

# THE MONTHLY MAGAZINE FROM CASC



## GST UPDATES

## VOTING RIGHTS



## RECENT JUDGMENTS



## INDIAN ECONOMY ROUND UP

VOLUME-2

ISSUE-10

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# CASC BULLETIN

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06.10.2023 (Friday)	Issues in Filing Form 10B for Charitable Trusts	CA. E.Chaitanya
19.10.2023 (Thursday)	Topic & Speaker will be Circulating Separately	

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**

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## EDITORIAL

*“Don’t take a rest after your first victory because if you fail in the second, more lips are waiting to say that your first victory was just luck.” – Dr.A.P.J.Abdul Kalam*

Dear Professional Colleagues,

Hope all of us would have taken a very long Breathe today, after the end of the busy season of Tax Audits which we were going through for the past few months. Now its time to chill and relax ourselves in cool mode.

Next !!!! Rest !!!!

### **Vasudhaiva Kutumbakam - The World is One Family**

On September 9<sup>th</sup> and 10<sup>th</sup> , the G20 Summit was held in New Delhi, hosted by India as the G20 Presidency. Under the theme of “One Earth, One Family, One Future,”. Important issues such as

food security, climate and energy, development, health and digitalization were discussed. This meeting holds a special place for the South East Countries because the leaders in this organization work for financial and strategic growth. Various countries such as China, Argentina, India, Turkey and others are part of the Group of Twenty (G20) in which the G20 Summit Presidency was handed over to India on 1st December 2022. The previous G20 summit, in 2022, was hosted by the Indonesian G20 presidency in Bali. The discussions are about the impact of Russia’s war against Ukraine on the global economy, and more specifically on food and energy security. Also a reaffirmation on the gender equality, which is of fundamental importance, and that investing in the empowerment of all women and girls, has a multiplier effect in implementing the 2030 Agenda.

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## A Need for Upgradation

The special address delivered by our Hon'ble Finance Minister Smt.Nirmala Sitaraman ji at the 90<sup>th</sup> Valedictory celebration of The Society of Auditors, insisted on the Skill upgradation by all the Chartered Accountants. We all need to agree with this statement that technology driven changes are dominating Chartered Accountancy and one must have greater knowledge in using "deep-tech" and "data mining". We were also cautioned that if an individual does not contribute to the growth of the country in the next 25 years, it is like a popular saying that, "You missed the bus" and the country would go back to its earlier days. The concluding remarks was alarming like, as she said this (next) 25 years are very critical and if these kinds of efforts (from auditors) are

received from every state, India can become a developed nation. It will be good for the future generations.

## Supreme Court draws the Attention

The deadline falls on October 1, for 28% GST on the full face value of bets in the online money games. Whether its prospective or retrospective? was the question now. Though the industries pleads for its prospective, always the Government maintains the amendments to CGST Acts and Rules are only clarifactory and the levy is applicable from July 2017. Though the statements of Revenue Secretary Mr.Sanjay Malhotra says there is no question of retrospective amendments because this is only in the nature of clarification, lets wait for the suprement court to quash GamesKraft's Rs.21000 crores GST Notice. But remember 28% levy is always on the Face Value.

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## Ranking for Suppliers

The centre plans for ranking of suppliers based on their GST compliance track record, credit history, transactions and supply history besides and past defaults. This ranking would definitely help businesses to choose their vendors based on their risk ascertained before engaging with them. After the formal introduction in the budget, the plan is to implement it from the next financial year. Hope this rating will encourage small suppliers for their timely compliance so that big companies dealing with them might not suffer the blockage of working capital.

## Appeal

We, at Chartered Accountants Study Circle, request members to contribute articles for the bulletin

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

For and behalf of Editorial Board

*Bhuvaneshwari.R.V.*

**CA. BHUVANESWARIR.V.**



*"We, all the members of the Chartered Accountants Study circle and the Managing Committee team, with great pleasure extend our heartfelt congratulations to all the members of "The Society of Auditors" on the momentous occasion of your 90th Year Valedictory Celebrations along with our Hon'ble Finance Minister Smt.Nirmala Sitharaman.*

**Errata in the previous Bulletin, September 2023.**

1. In Page 13, Present Members of the Management Committee of CASC, under Serial No.2, CA.Balaji. H is to corrected and read as CA.Balaji.V.
2. In Page 8, the header "Article writers being felicitated" shall be read as "Best Articles contributed to the CASC Bulletin during the year 2022-2023."

*The first MC meeting  
of the New Managing Committee  
was held on 11th September,2023  
at 6 PM at CASC premises.*

***CA.V.Thulasidharan*** being the convenor,  
***CA.Uttamchand Jain*** was nominated as the  
Joint Convenor.

*The Editorial Board was reconstituted  
with the Editor as **CA.Sricharan R**  
and members of the Editorial Board are*

***CA.Uttamchand Jain,***  
***CA.Bhuvanewari.R.V, & CA.Balaji.V***

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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](mailto:admin@casconline.org)

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## RECENT JUDGEMENTS IN VAT/CST/GST

**Bank account attachment :** The garnishee notice refers to the proceedings dated 28.03.2022 apparently made on the appellant under Section 79(1)(c)(iii) read with Section 142(8)(a) and Section 174 of the Central Goods and Services Tax Act, 2017, however, the same was never served on the appellant. It was only on receipt of the impugned garnishee notice, the appellant came to know about the assessment having been made vide order dated 28.03.2022. When the same was put to challenge in the writ petition, the learned Single Judge in the interim order dated 26.06.2023 had directed that the records be produced including proof of service, and that, the attachment would continue. Therefore, this appeal. Ld counsel for the appellant submitted that in view of the attachment, the appellant is facing difficulty in operating the bank account and in running their business, including disbursing salary to their



### CA. V.V. SAMPATHKUMAR

employees. Therefore, the learned counsel prayed for an appropriate order in this appeal. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel appearing on either side, the order of the learned Single Judge was modified by the bench to the following effect: "The attachment would continue only to the extent of the demand raised in the order dated 28.03.2022 including penalty, and it is open to the petitioner to operate the Bank account in excess of the said amount."

**M/s. Sabbs Infra and Security Pvt. Ltd., Vs. 1. Assistant Commissioner of GST & Central Excise, Madhavaram Division, Chennai North,**

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**Commissioner, Newry  
Towers, Chennai-40.2. Additional  
Commissioner of GST and Central  
Excise, Chennai North  
Commissionerate, Chennai-34. W.A.  
No.1450 of 2023 DATED : 18.07.2023**

**Detention and Release of goods :**

When the vehicle was detained for want of records and the product in the vehicle is diesel which is prone to inflammable, the Court was inclined to order provisional release of the vehicle, subject to the petitioner paying the disputed tax that has been arrived in the impugned order and a further Rs.1,00,000/- towards security penalty imposed within a period of seven days from the date of receipt of a copy of this order. The amounts to be paid by the petitioner pursuant to this order can be appropriated finally subject to final outcome of the proposed appeal to be filed by the petitioner. The petitioner shall also execute a bond to the satisfaction of the 2nd respondent within such period. Subject to the compliance of

the conditions stipulated above, the above vehicle of the petitioner shall be provisionally released by the Court. **M/s.Kumutham Agencies, Vs.1.State Tax Officer-II, (Intelligence), Adjudication Cell, Vellore. 2.State Tax Officer (ST), Intelligence, Roving Squad, Villupuram Group-III. W.P.No.21756 of 2023 DATED: 20.07.2023**

**Litigation policy of State :** When the matter was taken up for consideration, the Ld counsel for the petitioner / Revenue submitted that G.O.Ms.No.105, CT and R (D1) Dept, dated 25.07.2019, came to be issued amending the litigation policy already issued for the CT Department in G.O.Ms.No.10, CT and Regn (D1) Dept, dated 25.01.2016, wherein, it is stipulated that the cases / appeals / revisions shall not be filed / pursued by the Department before the High court in cases where the tax effect does not exceed Rs.5,00,000/-. It is also submitted that the tax effect in this case is less than the threshold limit

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and hence, the petitioner / Revenue is not pressing this petition. In the light of the aforesaid submissions made by the learned counsel for the petitioner / Revenue, the present tax case revision petition, wherein, the tax effect is said to be less than the monetary limit imposed, is dismissed as withdrawn. **The State of Tamil Nadu {JC (CT)}, Chennai Central Division, Chennai-6 Vs. Tvl. Pizza Corner India (P) Limited, T C (R) Petition No.346 of 2023 DATED 13.07.2023**

**Sufficient Opportunity:** On perusal of the records, it is seen that the respondents have not granted any personal hearing to the petitioner. Therefore, this Court observed that this order is passed without granting personal hearing and it is violative of principles of natural justice. Observing so, the impugned orders were set aside. The respondent was directed to grant sufficient opportunity to the petitioner and grant personal hearing. The petitioner

was directed to submit all the relevant documents which he relies on, thereafter, the respondent shall pass orders in accordance with law. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. **M/s.Anees Plastic Industries, vs. The State Tax Officer, Tiruverumbur Circle, Trichy. W.P.(MD)No.16573 of 2023 DATED: 17.07.2023**

**Delay Condonation :** The last date for filing an application to condone the delay would have expired on 26.06.2023. However, the petitioner filed an appeal belatedly on 03.07.2023 in the portal. When the petitioner wanted to file the manual copy of the appeal as is required, the Office of the Appellate Commissioner has declined to accept the same stating that the petitioner has filed the appeal beyond the condonable period prescribed under Section 107 of the respective GST enactments. Considering the fact that the petitioner

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is a small-time trader, who wishes to challenge the order passed on 27.02.2023 by the respondent, the Court allowed this writ petition by directing the respondent to number the appeal subject to the petitioner depositing a sum of Rs.50,000/- over and above, the amount already deposited by the petitioner towards pre-deposit. On such payment of the aforesaid amount, the delay of 40 days in filing the appeal shall stand condoned. The Appellate Commissioner shall dispose the appeal on merits. **Nalla Mohammed Hameedabanu, Vs. The Appellate Deputy Commissioner (ST), GST Appeals, Chennai W.P.No.20626 of 2023 DATED: 12.07.2023**

**Stock Transfer or not:** Merely because the petitioner has sold one of the car which was stock transferred, for which the petitioner produced Form F was later sold as an interstate sale and produced Form C and sold as an interstate sale, ipso facto would not mean that all the eleven other stock transferred cars were sold in the

course of interstate sale. To hold that there was an interstate sale, the twin test as recognized by the Hon'ble Supreme Court in the State of Tamil Nadu vs. The Cement Distributors Private Limited, 1975 4 SCC Cases 30, has to be satisfied as detailed below: "Sale or purchase (a) occasions the movement of goods from one State to another, or (b) is effected by a transfer or documents of title to the goods during their movement from one State to another." Before proceeding to reopen the assessment, it was incumbent on the part of the respondent to first call upon the petitioner to furnish the details and thereafter issue a notice and if the reply of the petitioner was found not satisfactory, the respondent should have issued a notice u/s 27 and thereafter proceeded to pass assessment order. **BMW India Private Limited, Vs The Deputy Commissioner (ST)-IV, Large Taxpayers Unit, Chennai - 35. W.P.Nos.18230 & 18232 of 2022 DATED : 12.07.2023**

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**Personal hearing:** The petitioner has not asked for any personal hearing. Petitioner has made a submission on merits, though without furnishing any details. The challenge to the impugned order stating that the petitioner was not given an opportunity of hearing therefore cannot be countenanced as the petitioner has given a reply but has failed to appear before the respondent in response to notice in DRC-01 issued under Rule 100 of the TNGST Rules, 2017 on 26.03.2021. The Court observed that there is no merits in the present WP. Stating so, this WP is dismissed. Needless to state that the petitioner is at liberty to file a Statutory Appeal within 30 days from the date of receipt of a copy of this order. In case, such an appeal is filed by the petitioner, the Appellate Commissioner shall dispose of the same on merits and in accordance with law. Registry is directed to return the copy of the Impugned Order to facilitate the petitioner to file a Statutory Appeal within such time.

**Tvl.RIDA Industries, Hosur - 635 110. Vs Assistant Commissioner (ST) Hosur (South) - I. W.P.No.5835 of 2022 DATED: 06.07.2023**

**Rectification Petition:** The rectification petition has been rejected without considering any of the material / submission made and thus non-speaking, thereby, violating the principle of natural justice vide proceedings dated 15.12.2021. Ld counsel for the respondent would fairly submit that the rectification petition may be set-aside and if a fresh rectification petition is filed, would be considered the same, which was agreed to by the petitioner who would submit that they may be granted six weeks' time to file a fresh rectification petition. Recording the submissions, the WP is disposed of by setting aside the impugned proceedings dated 15.12.2021. The petitioner is at liberty to file a fresh rectification petition along with all materials and documents in support of the same within 6 weeks from the

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date of receipt of a copy of this order. On receipt of such rectification petition, the respondent shall dispose of the rectification petition after affording reasonable opportunity of hearing, within 8 weeks from the date of receipt of the rectification petition, in accordance with law. The recovery proceeding shall be kept in abeyance until then. The above protection against recovery is subject to the condition that the petitioner files rectification petition within a period of six weeks from the date of receipt of a copy of this order. **M/s. Steel Shoppe, Hosur 635 117.v. The Assistant Commissioner (ST) Hosur (North)-1, Hosur - 635 109 W.P.Nos. 8913 of 2021 etc DATED: 06.07.2023**

**Remedy before the appellate authority/appellate forum:** In respect of goods detention the Court stated that no prejudice will be caused to the petitioner, if the petitioner is directed to work out its remedy before the Appellate Authority under the

respective GST enactments as there are several disputed questions that arise for consideration related to the value, even if the value given in the invoices produced by the petitioner are considered. There is a shadow of doubt, which needs to be cleared. Therefore, it would ideal for the petitioner to workout remedy before the appellate authority/appellate forum. Stating so, the Court dismissed this writ petition. However, liberty is given to the petitioner to file a statutory appeal within 30 days from the date of receipt of a copy of this order. If such appeal is filed by the petitioner within such time, the appellate authority shall dispose the appeal, as expeditiously as possible, preferably, within 3 months from the date of receipt of a copy of this order. **M/s.Tajmahal Tobacco Company P Ltd, Vs. The Deputy State Tax Officer (INT), RS, Tiruppur - VI, Tiruppur - 641 603. W.P.No.19933 of 2023 DATED : 07.07.2023**

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**Input Tax Credit:** A registered person is not entitled to credit of input tax in respect of any supply of goods or services of both if tax is not paid to the Government. The registration of the second respondent has been cancelled on 31.10.2018 before three invoices dated 23.11.2018 were raised. Thus, it is clear that the second respondent could not have paid the tax to the ex-chequer. Therefore, there cannot be a mandamus to the first respondent contrary to the provisions of the respective GST Act of 2017 and the Rules made thereunder. Therefore, there is no merits in the present writ petition. **M/s.Jai Balaji Paper Cones Vs1.The Assistant Commissioner, Sales Tax, Tiruchengode. 2.Raghava Industries, Mangalagiri, Guntur District, Andhra Pradesh 522 503 W.P.No.6780 of 2020 DATED: 03.07.2023**

**Defect noticed by CAG Audit:** There is no admission by the petitioner in the affidavit filed in support of the present WP. Notice dated 16.06.2022

has not served on the petitioner before the impugned order dated 30.06.2022 was passed. The date 16.06.2022 in the impugned order appears to be CAG Audit defects, as is evident from the reference in the preamble to the impugned order. Copy of the said CAG Defect Memo dated 16.06.2022 of CAG Audit team also appears to have not been served to the petitioner before the impugned order was passed on 30.06.2022. Therefore, the impugned order is not sustainable. Consequently, the impugned order is set aside and the case is remitted back to the respondent to pass an appropriate order within 75 days from the date of receipt of a copy of this order. **HBL Power Systems Limited, Vs. The Assistant Commissioner (ST), Ayanavaram Assessment Circle, W.P.No.21343 of 2022 DATED: 05.07.2023**

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

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## CASE LAWS - GST

### 1. GST - MARKET RESEARCH SERVICES TO JAPANESE COMPANY AND NOT TO THEIR CUSTOMERS - ZERO RATED SUPPLY - REFUND OF IGST ELIGIBLE



**CA. VIJAY ANAND**

In Ohmi Industries Asia Pvt. Ltd. v. ACGST 2023 (75) GSTL 26/ (2023)6 Centax 163 (Del.), the petitioner had entered into two separate agreements with OHMI Japan, one for rendering Business Support Services and the other for providing Market Research Services. An application dated 29.11.2018 seeking refund of integrated tax on zero rated supply which was by an order dated 26.11.2019 without an SCN holding that the petitioner was engaged in the business of “providing support to customer directly” which directly meant that the petitioner was rendering intermediary services consequent

to which the place of supply of services was located at the place of business of the petitioner. Accordingly, the adjudicating authority held that the services provided by the petitioner were not zero-rated supply and therefore, rejected the petitioner’s application for refund.

The Appellate Authority rejected the appeal consequent to which the petitioner preferred a writ petition before the high court observed as under:

1. It is apparent that the impugned order passed by the appellate authority is without application of

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- mind as it had failed to notice that the petitioner's appeal was confined only for refund of integrated tax paid on invoices raised in respect of Market Research Services. The order passed by the adjudicating authority was premised on the basis that the petitioner was rendering services directly to the customers of OHMI, Japan. This was in the context of the Business Support Services rendered by the petitioner to OHMI, Japan.
2. There is no dispute as to the nature of services rendered by the petitioner under the Market Research Services Agreement which indicates that the petitioner has facilitated the supply of services between OHMI, Japan and its customers in India.
  3. It is also apparent from the plain language of section 2(13) of the IGST that intermediary is one that arranges or facilitates supply of goods and services. In the present

case, there is no dispute that the petitioner had rendered Market Research Services on its own; there is no allegation that it had arranged supply of such services from a third party.

4. Circular No.159/15/2021-GST dated 20.09.2021 makes it clear that the concept of intermediary services contemplates minimum of three parties.
5. In the present case, the petitioner is rendering the Market Research Services directly to OHMI, Japan. Therefore, insofar as providing Market Research Services is concerned, the petitioner cannot be held to be an intermediary.
6. The issue involved in the present case is covered by the decision of this Court in Ernst And Young Ltd.-2023 (73) G.S.T.L 161 (Del) (supra).

Hence, the present petition was allowed and impugned order was set aside.

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**2. GST - REFUND OF SUPPLY TO SEZ UNIT - DENIED AS UNDERTAKING UNDER RULES 89(2)(d) and (e) OF CGST RULES WERE NOT PHYSICALLY SIGNED BY OVERSIGHT BY THE ASSESSEE - NOT SUSTAINABLE**

In Medicamen Biotech Ltd. v. UOI 2023 (75) GSTL 69/(2023)6 Centax 162(Raj.) The petitioner filed refund application in Form RFD-01 amounting to under the category “supply made to SEZ unit/ Developer with payment of Tax” for the period July, 2020 in terms of the provisions of Section 54, sub-section (3)(ii) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as ‘the CGST Act of 2017’) read with Rule 89, sub-rule (5) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as ‘the CGST Rules of 2017’) which was credited on 14-12-2020.

Thereafter, the departmental appeal was filed holding that the refund sanctioned was not legal and correct mainly on the basis that scanned copies of declarations and undertakings which were uploaded as attachments with Form GST RFD-01 submitted electronically through common portal, but the taxpayer/writ petitioner, due to oversight failed to physically sign those declarations and undertakings before scanning and attaching with Form GST RFD-01 and this was allowed by the Appellate Authority. On a writ petition, the high court observed as under:

1. It is not in dispute that all the declarations, which are required as per law to claim refund, were uploaded by the petitioner through electronic mode while claiming refund in GST RFD-01. However, the dispute is with regard to declarations referable to Rule 89, sub-rule (2) (d) and Rule 89 (2)(e) of the CGST Rules of 2017.

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In Para 6 of the writ petition, the petitioner has clearly averred that the GST refund claim application was filed electronically on the GST common portal, *i.e.*, [www.gst.gov.in](http://www.gst.gov.in) and duly signed using the digital signature certificate of the authorised signatory for GST purposes. It has been further averred that the application was uploaded with the necessary documents, including declarations and undertakings as envisaged in Circular No. 125/44/2019 dated 18-11-2019 issued by the Central Board of Indirect Taxes and Customs.

2. There is no dispute raised by the respondents to the aforesaid averments. As far as digital signatures on the declarations are concerned, that is also not in dispute.
3. The only reason assigned by the Appellate Authority to declare the sanction for refund as illegal is that declarations were not signed in

physical mode before it could be scanned and uploaded through electronic mode.

4. A conjoint reading of the provisions contained in Rule 26 and Rule 89 of the CGST Rules of 2017 does not mandate that even after having authenticated a document in the manner prescribed under Rule 26 of the CGST Rules of 2017, insofar as declarations (as sought in the present case) are concerned, they are also required to be signed in physical mode before being scanned and uploaded through electronic submission along with the application for refund. It appears that by administrative instructions, *i.e.* Circular dated 18-11-2019 (Annexure-10), such requirement has been added.
5. Though non-submission of refund application along with the declarations as required under the law would certainly be illegal and that may, in appropriate case,

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entail rejection of the application, however, if declarations, as in the present case, are digitally authenticated in the manner prescribed under Rule 26 of the CGST Rules of 2017, non-submission of physically signed and scanned declarations may only be an irregularity, but not an illegality.

In view of above, the impugned order passed by the Appellate Authority upsetting the order of refund passed by the Adjudicating Authority was not sustainable in law and the impugned order rejecting claim of refund and depriving the petitioner of the refund to which it may be entitled, without any authority of law, cannot be allowed to be sustained and the same was set aside.

3. **GST - LOAN TO CREDIT CARD HOLDER WITHOUT BEING CHARGED ON THE CREDIT CARD - EXEMPT**

In *Ramesh Kumar Patodia v. City Bank N.A.* 2023 (75) GSTL 545/ (2023) 8 Centax 262 (Cal.), the appellant had a credit card provided by Citi Bank (the respondent bank). On 21st February and 28th February, 2019 the respondent bank offered a loan of Rs.6,50,000/- being “increased pay lite loan” to him for 12 months with interest @ 13% per annum payable in 12 equated monthly instalments. The loan amount was disbursed by the bank by an account payee cheque. The date of advancement of loan was 2nd March, 2019. The equated monthly instalment (EMI) amount was Rs.58,050/-. From the statement enclosed by the appellant at Pg. 68A of the paper book, it appears that with the payment of EMIs, the interest amount in each EMI gradually reduced. At the start, the interest amount in the first EMI was Rs.7,041.44/-. In the last EMI, the interest amount was Rs.621.98/-. The principal amount was adjusted accordingly so that in the

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last EMI the principal amount was shown as Rs.57,434.02/-, interest Rs.621.98/- resulting in the last EMI of Rs.58,056/-. In respect of the appellant's credit card, monthly statements were issued where this loan and the EMI payable thereon were indicated.

On 16th May, 2019 the bank received a letter dated 13th May, 2019 from the appellant challenging the deduction of the said amount on account of IGST. The entire amount of loan has been repaid to the bank by him together with interest and IGST.

A writ petition was filed seeking to declare that the transaction between him and the bank was exempted from the levy of IGST and that no amount on that account should have been charged and if charged refunded. The high court observed as under:-

1. Grant of loan and charging interest on it by a lender situated in one

state to a borrower situated in another state is an inter state transaction. It is recognized as service for the purpose of imposition of the Integrated Goods and Service Tax. The respondent bank is situated in Tamil Nadu and the appellant in West Bengal. The latter availed of loan from the bank which was repayable with interest. This was considered as service rendered by the bank. The interest charged by the bank was viewed as a kind of service charge for advancing loan to the appellant. Hence, the said tax was payable thereon.

2. Now, by the 28th June, 2017 notification this kind of service with one exception "Interest involved in credit card services" was exempted from imposition of this tax. The terms and conditions on which the loan was granted to the appellant stated that it was only available to holders of Citi bank credit cards issued in India. Further, it was exigible to IGST.

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The petitioner applied for this loan according to those terms and conditions.

3. The question is whether this transaction was a credit card service? Whether the IGST charged by the bank was rightly done? If not, is the appellant entitled to refund?
4. Credit card service has not been defined in the IGST Act, 2017. It was conceived of a service provided by a banking company or a financial institution or a non-banking financial company or institution issuing a card to a card holder. It also extended to such institutions settling any amount “transacted through such card”.
5. It is quite plain that to constitute credit card service, the service should be between the issuer of the card and the holder of the card and that the service should have some relationship or nexus with

the holding, operation or use of such card including transactions made with it. Otherwise, a bank may be an issuer of a card to a card holder. The same card holder may be an ordinary savings account holder with the bank. The service rendered by the bank in relation to such ordinary account holding does not have any relationship with the service rendered by the bank to the same customer as a card holder in transactions concerning the card.

6. If the loan was advanced to the appellant through use of the card, then one could have understood that the service was related to the card. In this case, the bank declared the appellant card holder to be eligible to receive loan. His loan amount was advanced by a cheque or draft issued by the bank. That is to say, the loan amount was not generated by charging the appellant’s card.

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7. It appears in the monthly statement issued in relation to use of the card, that the loan amount was shown and the equated monthly instalment payable indicated. The loan transaction had to be taken as an altogether separate transaction. It had no relationship with the relationship between the appellant and the bank arising out of issue, holding or operation of the credit card.

8. Hence, the appellant's above transaction with the bank was a service which could not be termed as a credit card service and was not exigible to the Integrated Goods and Service Tax under the notification dated 28th June, 2017.

Hence, the appeal succeeded and the respondent were directed to immediately refund the IGST paid by the respondent bank on account of the above loan transaction of the appellant to the respondent bank which in turn

will refund the amount on furnishing proper accounts to the appellant.

**4. GST-AAR-VALUATION - POST-SUPPLY DISCOUNT - NOT ENTITLED IN TAKING FULL CREDIT OF GST CHARGED IN TAX INVOICE BY THE SUPPLIER**

In RE: Vedmutha Electricals India Pvt. Ltd. 2023 (75) GSTL 611/ (2023) 8 Centax 12 (AAR-GST-AP), the applicant is engaged in the business of supply various electronic Items. The applicant, purchases various electronic Items from M/s. Gold Medal Electricals Private Limited (hereinafter referred as 'supplier').

The supplier Issued Tax Invoice in terms of rule 46 of CGST Rules, 2017, and charged GST on such taxable value, calculated in terms of section 15 of CGST Act, 2017 which were reflected in the

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GSTR3B Return and the supplies reported in GSTR1 Returns. The applicant has received various incentives, in the nature of “discounts” from its supplier, viz. Turnover Discount, Quantity Discount, Cash Discounts and Additional Scheme Discounts in the form of after-sale discounts for which the supplier has raised financial/commercial credit note without GST for accounting purpose only. The financial Credit Notes were accounted for by the Applicant and also disclosed by distributors in their Income-tax returns. Further, supplier does not reduce its output tax liability in respect to said Financial/commercial Credit Notes, as section 15 doesn't permit to exclude “Post-Supply Discount” from transaction value. Supplier also filed affidavit stating that they don't reduce GST liability on account of financial/commercial credit note. An application was filed seeking advance ruling as to the following:-

- 1) Whether the applicant is duly eligible to take full credit of GST Charge in Tax invoice issued by supplier and GST was paid by such supplier to government even though later commercial/financial credit note is issued for part amount of invoice.
- 2) Whether the applicant is required to reverse the ITC proportionately to the extent of financial/commercial credit note issued by supplier.

The authority observed as under:-

1. The main issue is to decide whether the applicant is eligible to take full credit of GST charged in tax invoice issued by supplier when GST was paid by supplier to the Government even though later commercial/financial credit notes was issued.
2. As per section 15(3) of the CGST Act, the value of the supply shall not include any discount which is given—

- 
- a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
- b) after the supply has been effected, if –
- i. such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- ii. input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.
3. Therefore, the discount value shall not be included when such supply has already been affected and the discount is established as per terms of an agreement at or before the time of such supply and there is a link to the invoices of the discount given. Further, the ITC attributable to the discount is to be reversed by the recipient of the supply.
4. On examination of the transaction between the applicant and their supplier, M/s Gold Medal, it is found that the supplier is issuing a tax invoice on the supply of goods to the applicant and the applicant is taking ITC on the same. The applicant is issued commercial credit note or financial credit notes under various schemes such as turnover discount, quantity discount, additional scheme discount etc.
5. The credit notes issued are without GST and were issued only for accounting purpose as also given in undertaking by the supplier. The credit notes are duly accounted in the books of account of the applicant and also in their income tax returns.
6. For the applicability of provisions of 15(3)(b), there should be prior agreement and a link established

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with the relevant invoices of the discount given. No such co-relation between the credit notes issued by the supplier to the applicant is found except credit note mentioning the scheme and the goods for which the credit note is being given.

7. In absence of such specific Information, the benefit of lessening the value of discount from the transaction value as per the provisions of 15(3)(b) is not allowed and therefore the contention of the applicant is correct.
8. Therefore, no adjustment in price is done in respect of goods already sold as per their own undertaking nor any adjustment of GST made in the credit note which does not necessitate the corresponding reduction in ITC as there is no corresponding reduction of outward liability at the end of the supplier.

9. The amount received by the applicant is in the form of post-supply discount by the supplier and it will not affect transaction value between the supplier and the applicant for the reasons discussed above.
10. For the above, the applicant is eligible to take full credit of GST charged in the tax. Invoice and not required to reverse the ITC to the extent of financial/commercial credit notes issued by the supplier.
11. It is pertinent to note that the financial credit note shall not be used as a conduit to transfer input tax credit fraudulently, by raising an Invoice for a higher value to transfer ITC and then reducing the transaction value through financial credit note whereas the ITC transferred is left unaltered. In case such a misutilisation of financial credit note is noticed at any point the same shall be liable for penalties under section 132(b).

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12. Circular No 92/11/2019-GST dated 7-3-2019 clarifies that secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) to sub-section (3) of section 15 of the said Act are not satisfied. In other words, value of supply shall not include any discount by way of issuance of credit note(s) except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied.
13. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.
1. The applicant is duly eligible to take full credit of GST Charge in Tax invoice issued by supplier and GST was paid by such supplier to government even though later commercial/financial credit note is issued for part invoice.
2. The applicant is not required to reverse the ITC proportionately to the extent of financial/commercial credit note issued by supplier provided the dealer pays the value of the supply as reduced after adjusting the amount of post-sale discount in terms of financial/commercial credit notes received by him from the supplier of goods plus the amount of original tax charged by the supplier.

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Hence, the authority held as under:

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## UNDERSTANDING VOTING RIGHTS UNDER COMPANY LAW

### INTRODUCTION

A key feature of corporate forms of business, especially companies, is the availability of voting rights to the holders of shares of the company. Voting rights generally refer to the rights available to a shareholder to vote on matters relating to the decision-making aspects of a company relating to its business or objects for which the company has been incorporated.

The following paragraphs seek to analyze and give some guidance on voting rights and their related provisions under the Companies Act, 2013.

### CONCEPT OF SHARE AND SHARE CAPITAL

Section 2(84) defines share as to mean a share in the capital of a company and includes stock.



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In other words, each unit in the overall capital of the company is referred to as a share and indicates the percentage/quantum of ownership a person owns in the capital of the company.

Section 2(64) defines Paid-up share capital or share capital paid-up as:

- to mean such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and
- also includes any amount credited as paid-up in respect of shares of the company but

- 
- does not include any other amount in respect of such shares, by whatever name called.

Share capital can be classified into authorized capital, issued capital, subscribed capital, paid-up capital and called-up capital.

## **KINDS OF SHARES**

According to Section 43, a Company limited by shares may issue equity shares or preference shares or both. Equity shares may be with full voting rights or with differential rights with respect to voting or dividend or otherwise.

Explanation (i) to Section 43 clarifies equity share capital, with reference to any company limited by shares, to mean all share capital which is not preference share capital.

### **Equity Share Capital with Voting Rights**

Equity share capital with the voting rights are ordinary shares and carry

voting rights in proportion to the share in the paid-up share capital of the company.

These shareholders hold the right to vote, share profits and have a claim in the assets of a company.

Equity shareholders play a vital role in corporate governance by participating in decisions related to changes in the company's structure, key appointments, mergers, and acquisitions. They exercise their voting rights to approve or reject significant resolutions.

### **Equity shares with differential rights**

The provisions of the Companies Act and regulations of the Securities and Exchange Board of India (SEBI) permit the issuance of equity shares with differential rights as to voting, dividends etc., (commonly referred to as DVR) subject to authorization in the articles of association.

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The equity shares with differential rights shall be different from the ordinary shares with respect to voting, dividend, and otherwise. The word “otherwise” is not defined under the Companies Act 2013. It can be interpreted to be the decision or as determined by the Company as per the terms of issue.

It is also important to note that DVRs cannot be issued by converting an existing class of equity shares into those with different rights and vice-versa

Rule 4 of the Companies (Issue of Share Capital) rules, 2014 sets out the conditions subject to which equity shares with differential rights can be issued, some of which are listed below:

- Articles of Association shall have provision with respect to the issue of equity share capital with the differential rights.
- Such an issue must be approved by passing an ordinary resolution in a general meeting of the company.
- The voting power of shareholders holding equity shares with differential rights shall not exceed 74% of the total voting power.
- No default in annual filing for immediately preceding 3 years.
- No subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures.
- No default in repayment of loans to public financial institution or State level financial institution or scheduled Bank or statutory payments;
- No default in crediting the amount in Investor Education and Protection Fund to Government.

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## Preference share capital

Explanation (ii) to Section 43 explains preference share capital, with reference to any company limited shares, as to mean that part of the company's share capital, that carries a preferential right with respect to (i) payment of dividend, and (ii) repayment of share capital in case of winding up of company or repayment of share capital to the shareholders in any other manner.

## Deemed Preference capital

As per Explanation (iii) to Section 43, capital shall be deemed to be preference capital, notwithstanding that it is entitled to either both of the following rights, namely;-

- That in respect of dividends, in addition to the preferential rights to the amounts/dividends, it has a right to participate (fully or to limited extent), with capital entitled to the preferential right;

- That in respect of capital, in addition to the preferential right to the repayment of the amounts on winding up, it has a right to participate (fully or to limited extent), with capital not entitled to that preferential right, in any surplus which may remain after the entire capital has been repaid.

Any instrument, including equity shares which have special rights to dividend or liquidation preference, shall be deemed to be preference capital.

## CONCEPT OF VOTING RIGHTS

A system of shareholder rights is an integral part of any corporate governance system. These rights ensure that shareholders are able to voice their opinions on board nominees and other proxy initiatives, as well as other corporate actions that may affect the value of their interests.

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Voting rights in business refer to the privileges granted to shareholders or members of an organization to participate in decision-making processes by casting their votes on matters such as electing the board of directors, approving major transactions, or making important corporate decisions. The number of votes typically corresponds to the proportion of ownership or shares held by the shareholder.

Section 2(93) of the Companies Act defines voting rights to mean ‘the right of a member of a company to vote in any meeting of the company or by means of postal ballot’.

### **Voting rights attached to equity shares**

Following rights are available for a member holding equity shares in a company limited by shares, subject to the provisions of Section 43 (relating to DVR), Section 50(2) (share capital not called up) and Section 188(1) (related party transactions):

- Right to vote on a resolution placed before the company.
- Right to vote in a poll in proportion to his share in the paid-up equity share capital of the company.

### **Voting rights attached to preference shares**

Unlike equity shares, preference shares do not carry absolute voting rights on a resolution placed before a general meeting. The voting rights in respect of a preference share is restricted and shall be available only in respect of:

- resolutions which directly affect the rights attached to preference share capital, and
- resolutions for winding up of the company and repayment or reduction of equity or preference share capital.

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However, where preference dividend is unpaid for more than 2 years, preference shareholders are entitled to vote on every resolution placed before a general meeting.

## **RIGHTS AND LIABILITIES OF SHAREHOLDERS**

### **Liability of shareholders**

The liability of the shareholders is limited to the extent of their shareholding in the company. Such shareholders will not be held responsible beyond the amount, if any, unpaid on the shares held by them.

The shareholders cannot be held personally liable for the acts or omissions of the company, except in the case of a company with unlimited liability, where the shareholders agree to contribute to the assets of the company in the event of its winding up.

### **General rights of shareholders**

The right to vote on every resolution for a shareholder shall be as per his percentage of holding in the paid-up share capital of the company. Voting right is a decision-making right vested in members of a company that are exercised by them, to approve or otherwise, any resolution placed before them in the General Meeting of the company.

### **VARIATIONS AND RESTRICTIONS ON VOTING RIGHTS**

Variation in voting rights attached to a particular class(es) of shares can be made by adopting the procedure given under Section 48. There are two options available to effect such variation of rights, which may include restrictions in respect of voting rights:

- Obtaining written consent of holders of not less than 3/4ths of the issued shares of the class, whose rights are proposed to be varied, or

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- Passing a special resolution at a separate general meeting of the shareholders of the class, whose rights are proposed to be varied, provided:
  - such a provision is contained in the MOA or AOA; or
  - where such a provision is absent, such variation is not prohibited by the terms of issue of shares of that class.

Further to be noted is that where the variation of rights of one class of shareholders affects the rights of any other class of shareholders, the consent of not less than 3/4ths of the other class of shareholders shall also be obtained.

### **Restriction on voting rights**

Whether a company can restrict voting rights attached to a class of shareholders is to be answered in the affirmative. However, Section

106 prevents a company from misusing the right to vary the voting rights attached to a class of shares.

The section provides that notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name:

- on which any calls or other sums presently payable by him have not been paid, or
- regarding which the company has exercised any right of lien.

A company shall not, except on the aforesaid grounds specified, prohibit any member from exercising his voting right on any other ground.

Some of the instances where the voting right or voting power can be restricted under the Companies Act are listed below:

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- Restrictions introduced through Section 48.
  - Restrictions due to the operation of Section 106.
  - Restriction to vote in interested resolutions by a related party as per Section 188.
  - Restriction for maximum voting power of equity shares with DVR at 74% of overall voting power as per Section 43 read with Share Capital Rule 4.

### **Protection of minority interest relating to voting rights**

An application shall be filed with the Tribunal by less than 10% of the holders of such class of issued shares stating that they did not consent to such variation or vote in favour of the special resolution, within 21 days of passing the resolution or after receiving the consent, as the case may be.

## **CASE LAWS ON SHARE HOLDERS' RIGHTS**

### **Case laws under the Indian Law**

**R. H. Pandya vs. Birla:** In this case, the Supreme Court emphasized the importance of the right to vote as an essential attribute of shareholding. It held that any agreement or arrangement that restricts the voting rights of a shareholder is void unless it is expressly permitted by law.

**Unitech Ltd. vs. T. C. Gautam:** This case highlighted the importance of the rights of preference shareholders regarding voting. The Supreme Court ruled that the Articles of Association should be examined carefully to determine whether preference shareholders have voting rights or not.

**Bank Of Baroda V. Aban Offshore Limited (NCLAT):** The appellants being Preference shareholders have filed an application to NCLT for redemption of preference shares

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under section 55(3) or section 245. NCLT, Chennai Bench (Tribunal) has dismissed the application of Appellant solely on the ground that the Appellant being preferential shareholders has no locus standi to file application for redemption of shares under Section 55(3) of the Companies Act, 2013 or even under Section 245 of the Companies Act, 2013.

Aggrieved by the order of NCLT, The appellants have filed an appeal to NCLAT challenging the order to seek remedy under law available to preference shareholders for filing application for redemption of preference shares.

NCLAT held that Preference shareholders are not remediless for redemption of preference shares, they can file an application under Section 55(3) of the Companies Act, 2013 or alternatively they may also file application under Section 245 of the Companies Act, 2013 as a class action

suit. Preference shareholders coming within the definition of 'member(s)' under Section 2(55) read with Section 88 of the Companies Act, 2013, may file a petition under Section 245 of the said Act, as a class action suit, being aggrieved by the conduct of affairs of the company.

### Case laws on shareholders rights under the United Kingdom law

#### *Allen v Gold Reefs of West Africa Ltd*

- A case concerning alteration of a company's articles of association - It was held that alterations could not be interfered with by the court unless the change made was not bona fide for the benefit of the company as a whole. This rule served as a marginal form of minority shareholder protection at common law, before the existence of any unfair prejudice remedy.

#### *Waldron & Ors v Waldron & Anor* -

It was held that the shareholders' failure to complain about 'unfair prejudice' at the time may lead to

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claim being rejected. A director's failure to avoid a situational conflict or to get authorization for it was a breach of his company law duties amounted to unfair prejudice to minority shareholders. Shareholders' failure/delay to complain about such 'unfair prejudice' was rejected by the London Court of Justice.

*O'Neill v Phillips* - A case on an action for unfair prejudice - one of the first cases in the House of Lords on the provision and it deals with the concept of members of a business having their "legitimate expectations" disappointed. The judge rejected the petition on grounds that there was no firm agreement for an increase in shareholding and it was not unfair for defendant to keep a majority of company shares. There was no requirement to assess defendant's behaviour for unfairness under section 459 because of the absence of any legitimate arrangement between the two parties. Unfairness can

usually only arise when there is a breach of the terms entered into earlier. Also, it was held that Petitioner suffered nothing in his capacity as a member of the company as his shares were unaffected.

*Pender v Lushington* - A company member's right to vote may not be interfered with, because it is a right of property. Furthermore, any interference leads to the personal right of a member to sue in his own name to enforce his right.

*Rayfield v Hands* - The plaintiff was a shareholder in a particular company, who was required to inform directors if he intended to transfer his shares, and subsequently, the directors were required to buy those shares at a fair value. The plaintiff remained in adherence to the articles and informed the directors. The directors, however, contended that they were not bound to pay for his shares and the articles could not impose this obligation on

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them. The issue was did the articles give rise to a contract between the plaintiff and the directors. The Court held that the articles related to the relationship between the plaintiff as a member and the defendants not as directors but as members of the company. The Court, however, dismissed the directors' argument and compelled them to buy Rayfield's shares at a fair value.

*Wood v. Odessa Waterworks Co* -

The issues were whether the memorandum and articles could constitute a contract between not just the company and its shareholders but also among shareholders and whether a minority shareholder could prevent a company from acting in a particular way. The articles of the company provided that the directors can declare a dividend to be paid to the members, with the sanction of the company at a general meeting. However, instead of paying the dividend to the shareholders in cash a resolution was passed to give them

debenture bonds. It was finally held by the court, that the word "payment" referred to payment in cash, and the directors were thus restrained from acting on the resolution so passed.

## CONCLUSION

Voting rights in Indian company law play a pivotal role in ensuring corporate democracy and shareholder participation. The Companies Act, 2013, emphasizes principles such as one share-one vote and permits innovative mechanisms like differential voting rights to strike a balance between promoting investments and safeguarding minority interests. As Indian businesses continue to evolve, these provisions remain essential in maintaining transparency, accountability, and equitable decision-making within corporate structures.

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## CLASSIFICATION OF FINANCIAL ASSETS UNDER IND AS

Accounting for financial assets has undergone a paradigm shift under Ind AS when compared with IGAAP, with regards to initial measurement, classification and subsequent measurement.



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Classifying a financial asset correctly and in compliance with Ind AS 109: Financial Instrument, is very critical and will impact the carrying amount of the asset and correspondingly the statement of profit and loss.

In this article we will discuss the intricacies involved in the classification of financial assets under Ind AS.

### I. Basic definitions:

A **financial instrument** is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity.

A **financial asset** is any asset that is:

- a) cash;
- b) an equity instrument of another entity;
- c) a contractual right:
  - i. to receive cash or another financial asset from another entity; or
  - ii. to exchange financial assets or financial liabilities with another entity under conditions that are potentially favorable to the entity; or

- 
- d) a contract that will or may be settled in the entity's own equity instruments and is:
    - i. a non-derivative for which the entity is or may be obliged to receive a variable number of the entity's own equity, or
    - ii. a derivative that will or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity's own equity instruments

**Equity instrument** is any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities.

## II. Initial recognition in brief:

At initial recognition, an entity shall measure a financial asset at fair value, but for any asset that is not subsequently classified as "Fair Value Through P&L"

("FVTPL"), then transaction cost that are directly attributable to its acquisition are added to the fair value.

Trade receivables are measured at the transaction price in accordance with Ind AS 115: Revenue from Contract with Customers.

## III. Classification of Financial Assets:

Financial assets can be classified for subsequent measurement under three categories:

- i. Fair value through P&L ("FVTPL")
- ii. Fair value through other comprehensive income ("FVOCI")
- iii. Amortised cost

The assessment of how the entity should classify a financial asset is made on the basis of both the

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entity's business model for managing the assets and the contractual cash flow characteristics of the financial asset.

A financial asset shall be **measured at amortized cost** if both of the following conditions are met:

- a) The asset is held within a business model whose objective is to hold assets in order to collect contractual cash flows.
- b) The contractual terms of the financial asset give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding.

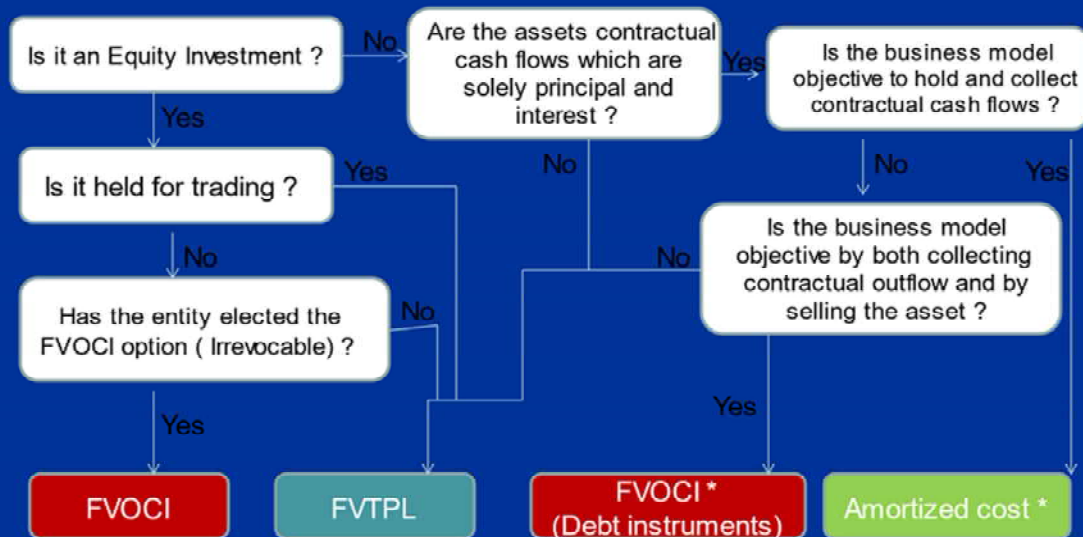
A financial asset shall be **measured at fair value through other comprehensive income** if both of the following conditions are met:

- a) The financial asset is held within a business model whose objective is achieved by both collecting contractual cash flows and selling financial assets and
- b) The contractual terms of the financial asset give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding.

A financial asset shall be measured at FVTPL unless it is measured at amortized cost or at FVOCI. The only exception being an equity instrument which is not held for trading can be taken as FVOCI.

An entity may, at initial recognition, irrevocably designate a financial asset as measured at fair value through profit or loss if doing so eliminates or significantly reduces a measurement or recognition inconsistency.

## Summary of classification of Financial Assets



\* An entity may, at initial recognition irrevocably designate a financial asset as measured at fair value through profit or loss if doing so eliminates or significantly reduces a measurement or recognition inconsistency

#### IV. Additional guidance on classification of Financial Assets:

An entity's business model refers to how an entity manages its financial assets in order to generate cash flows. That is, the entity's business model determines whether cash flows will result from collecting contractual cash flows, selling financial assets or both. Consequently, this assessment is not performed on the basis of scenarios that the entity does not reasonably expect to occur, such as so-called 'worst case' or 'stress case' scenarios.

Contractual cash flows that are solely payments of principal and interest on the principal amount outstanding are consistent with a

basic lending arrangement. In a basic lending arrangement, consideration for the time value of money and credit risk are typically the most significant elements of interest. However, in such an arrangement, interest can also include consideration for other basic lending risks (for example, liquidity risk) and costs (for example, administrative costs) associated with holding the financial asset for a particular period of time. In addition, interest can include a profit margin that is consistent with a basic lending arrangement.

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## SUMMARY OF AAR/AAAR

1. Gold coins/ white goods distributed as a part of incentive scheme shall be taxable under Schedule I as permanent transfer of disposal of business assets and Input Tax Credit (ITC) thereon shall be available.

In case of M/s Orient Cement Limited (“Applicant”) [TS-424-AAR(KAR)-2023-GST dated August 31, 2023] – Karnataka State Authority For Advance Ruling (‘AAR’ or ‘Authority’).

### Facts of the Case:

- The Applicant is engaged in the business of manufacture of Portland Cement.
- In order to promote its product, the Applicant runs various discount or incentive schemes for its dealer.
- Under the scheme, the applicant gives incentives or discounts based on the quantity purchased by the dealer.



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

- Subsequently, to pass on such benefit the applicant distributes gold coin/white goods to the extent of incentive credited to the dealer account subject to the fulfilment of other conditions.
- The applicant procures the gold coin and white goods for distribution to its dealer.

### Question before the AAR:

- Whether the applicant can avail ITC on such gold coins/white goods procured for issue to the dealer under incentive scheme or the same would be restricted under 17(5)(h) as “*goods disposed by way of gift*”?

- 
- Whether the issue of gold coins/white goods to the dealer would fall under entry 1 of the

Schedule-I i.e., “**Permanent transfer or disposal of business assets where input tax credit has been availed on such assets**”

- Whether the issue of gold coins/white goods to dealers would amount to supply under section 7 of the CGST Act.

### Contention of the applicant:

#### Eligibility of Input Tax credit

- Applicant contended that the ITC on the gold coins/white goods will be eligible for ITC as the same is provided to the dealers in furtherance of business to promote and enhance the sales of the company.
- The Applicant stated that restriction as per Section 17(5) is applicable to any goods disposed

of by way of gifts or free samples. Further, Applicant submitted that any goods shall be treated as a gift when provided to any other person without any contractual obligation and for no consideration in money or money's worth.

#### Whether issue of gold coins/white goods amounts to Supply

- The Applicant further contended that the gold coins/white goods distributed to the dealers will not fall under schedule I to CGST Act as “Permanent transfer or disposal of business assets where ITC is not availed”. In this regard, the applicant has submitted the followings: -
- The assets are generally only those goods which are recorded in the Balance sheet as capital goods. Since, white goods/gold coin are not in balance sheet, it would be treated as assets

- 
- Further entry 2 and 3 of the Schedule I uses the term goods or service, however the term used in entry 1 is 'business assets'. Therefore, the legislative intent was to cover only assets which are forming part of balance sheet;
  - Further, the Applicant also contended that gold coins/white goods are provided to its dealers without any consideration and hence the same cannot be considered as supply.

### **Observation and Ruling of the authority:**

- AAR held that distribution of gold coins/ white goods to dealers has to be regarded as a taxable supply in the form of permanent transfer or disposal of business assets.
- The word "asset" includes inventory and nowhere in the schedule it is mentioned that the same is to be capitalized. Therefore, it would fall under entry 1 of the schedule -I as "Business Assets"

- Further the ITC is not restricted under Section 17(5)(h) of the CGST Act since distribution of white goods/gold coins are treated as supply.

### **2. Interest received over the consideration to compensate the delayed payment chargeable to GST**

In case of M/S. Ganga STP Project Private Limited [16/WBAAR/2023-24 dated July 13, 2023] referred as 'Applicant') - West Bengal state Authority of Advance Ruling ('AAR' or 'Authority').

### **Facts of the Case:**

- The Applicant is awarded a Water Treatment project jointly by the National Mission for Clean Ganga (NMCG) & Kolkata Metropolitan Development Authority (KMDA) (collectively "Project Authority"), under the Hybrid Annuity Model (HAM)

- 
- Under this model, the project Capex is being funded by a mix of public and private participation.
  - Projects are awarded to the concessionaire under the terms that 40% of the Capex shall be paid by NMCG during the period of construction as a grant and the balance 60% of Capex shall be paid by KMDA in 60 equal quarterly instalments over a 15-year period along with an interest at a rate linked to SBI MCLR rate

incurred by the applicant arising out of the delayed payment of the 60% of Project Capex cost, which is received by the applicant by way of annuity after a considerable amount of time of completing the Project/Contract.

- Further, the Applicant contends that the applicant will receive the consideration of 60% Capex from KMDA on an annuity basis i.e., on a delayed basis. However, the Applicant will borrow money in order to complete the project.

### Question before AAR

- Whether the quantum of interest on 60% of the capex, payable over and above on the consideration value at the rate linked to SBI MCLR attracts the levy of GST or not?

### Interpretation of Law by the Applicant

- The Applicant submits that the interest paid by KMDA to him is an attempt to minimize the loss

Hence, to bridge the gap of time cost between the time of borrowing money for completion of the contract and the time of receipt of consideration from KMDA, the interest is received over and above the consideration.

- Hence, the Applicant argues that the interest payable by KMDA at SBI MSLR rate does not form part of the consideration for the contract.

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- However, the authorised advocates of the Applicant contended that the interest being the time cost associated with the deferred payments of Capex, shall be considered as a part of consideration and thereby taxable under GST.

### **Observation of AAR**

- The AAR highlighted that clause (d) of sub-section (2) of section 15 CGST Act deals with value of supply wherein it is specifically mentioned that value of supply shall include 'interest or late fee or penalty for delayed payment of any consideration for any supply.
- The AAR highlighted that the authorised advocate of the applicant, in course of personal hearing, has also expressed that GST will be payable on the interest quantum received as payments by the applicant.

- Hence, the AAR has held that GST is applicable on the amount of interest received by the Applicant.

### **Ruling of the AAR**

The interest received over and above the consideration shall be included within the value of supply and thereby chargeable to GST.

### **3. A service recipient is not eligible to seek advance ruling**

In case of M/s. Uttar Pradesh Metro Rail Corporation Ltd, [Order No. 10/AAAR/2023 dated August 17, 2023] (referred as 'Appellant') - Uttar Pradesh state Appellate Authority of Advance Ruling ('AAAR' or 'Authority').

### **Facts of the case**

- The Appellant is engaged in construction, erection and commissioning of metro rail facility all over the state of Uttar Pradesh.

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- The Appellant is currently doing the work of construction, erection and commissioning of metro rail facility in Kanpur for which the existing electric poles, power lines and transformers are to be shifted from one place to another to keep the electrical clearances safe as per the Indian Electricity Rules, 1956.
  - The entire work of shifting of power lines is done by Applicant under the supervision of Kanpur Electricity Supply Company Limited (KESCO) and the appellant pays supervision charge @ 15% to KESCO which is approx. 5% of estimated cost of shifting of transmission/power lines/transformers (also termed as deposit work).
  - Appellant was issued a notice by KESCO asking for payment of 18% GST on the work which was done by the contractor appointed by the appellant under the supervision of KESCO according to the cost estimate provided by the KESCO.
  - The Appellant submits that entire shifting work is done by the contractors of intending agency/appellant who purchases material required for shifting/modification of the transmission lines as per the technical specification of KESCO.
- Question before AAR**
1. Whether services supplied by KESCO by the way of utility shifting are integral part of services supplied by KESCO by way of distribution of electricity?
  2. Whether services supplied by KESCO by the way of utility shifting are ancillary to the principal supply of services by way of distribution of electricity?
  3. Whether the exemption given under entry no. 25 of the exemption notification No. 12/2017-CentralTax (Rate) dated 28.06.2017 with respect to the services by way of transmission and distribution of electricity is available to KESCO?

- 
4. If answer to issue at 3 is Yes, whether the appellant is liable to pay GST on the activity of utility shifting performed by KESCO or by itself as such utility shifting is an integral part of services supplied by KESCO by way of distribution of electricity which is exempt from levy of GST?
  5. If answer to issue at 3 is No, whether the situation faced by the appellant wherein KESCO has provided only supervision services and not borne cost towards labour and material, shall be governed by provision of section 15(1) or by section 15(2)(b) of the Central Goods and Service Tax Act 2017 read with Section 15 of the U.P. GST Act, 2017 for the purpose of determining transaction value of supply?
  6. Whether Appellant is liable to pay GST on services supplied by KESCO by way of supervision only on the supervision charges

(i.e. 5% of the estimated cost of shifting of transmission lines/ deposit work) or on the estimated cost of deposit work as depicted in the letter dated 03.09.2022.

However, the AAR rejected the application stating that the Appellant is a service recipient whereas application before the AAR can be made only by a supplier of the service. The AAR held that the Appellant has no locus standi to move an application for seeking advance ruling being a receiver of goods/services. Aggrieved by the order the Appellant filed an appeal before the AAAR.

#### **Applicants Interpretation of the Law:**

- With reference to section 95 of the CGST Act, the Appellant contended that “Applicant” as per the Act can be any person registered or desirous of getting registered under the Act.

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- The Appellant submits that in case of *M/s Gayatri Projects Limited & Anr. Vs. the Assistant Commissioner of State Tax, Durgapur and Anr. M.A.T. No. 2027 of 2022* it was held by Hon'ble High Court of Calcutta that the appellant being a registered dealer under provisions of the Act could be an Applicant under Section 95(c) of the Act. Therefore, court directed the AAR to grant personal hearing on merits
  - The Appellant has relied upon another judgment of a division bench of the Hon'ble *Calcutta High Court in case of M/s Anmol Industries Ltd. & Anr. Vs West Bengal Authority for Advance Ruling, G.S.T. & Ors* wherein it was held that the application filed by the appellant before the AAR is well within the jurisdiction to consider the application on merits rather than rejecting the same on the ground of having no locus standi

### Observation of AAAR

- The AAAR has stated that application for advance ruling can be made on question as specified in the relevant provisions in relation to *the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.*
- The Authority further stated that the definition of the terms 'Applicant' and 'Advance ruling' mentions as 'supply of goods or services or both' and not recipient of goods or services or both.
- Further, the authority informed that with regard to the judgment quoted by applicant, the Department has not accepted the order and is in the process of filing an appeal before the Hon'ble Supreme Court.

### Decision of AAAR

- The AAAR has held that only supplier of a goods or services or

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both can make application before the AAR and a recipient cannot make such applications.

**4. ITC is required to be reversed on the inputs consumed in the manufacture of finished goods when the finished goods are destroyed.**

In case of M/S. Geekay Wires Limited [TSAAR Order No.15/2023 dated September 02, 2023] (referred as 'Applicant') – Telangana State Authority for Advance Ruling ('AAR' or 'Authority').

**Fact of the case**

- The Applicant is engaged in the business of manufacturer of Steel Nails and other steel products in its manufacturing unit situated at Shankarampet-R, Village, Shankarampet- R Mandal-Medak, Medak, Telangana.
- For the purpose of manufacturing Steel nails, the

applicant purchases steel wire rods and draw it to required sizes and then puts the same in nail making machine for manufacturing different sizes of steel nails.

- The other major inputs for manufacturing Nails are Polypropylene, Copper wire, Paper tape and packing material like cartons, pallets etc., which the Applicant purchases from other registered taxable persons within the State and also from outside the State of Telangana.
- The Applicant thereby avails GST input tax credit on all such materials purchased.
- During the manufacturing process steel scrap is also generated which the applicant sells in the market and GST liability is paid / set off on the same against the GST input.
- Further, once the steel Nails are manufactured, they are further

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collated through collating machines by using the collation material like Polypropylene, Copper wire, Paper tape. Once Nails are collated they are packed in Cartons and then all these cartons are palletized on wooden pallets for sales purpose as a Finished goods.

- It is submitted by the applicant that on December 17, 2022 fire broke out in the applicant's factory premises and major quantities of Finished goods as stated above are destroyed and now these finished goods can be sold only as a steel scrap in the market.
- The Applicant had already availed ITC on the purchase of raw consumed for the manufacture of steel nails during the month.
- Further, Applicant states that as per Section 17(5) ITC shall be restricted only on the goods

destroyed whereas in the Applicant's case, the goods purchased are already consumed for the manufacture of the Steel nails and only the finished goods have been destroyed.

#### Issue before AAR

- Whether ITC availed already has to be reversed when the raw materials purchased are already used in the manufacture of finished goods and the finished goods are destroyed in the fire accident completely
- Whether ITC availed already has to be reversed when the raw materials procured are lost in the fire accident before use in manufacture of finished goods.
- Whether ITC availed already has to be reversed when the destroyed finished goods can be sold as steel scrap in the open market and output tax liability on such supply of scrap is paid.

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### Applicant's Interpretation of Law:

- The Applicant stated that the raw materials purchased are already consumed in the process of manufacturing of the Steel nails. Hence, the inputs purchased are not destroyed by the fire as by that time the inputs have already lost their identity.
- Further the Applicant submitted that the goods destroyed is finished goods and these finished goods are not procured from any registered taxable person under the Act and therefore the question of availing Input tax credit/restriction of such availed input tax credit in respect of the finished goods does not arise.
- Further as per Section 17(5) ITC can be disallowed only 'on' those input goods which are lost, stolen, destroyed, etc. and thereby there has to be a matching of the identity of goods on which

credit is take and on which credit is denied under Section 17(5)(h).

- In this regard, the Applicant argued that once the goods on which credit is taken are consumed in the final product they lose their identity and hence ITC reversal cannot be demanded. ITC restriction does not extend itself to inputs contained in the finished goods after being put to use.
- Basis the above, the Applicant stated that ITC shall be available even when the finished goods are destroyed in fire accident and the destroyed finished goods are sold as scrap.

### Observation and conclusion of AAR

- The AAR has stated that as per Section 17(2) of the CGST Act, the ITC shall be restricted to so much of ITC as is attributable to the taxable supplies including zero-rated supplies.

- Hence, as per the provision once the output becomes non-taxable for any reason the input tax already utilized pertaining to the corresponding inputs has to be reversed or paid back to the extent of ITC relating to inputs held in stock, inputs contained in semi-finished or finished goods in stock and the capital goods.
- Similarly, as per Section 17(5) (h) ITC shall not be available on goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.
- Hence, the AAR has held that the input tax credit to the extent of manufactured goods destroyed or inputs destroyed is not available to the applicant and the same needs to be paid back either through the credit available in the credit ledger or by cash.
- The AAR further stated that the scrap sold by the applicant is nothing but a destroyed goods therefore in the context of above discussion sale of scrap i.e., sale of destroyed goods are not eligible for input tax credit.

### Decision of AAAR

Questions	Ruling
When the raw materials purchased are already used in the manufacture of finished goods and the finished goods are destroyed in the fire accident completely.	ITC is required to be reversed
When the raw materials procured are lost in the fire accident before use in manufacture of finished goods.	ITC is required to be reversed
When the destroyed finished goods can be sold as steel scrap in the open market and output tax liability on such supply of scrap is paid.	ITC is required to be reversed

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## INDIA INC. LOOKS FORWARD TO FESTIVE DEMAND

India remains one of the fastest growing economy amongst major economies in the World. This is despite deceleration in India's GDP growth from 9.1% in FY 2021-22 to 7.2% in FY 2022-23. The pace of deceleration continues, with further moderation of India's GDP growth to 7.8% in the quarter ended June 2023 from 13.1% in the corresponding previous quarter ended June 2022.

Investment in Capital Expenditure has been buoyant in the past few years. The Gross Fixed Capital Formation represented 31.1% of the GDP in FY 2020-21, but scaled up to 32.7% in FY 2021-22, which further jumped to 34.0% in FY 2022-23. But it remained at 34.7% in the Quarter ended June 2023 as well as in the Quarter ended June 2022.

On the other hand, the Government final consumption expenditure has been coming down from 10.8% in FY 2020-21 to 10.6% in FY 2021-22,



**CA. KANDASWAMY**

and to 9.9% of GDP in FY 2022-23. The deceleration continues, with Government Final Consumption expenditure at 10.1% in the quarter ended June 2023, down from 11.0% in the corresponding previous quarter.

Similarly, sluggishness in exports, after two years of acceleration, is a cause for concern. Exports were 18.7% of GDP in FY 2020-21, jumped to 22.1% in FY 2021-22, and increased further to 23.5% in FY 2022-23. But then, the share of exports in Indian GDP tumbled down to 20.9% in the quarter ended June 2023, from relatively good 24.4% in the corresponding previous quarter.

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From a sectorial perspective, Agriculture, forestry and Fishing recorded acceleration in the pace of growth from 2.4% in the quarter ended June 2022 to 3.5% in the quarter ended June 2023. Similarly, spectacular pace of acceleration was witnessed in Financial, Real Estate and Professional Services, which recorded 8.5% growth in the quarter ended June 2022, but the pace of growth surged to 12.2% in the quarter ended June 2023. Sharp deceleration was witnessed in Public Administration, Defense and Other Services (including Education, Health, Recreation and other personal services) from robust 21.3% in the quarter ended June 2022 to 7.9% in the Quarter ended June 2023.

India recorded 4.8% growth in Index of Industrial production in the 4 months ended July 2023, powered by 7.3% growth in Mining sector, followed by 4.8% growth in manufacturing sector and mere 2.9%

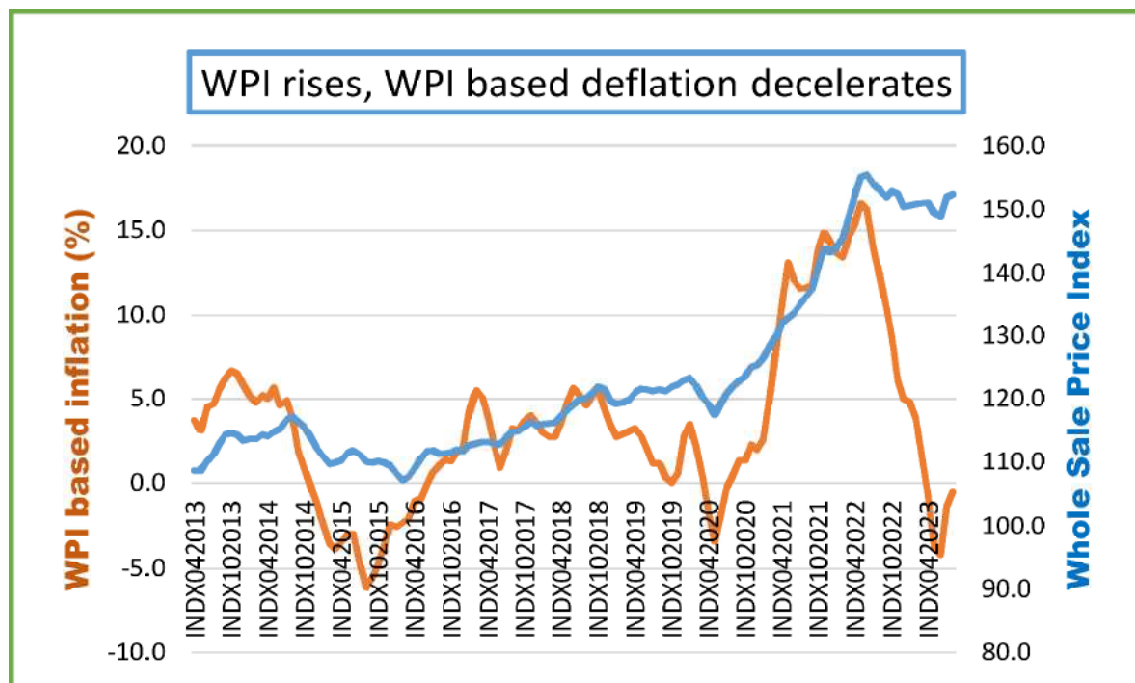
growth in Electricity generation. This is despite acceleration in the pace of growth in Index of Industrial production to 5.7% in July 2023, powered by robust 10.7% increase in mining, 8.0% spike in electricity generation but moderated by 4.6% growth in manufacturing sector.

The star performers in the Indian Industrial production are base metals (112.8% growth in July 2023, and 12.2% growth in 4 months ended July 2023), pharmaceuticals, medicinal chemical and botanical products (12.0% growth in July 2023 and 14.7% growth in 4 months ended July 2023), besides motor vehicles, trailers and semi-trailers that recorded 8.9% growth in July 2023 and 8.5% growth in the 4 months ended July 2023.

From 16.6% in May 2022, the Whole Sale Price Index (WPI) based inflation came down to -4.2% in June 2023, and since then the deflation has been decelerating to -1.4% in July

2023 and to -0.5% in August 2023. Meanwhile, India's surprise cut in cooking gas prices in August 2023 has fuelled some expectation on cut

in petrol and diesel prices, going forward, amidst slew of State elections followed by Parliamentary elections.



India's merchandise exports fell by 6.9% to US\$ 34.48 billion, while Imports fell by 5.2% to US\$ 58.64 billion in August 2023, leading to marginal 2.8% fall in merchandise trade deficit to US\$ 24.16 billion in August 2023. During this period, service exports marginally came down by 0.4% to US\$ 26.39 billion while service imports fell by 8.9% to

US\$ 13.86 billion, leading to net service exports recording 11.1% growth to US\$ 12.53 billion in August 2023. The total trade deficit fell steeper by 14.4% to US\$ 11.63 billion, due to steeper fall in total imports by 6% to US\$ 72.5 billion, while total exports fell by 4.2% to US\$ 60.87 billion in August 2023.

Particulars	Parameters	Aug-23	Aug-22	Var. (%)
Merchandise	Exports	34.48	37.02	-6.9
	Imports	58.64	61.88	-5.2
Merchandise Trade Deficit		-24.16	-24.86	-2.8
Services	Exports	26.39	26.5	-0.4
	Imports	13.86	15.22	-8.9
Services Net Exports		12.53	11.28	11.1
Total	Exports	60.87	63.52	-4.2
	Imports	72.5	77.1	-6.0
Total Trade Deficit		-11.63	-13.58	-14.4
Figures in US\$ billion, except Var.(%) which is in Percentage				

Merchandise exports were affected by 27.35% fall in Petroleum product exports to US\$ 31.66 billion, 26.2% fall in gems & jewellery exports to US\$ 12.43 billion, 15.5% fall in organic & inorganic chemicals to US\$ 11.31 billion, besides others, in the five months ended August 2023. On the positive side, electronic goods recorded healthy 35.2% rise to US\$ 11.18 billion, besides virtual doubling (95.2% rise) of Iron ore exports to US\$ 1.28 billion during this period.

India remains the fastest growing major economy in the World. The

China + 1 strategy of the Western World, depreciation of rupee, and improving global competitiveness of Indian Industry can acceleration the pace of exports, which has been sluggish for the past few Quarters. Intensified focus on new and renewable energy, solar powered vehicles, and green hydrogen adds further cream. For the short term, the domestic players are looking forward to festive season to power domestic demand growth.

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## EXCEL TIPS

### Formula Auditing

Formula auditing is an essential tool in Excel helps us show the relationship between formulas and cells. This feature is instrumental in identifying errors, tracing dependencies, and ensuring the accuracy and reliability of data.



**CA. DUNGAR CHAND U JAIN**

Formula Auditing in MS Excel contains a set of tools that allow users to inspect formulas, trace precedents and dependents, monitor cell relationships, and detect errors. These tools are accessible through the “Formulas” tab under the “Formula Auditing” group.

Following are the different ways using which you can audit a formula:

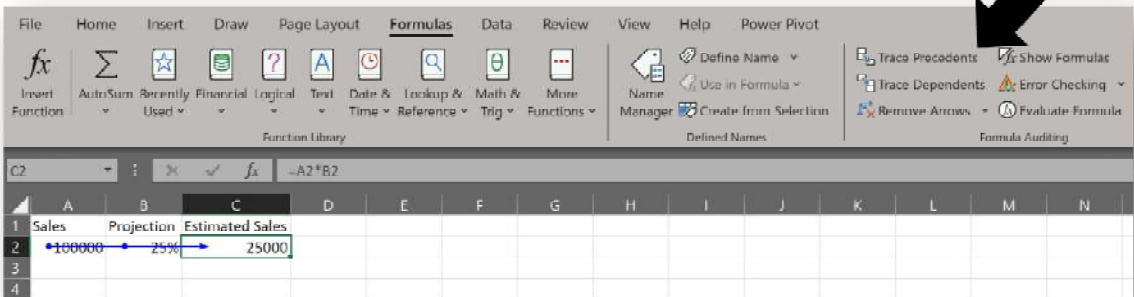
1. Trace Precedents
2. Trace Dependents
3. Remove Arrows
4. Show Formulas
5. Error Checking

#### 1. Trace Precedents

Trace Precedents displays tracer arrows from the cells showing the direction of information flow. You see a blue box around the cells when this method is active. However, one can press this button multiple times to catch additional levels.

Following are the steps to use Trace Precedents in your Excel worksheet:

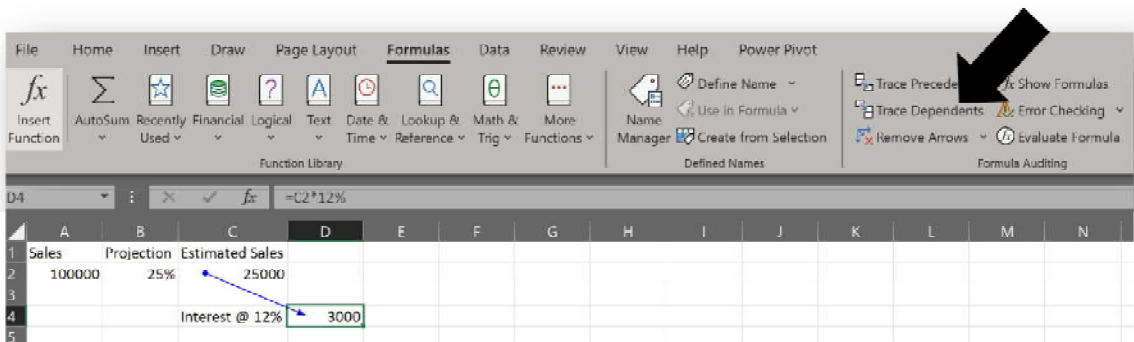
Select the formula Tab. Under Formula Auditing Group, click on the Trace Precedents option.



The precedent cells will be shown with blue dots.

## 2. Trace Dependents

Select the formula Tab. Under Formula Auditing Group, click on the Trace Dependents option

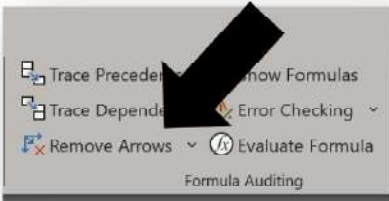


The dependent cells will be shown with blue dots.

Tracing precedents and dependents is crucial for understanding cell relationships. Precedents are cells that influence the active cell's value, while dependents are cells affected by the active cell.

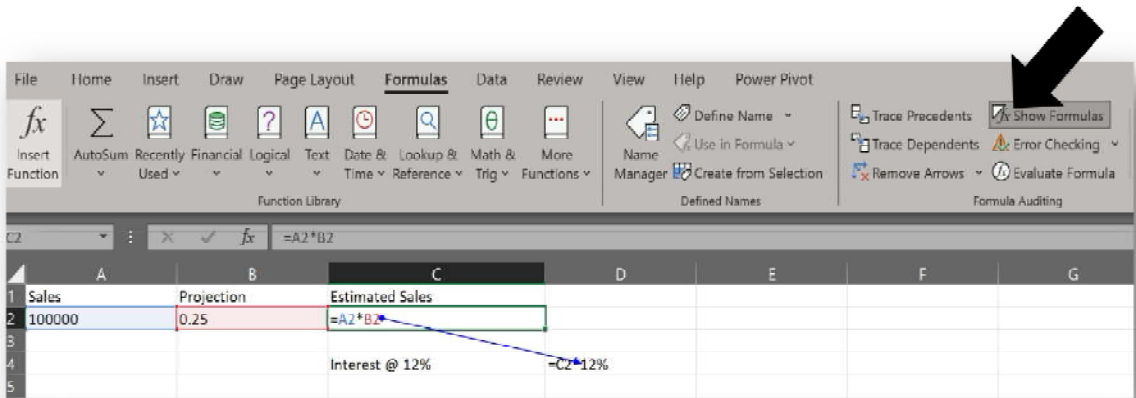
## 3. Remove Arrows

After tracing precedents and dependents, users can remove the arrows by selecting "Remove Arrows" in the Formula Auditing group. This option clears the visual indicators, maintaining a clutter-free spreadsheet.



## 4. Show Formulas

The "Show Formulas" option displays all formulas in the cells instead of their results. This view is beneficial for reviewing and verifying formulas quickly.

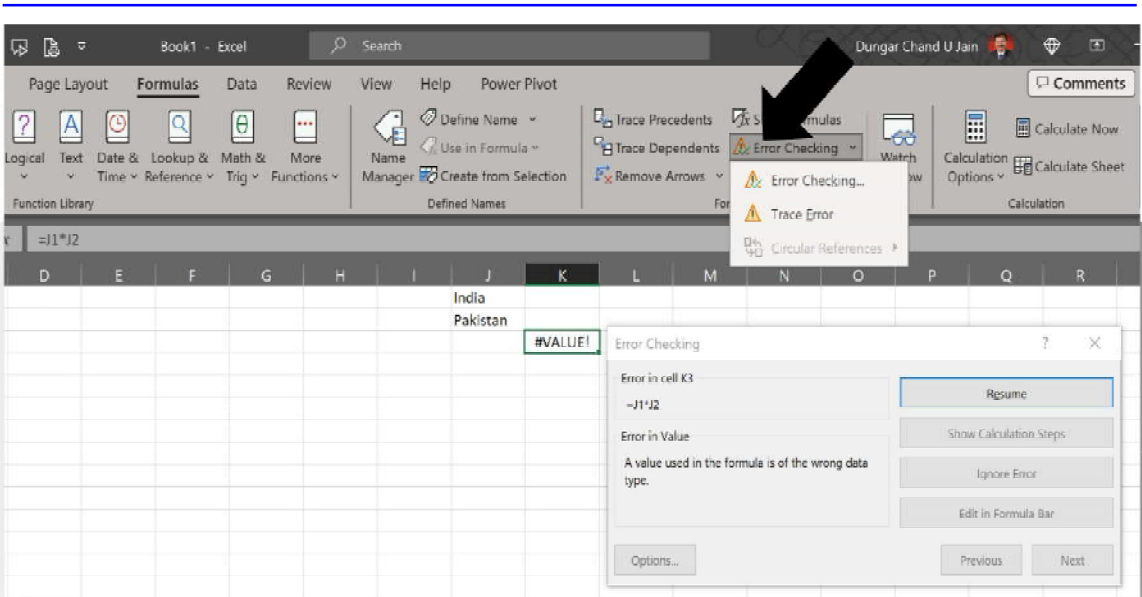


## 5. Error Checking

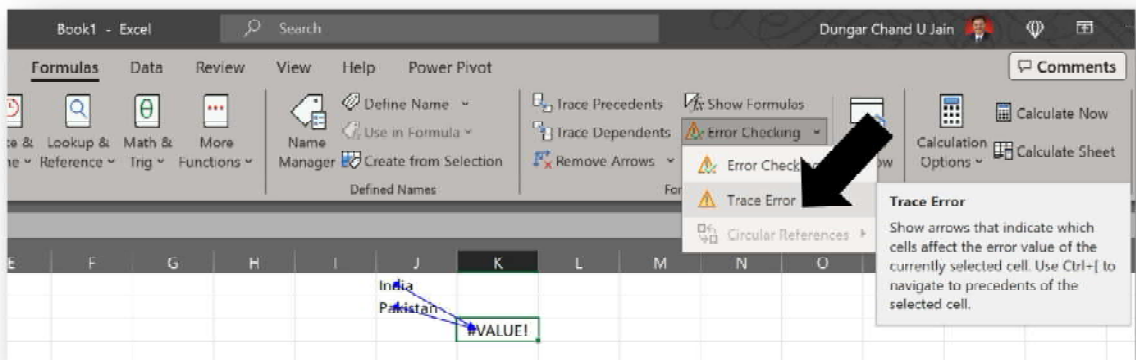
Error Checking is a fundamental aspect of Formula Auditing. Excel automatically flags potential errors in formulas with a small triangle in the cell's top-left corner. Clicking on the error icon reveals a dropdown menu with options to correct or ignore the error. Additionally, users can initiate a manual error check by selecting "Error Checking" in the Formula Auditing group.

Example:

Consider a cell with the formula  $=J1*J2$ . If cells J1 and J2 contain text instead of numbers, Excel will flag this as an error, allowing the user to rectify it promptly.



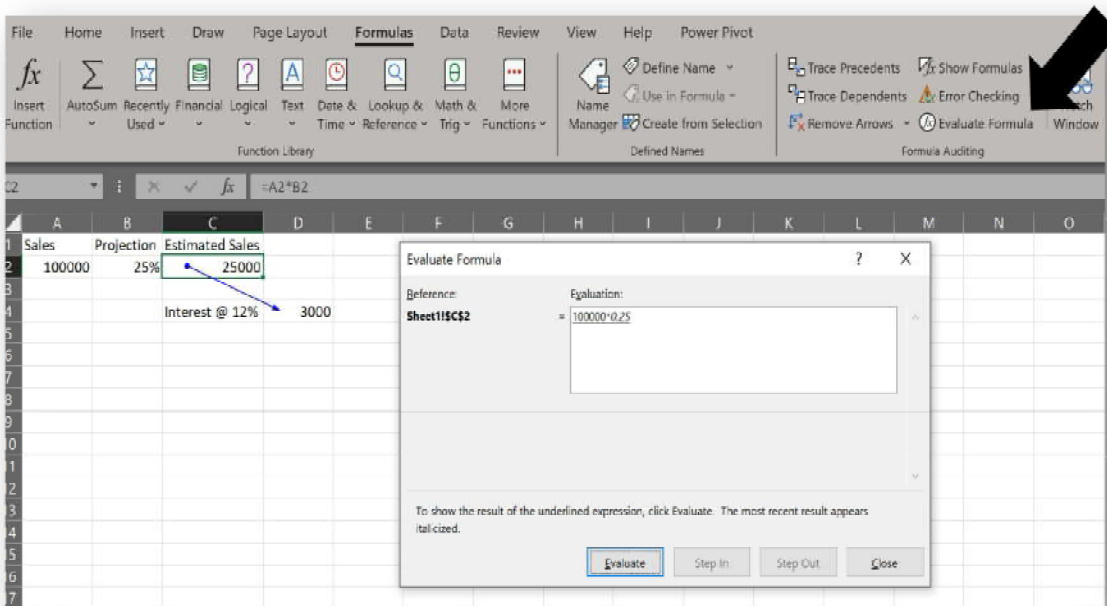
## Trace Error



## 5. Evaluate Formula

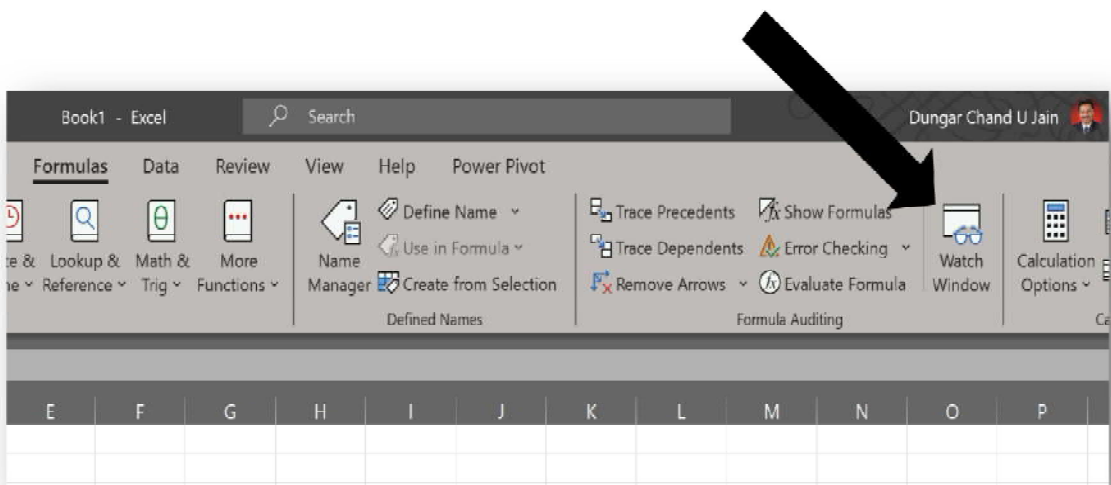
The "Evaluate Formula" tool allows users to step through a formula's calculation, observing how Excel evaluates each part of the formula. This step-by-step approach is particularly useful for debugging complex formulas.

Click Evaluate in the dialog box and Excel will take through the series of steps involved in a formula one-by-one and show how the result was obtained in the window.



## 6. Watch Window

The Watch Window is a floating dialog box that monitors the values and formulas of specified cells, even when the cells are not visible on the screen. This tool is especially useful for tracking crucial cells in large spreadsheets.



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Example:

Adding cell D1, which contains the total sales figure, to the Watch Window allows users to monitor sales while working on different parts of the spreadsheet

### **Conclusion:**

Formula Auditing in MS Excel is an excellent feature for users seeking to optimise the accuracy and reliability of their spreadsheets. By taking benefits of techniques such as Error Checking, Trace Precedents, Trace Dependents, Show Formulas, Evaluate Formula, and Watch Window, one can effectively audit, debug, and monitor formulas, thereby enhancing the data analysis.

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