.84 billion and 8.4% fall in service imports to US\$ 14.91 billion in September 2023. On the other hand, the country actually witnessed 2.6% fall in merchandise trade exports to US\$ 34.47 billion and 0.5% improvement in service exports to US\$ 29.37 billion. The country is expected to become total (foreign) trade surplus in the medium term, thanks to improving global competitiveness of Indian economy, leading to acceleration in exports, and deceleration in imports.

The State elections scheduled in 5 states has given hope that there could be a cut in petrol and diesel prices. But the skirmishes in Israel -

Palestine region had already lead to spike in crude oil prices, but there are hopes that this will be short lived, and the world is likely to go back to lower crude oil prices, unless the geo-political situation worsens. So, if the inflation remains range bound, and if RBI cuts interest rates, then there are expectations that the GDP growth can accelerate from current estimates. Add to this, the leap year in 2024 is likely to add 0.27% to India's GDP for FY 2023-24. Strong growth in capital formation in general and capacity additions in the industry and roadway, highway and house hold construction can power the economy. Only, the El Nino and Super El Nino may become a dampener for Animal Spirits of Indian economy.

Despite the sharp rise in interest rates, which has adversely affected both the real estate players as well as home buyers, we are seeing good

absorption of real estate at higher prices in the past few quarters. Also, there has been strong rebound in Cement prices in many parts of the country since September 2023. There is a school of thought that sizeable portion of the incremental demand goes towards infrastructure sector, which has bolstered the domestic cement producers to try for a significant improvement in realizations, amidst rising costs and strong demand growth.

The IMF revised upwards India's growth estimate to 6.3% in FY24, due to resilient domestic demand

and strong investment inflows. The domestic players looks forward to festive demand, to accelerate the pace of consumption. Whether the festive demand and State Elections followed by Elections for the Union Government will help improve the consumption growth remains to be seen. Currently, the private final consumption remains relatively sluggish, but there is strong demand growth in real estate, construction, capital goods, infrastructure sector.

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EXCEL TIPS

DATEVALUE Function in Excel

DATEVALUE is a function that allows you to convert a date stored as text into a proper Excel date format. This function is particularly useful when working with data imported from external sources, where dates may be in a text format that Excel does not recognize as dates. In this article, we will explore how the DATEVALUE function works and provide five examples of its practical usage.



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Syntax:

=DATEVALUE(date_text)

Where, `date_text`: This is the text representation of the date you want to convert into a date value. If the date is typed directly without a cell reference containing the text date, it should be enclosed in double quotes ("").

Example 1: Basic DATEVALUE Usage

Suppose you have a date in text format in cell A1 ("15/08/2023") and want to convert it to an Excel date value in cell B1. Use the following formula in cell B1:

=DATEVALUE(A1)

Example 2: Working with Date Strings

In this example, cell A2 contains a date string ("2023-09-20") in a different format. To convert it into an Excel date, use the following formula in cell B2:

=DATEVALUE(A2)

Example 3: Date Conversion from Concatenated Text

Imagine you have a date in a concatenated format in cell A3 ("October 28, 2023"). To convert it to a date value in cell B3, use this formula:

=DATEVALUE(A3)

Example 4: Handling Date and Time in One String

If you have a date and time combined in a text string in cell A4 ("15/08/2023 14:30:00"), and you only want the date, use the DATEVALUE function like this in cell B4:

=DATEVALUE(LEFT(A4, 10))

Example 5: Error Handling for Invalid Dates

When dealing with potential errors, such as invalid date formats, you can use the IFERROR function to display a custom message. For instance, if cell A5 contains an invalid date text ("xyz"), you can use the following formula in cell B5:

=IFERROR(DATEVALUE(A5), "Invalid Date")

	A	B	C	D
1	15-08-2023	45153	15-Aug-23	=DATEVALUE(A1)
2	2023-09-20	45189	20-Sep-23	=DATEVALUE(A2)
3	October 28, 2023	45227	28-Oct-23	=DATEVALUE(A3)
4	15/08/2023 14:30:00	45153	15-Aug-23	=DATEVALUE(LEFT(A4, 10))
5	2023-09-20	45189	20-Sep-23	=DATEVALUE(A5)
6	xyz	45189	20-Sep-23	=IFERROR(DATEVALUE(A5), "Invalid Date")
7				
B	Data	↑ before changing to date format	in date format	Formula used in Column B
9				

DATEVALUE function in Excel is a function for converting date text into Excel's recognised date format. It is particularly useful when dealing with data imports or when dates are stored as text.

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UNSECURED CONVERTIBLE DEBENTURES AND DRR

Section 71 of the Companies Act, 2013 permits a company to issue debentures with an option to convert into shares at the time of redemption. Therefore, the debentures can be issued which are convertible at the option of the debenture-holder either wholly or partly. Where the debentures are convertible, the issue should be pre-approved by the shareholders by passing a special resolution.

This write-up discusses certain issues regarding unsecured debentures revolving around mandatory nature of creation of debenture redemption reserve (DRR), investment of sums lying under DRR and other ancillary issues.

Can debentures be unsecured?

While dealing exclusively with debentures, section 71 of the Companies Act, 2013 uses the word “secured” only in sub-section 3 and sub-section 7, while sub-section (1), (2) and other sub-sections do not use



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the word “secured”. Sub-section (3) provides that secured debentures may be issued by a company subject to such terms and conditions as may be prescribed. The terms and conditions for issue of secured debentures are prescribed in rule 18 of the Companies (Share Capital and Debentures) Rules, 2014. The rule also prescribes requirements when there is a debenture trust.

While sub-section (1) permits a company to issue debentures with an option to convert into shares at the time of redemption, sub-section (3) only provides that secured debentures may be issued subject to prescribed conditions. Therefore, there is no compulsion that debentures shall be secured only.

This has also been substantiated in the case of Narendra Kumar Maheshwari vs. Union of India by the Supreme Court in para 13.1 of its Order dated 03.05.1989. It was observed that a debenture need not be secured. It further observed that even a non-convertible debenture need not always be secured.

Whether DRR is required, if debentures are unsecured?

Sub-section (4) of section 71 of the Act requires every company issuing debentures to create a Debenture Redemption Reserve (hereinafter **DRR**). The amounts in DRR (**DRR amount**) shall be created only out of profits available for dividend. The relevant portion of the section is extracted below:

“(4) Where debentures are issued by a company under this section, the company **shall create a debenture redemption reserve account** out of the profits of the company available for payment of dividend and the amount credited to such account shall not be

utilised by the company except for the redemption of debentures.”

It is noteworthy, particularly in the light of subsequent observations, that sub-section (4) is applicable to all kinds of issue of debentures whether secured or unsecured. Therefore, the requirement of creating DRR will be applicable to debentures though they may be unsecured, in case there are profits during the year.

Whether rule 18 is applicable to unsecured debentures?

Sub-section (3) of section 71 requires that secured debentures shall be issued subject to such terms and conditions as may be prescribed. The relevant excerpt is extracted below:

“(3) Secured debentures may be issued by a company subject to such terms and conditions **as may be prescribed.**”

The use of the expression “as may be prescribed” in the above sub-section (3) is to be particularly noted. Additional terms and conditions as

envisaged by this sub-section, are prescribed in rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 (hereinafter **Rules**).

Sub-rule (7) of rule (18) of the Rules provides for the requirements of DRR and investment or deposit of sum in respect of debentures maturing during the year ending on 31st day of March of next year.

It is worthwhile to note that the said expression “as may be prescribed”, is absent in sub-section (4). In the absence of the said expression, there is no need to look for additional prescriptions if the case falls only under sub-section (4) and not under sub-section (3). Therefore, the additional terms and conditions prescribed in the rules are applicable only if the debentures are secured, which will be the case of sub-section (3). The additional conditions are not applicable to unsecured debentures by virtue of absence of the expression “as may be prescribed” in sub-section (4).

Debentures if unsecured, are outside the ambit of sub-section (3) and therefore outside the ambit of compliance of provisions of the rule 18. Given this, the terms and conditions prescribed in the Rules are not applicable to the debentures if unsecured.

DRR required only for non-convertible portion of Debentures

Rule 18(7)(c) prescribes that in case of partly convertible debentures, DRR shall be created in respect of non-convertible portion of debentures. While applicable to secured debentures in view of the foregoing conclusion, even in case of such debentures, DRR is required only in respect of the portion of the debentures which are non-convertible. The said clause (c) is reproduced below:

“(c) in case of partly convertible debentures, Debenture Redemption Reserve shall **be created in respect of non-convertible portion** of debenture issue in accordance with this sub-rule.”

Meaning of “non-convertible”

Sub-section (1) of section 71 helps in understanding the meaning of non-convertible debentures. It provides that “a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption.”

Therefore, a mere option to convert debentures into shares will render the debentures as convertible debenture as against non-convertible, irrespective of whether such option is exercised by the debenture-holder or not. In other words, both optionally convertible as well as compulsorily convertible debentures will fall within the meaning of convertible debentures and therefore will be outside the purview of the meaning of “non-convertible”.

The debentures being optionally convertible into shares are to be considered as convertible and not non-convertible. Therefore, even when

assuming the debentures in question were secured, there being no non-convertible portion, the necessity of creating DRR is not there much less investment of that amount in the prescribed securities/deposits {ref. sub-clause (vi) of clause (b) of sub-rule (7) of rule (18)}.

Creation of DRR by the Company

In view of the rule 18(7)(c), creation of DRR is relaxed in cases of non-convertible portion of secured debentures. However, in view of foregoing discussions, the relaxation is not available when the debentures are unsecured due to operation of sub-section (4) of section 71.

Therefore, while a Company is bound to create DRR by virtue of section 71(4)(c) even though the debentures are unsecured, it is not bound to invest the sum in prescribed securities/deposits.

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