

# THE MONTHLY MAGAZINE FROM CASC



**VOLUME-2**

**ISSUE-9**

**SEPTEMBER 2023**



# CASC BULLETIN

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## INDEX

Subject	Author	Page No.
Recent Judgments in VAT / CST / GST	CA. V.V. Sampathkumar	15
Case Laws - Service Tax and GST	CA. Vijay Anand	22
Accounting for warranty given for the Products sold under Ind AS	CA. Vinay Nahar	36
Summary of AAR / AAAR	CA. Aman Goyal & CA. Priyanka Prabaghar	39
The wait for softer interest rate Regime gets longer	CA. Kandaswamy	50
Excel Tips	CA. Dungar Chand U Jain	54
Clause 44 in Form 3CD under Section 44AB of the Income Tax Act 1961 - FAQs	CA. Nitin Bhuta	57
Recent Case Laws & Notification in Insolvency and Bankruptcy Code	CA. B. Ramana Kumar Advocate	80

Date	Topic	Speaker
14.09.2023 (Thursday)	TDS / TCS - Critical Issues	Eminent Speaker

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

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

### **Chandrayaan-3, a resounding success**

The whole nation rejoiced on the evening of 23rd August 2023 when the lander Vikram touched down south pole of the moon in a flawless motion. The rover Pragyan also successfully started functioning with a flow of scientific data, which will be used by the mankind. One wishes the rover will regain its life after the moon night. Of course, ISRO had planned to complete its mission before the end of moon day. This entire mission just cost Rs 615 crores. What impact this will have on the country's economic sphere? 1. It showcased India's ability to build a reliable system at an affordable cost. 2. It showcased the level of involvement of Indian companies and their capabilities. ISRO and Indian Companies will be looked favorably by countries which intend to have their space mission. This will result in a big boost to our manufacturing

companies viz a viz Atmanirbhar which the government aims to achieve. The collective prayers offered by the citizens of India irrespective of the faith, also augurs for our great nation.

When Chandrayaan 2 failed 4 years ago, our PM motivated and backed the team of ISRO to achieve success in future. The failure analysis team of ISRO thoroughly analyzed and examined every aspect as to why that mission did not succeed and course corrected the current mission which resulted in success. There is a good lesson to corporates also in this. It is heartening to note that the Prime Minister, immediately on his arrival in the country from BRICS summit, visited and personally congratulated the ISRO team on Chandrayaan 3 success. This will motivate them further to achieve greater goals for the benefit of the country.

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## India - The way forward after Chandrayaan-3

The global economic data indicates that all is not well with China, the world's second largest economy. Its infrastructure/real estate and export driven growth model resulted in a furious phase of economic growth over 4 decades, which saw it become the factory of the world and also the largest consumer of minerals. Its export driven model resulted in neglecting the domestic demand to a large extent and its infrastructure/real estate growth model created assets on which the return of investments may take more than decades and sometimes no return at all. Covid induced lockdown shrunk the economic activity of China, resulting in decline in its economic activity and consequently fall in exports and domestic demand. The twin jeopardy resulted in cascading effect and

multiple failures and its largest real estate company filing for bankruptcy proceedings with a mounting loss of US\$81 billion in last two years. (This is more than the GDP of some small nations put together)

With the American Rating agencies lowering the rating of US government, one will have to wait to see the impact of these rating cut.

India with its focus on economic growth mostly based on domestic consumption offers a sweet spot in the world of economic chaos. Our main concern is the current account deficit. With manufacturing activity picking up and India being seen as a manufacturing base, soon the current account will become positive. With focus on renewable energy, there is every possibility of reduction in oil import bill which will also help this cause.

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With India showcasing its ability and its will, with its stable growth prospects and a good demographic divide, we can safely think that our time has come.

### **Updated Income Tax Website goes live**

When accessing [incometaxindia.gov.in](http://incometaxindia.gov.in), the income tax department's website for accessing legal content relating to the income tax law, one was caught by surprise that the website has been revamped. One is welcomed by a tax calendar when logging into the website which provides the upcoming due dates under the Income Tax Act, 1961. The new website boasts of a whole new set of features including section wise content where all relevant notifications, circulars, forms, FAQs, amendments made by various finance acts, etc. relating to each section are brought in one place. We hope that the website will be kept updated and glitch free so that the taxpayers and the

professionals benefit out of it in the long run. One must not confuse this website with the income tax portal which is used for e-filing returns/forms.

### **Highlights of the Annual General Meeting of CASC**

The Annual General Meeting of CASC was held on 26th August, 2023 wherein two of our Management Committee Members, viz., Mr. R Ravi and Mr. Sathiyarayanan K R have retired. We, at CASC, thank them for their immense contributions to the functioning of organization. In their place, Mr. H Balaji and Mr. Praveen have been elected as Management Committee Members. We wish them all the best in this new endeavor. During the AGM, rankholders of the recent CA Final and CA Intermediate examinations were felicitated for their achievements. Scholarships were also awarded to deserving candidates. The highlight of the AGM was the

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special address by Mr. Arvind P Datar, Senior Advocate, Supreme Court which we believe would have been a game changer for the young entrants to the profession.

### **Best wishes for the upcoming season**

The professional fraternity would be ready for the tax audit season after a well-deserved break post the July season completion. CASC wishes its members and the bulletin's readers a happy tax audit season.

### **Students Programme on Tax Audit**

We, at Chartered Accountants Study Circle, along with other organisations, have been organizing Students Programme on Tax Audit every year and this year also we have organized a full day Students Programme on Tax Audit to be conducted on 01.09.2023. By the time this bulletin reaches you, the programme would be ongoing.

### **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 On behalf of Editorial Board

*R. Sricharan*

**Sricharan R**

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## GLIMPSES FROM THE AGM

### 1. The AGM of CASC being conducted



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## 2. Article writers being felicitated



### 3. Emerging speakers being felicitated



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#### 4. Special address by Mr. Arvind P Datar



#### 5. Scholarships awarded to deserving candidates



## 6. Rank holders being felicitated





**PRESENT MEMBERS OF THE MANAGEMENT COMMITTEE**  
**OF THE CHARTERED ACCOUNTANTS STUDY CIRCLE**  
**IN ALPHABETICAL ORDER**

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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)

For Further Details contact :

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## RECENT JUDGMENTS IN VAT/CST/GST

**Mandamus** : The prayer is for a mandamus simplicitor directing the sole respondent to issue refund along with interest. Ld AGP of respondent produces written instructions confirming the position that the issue of refund is under active consideration and is only awaiting approval of the Government. Though in the written submissions the officer seeks three months to pass the refund order, Ld AGP would clarified that the refund order has already been passed and what is awaited is the Government's sanction to transfer the amount to the credit of the assessee/petitioner. This was recorded and mandamus was issued to the respondent to credit the amount determined under refund order dated 05.12.2022 for the periods 2012-13 and 2013-14 along with interest in line with the applicable provisions, within a period of twelve (12) weeks from today. **Siemens Ltd. Vs The Additional Deputy Commercial Tax**



**CA. V.V. SAMPATHKUMAR**

**Officer - IAC, Pudhucherry-5**  
**W.P.Nos.19190 and 19192 of 2023**  
**Dated: 28.06.2023**

**Recovery without demand** : Petitioner's case that this recovery which relates to arrears of sales tax for the period 2004 -2005 is incorrect insofar as the entirety of the demand under order of assessment dated 29.03.2006, for that year, placed at page 22 of the typed-set, has been fully paid by the petitioner. It is submitted by the respondent that the order of assessment dated 29.03.2006 was revised subsequently and it is the revised demand that has been recovered under the impugned order. Ld Government Advocate is unable

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to provide a copy of the revision order and is also unaware of the statutory provision to what that revision order relates. She has also not been in a position to provide any notice for revision or show-cause notice issued prior to the passing of the mysterious revision order. R1 in proceedings in R.O.C.No.1376/2020/A3 dated 26.06.2023, a copy of which has been handed over to the learned counsel for petitioner, confirms that the amounts recovered from Karur Vysya Bank of a sum of Rs.3,24,466/- will be refunded. This refund is directed to be made within 48 hours from today. With these the matter was closed by the Court. **M.Kandhavel Vs 1.The Assistant Commissioner, Thindal Assessment Circle, Erode - 638 001. 2. The Manager, Karur Vysya Bank, Erode- 638 001.W.P.No.34184 of 2022 DATED: 28.06.2023**

**Writ of Mandamus:** Writ petitions seeking mandamus directing the second respondent being the JC(ST)

(GST-Appeals) to decide the question of maintainability of the statutory appeals pending before him (filed on 11.05.2023). On instructions from the officer who is present in the Court, learned Government Advocate, assured the Court that the petitioner would be heard and a decision taken with regard to maintainability or otherwise of the appeals within four weeks from today. It is on these facts that learned Government Advocate is directed to seek instructions. In light of the assurances as recorded aforesaid, which would achieve the purpose of mandamus sought for by the petitioners, the court directed that no further directions are required. **M/ s.Sundaram Clayton Limited Vs 1.The Deputy Commissioner (ST)-II, Large Tax Payers Unit, Chennai-35. 2.The Joint Commissioner (ST) (GST-Appeals), Nandanam - 600 035. W.P.No.18770 of 2023 etc DATED: 27.06.2023**

**Delay:** Petitioner was unaware of the orders having been issued as it had been sent to the Consultant's email id

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and also to the effect that the sole proprietor was unwell at the relevant point in time. Ld Additional Government Pleader, who accepts notice for the respondents fairly does not raise any strenuous objection to the suggestion of the Court that, having regard to the explanation tendered, the delay of 10 days may be condoned and the appeals restored to the file of the appellate authority. In view of this, the Hon'ble Court, while rejecting the challenge to the orders of assessment, acceded to the request for condonation of delay of 10 days with a direction that the petitioner represent the appeal papers within a period of one (1) week from date of receipt of a copy of this order. If the appeal papers are so represented as aforesaid, the appellate authority shall entertain the same holding them be maintainable, hear the appeals and dispose the same in accordance with law. **M/s. Sri Mutharamman Traders., Vs 1. The State Tax Officer, Madipakkam Assessment Circle, Chennai - 600 035. 2. The Deputy**

**Commissioner (ST),GST, Appeal Chennai-II, Chennai-6. W.P.No.18890 of 2023 Dated: 27.06.2023**

**Writ of Certiorarified Mandamus :** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the cancellation order vide reference No.ZA330221025608Z dated 05.02.2021 passed by the 3rd Respondent and quash the same and consequently allow the petitioner to file pay the remaining dues and file all pending return and consequently direct the respondents to unfreeze petitioner-s abovementioned bank accounts. Ld Additional Government Pleader accepts notice for the respondent and is armed with necessary instructions to enable a final disposal of this Writ Petition, even at the stage of admission. Petitioner is called absent. In any event, the impugned order is dated 05.02.2021 and hence this Writ Petition instituted on 20.06.2023 is far beyond

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the statutory period provided for revision/appeal. Hence, this Writ Petition stands dismissed. However, the petitioner is at liberty to approach the competent authority in the Commercial Taxes Department to seek benefit of the presently on-going amnesty scheme for restoration of registration. Such application, if and when filed, shall be considered by the competent authority in accordance with law. **S.A.Umayaal Devi Vs 1. Commissioner of Commercial Taxes, Chennai-5. 2. Deputy Commissioner (State) Inspection - I, Intelligence - I, Chennai - 6. 3. Assistant Commissioner (Circle) Royapuram, Zone-II, Chennai North, Tamil Nadu. W.P.No.18906 of 2023 Dated: 27.06.2023**

**Refund:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the Respondent to sanction the refund of pre-deposit of Rs.4,11,181/- paid on Appeal filed against Assessment Order

No.33913203501/2007-2008, along with interest. Against the order in first appeal, the State had filed an appeal before the Sales Tax Appellate Tribunal, that was disposed on 04.01.2022. The present Writ Petition has been filed by the petitioner assuming that, that order of the Tribunal dated 04.01.2022 has attained finality. That does not appear to be the case as confirmed by learned Government Advocate who states that a Tax Case (Revision) has been filed, albeit, belatedly, pending in SR stage (SR.No.74673 of 2022) before this Court challenging order dated 04.01.2022. The claim for refund can be considered only upon conclusion of the litigation. **M/s.Hariharan Spinners (I) Private Ltd Vs The Assistant Commissioner (ST),Pallipalayam Circle, Tiruchengode W.P.No.19008 of 2023 Dated: 27.06.2023**

**Delay:** The reason for approaching this Court by way of Writ Petition is that as on date of institution of the

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Writ Petition, being 26.06.2023, the appeal was time barred by a little over one month from the last date provided under the Statute for condonation of delay. As no serious objection is placed in this regard by the Ld Government Advocate, while sustaining the impugned order of assessment, liberty is granted to the petitioner to challenge the same by way of statutory appeal before the first appellate authority. **Shree Agencies Vs 1.Assistant Commissioner (ST),Peddunaickenpet Assessment Circle, 2. Kotak Mahindra Bank Limited, Mint Street, Sowcarpet, Chennai - 79.W.P.No.19103 of 2023 Dated: 27.06.2023**

**Technical Glitches** : The petitioner has challenged a refund rejection order dated 30.09.2022 inspired by an order which was uploaded dated 06.10.2022 wherein the refund granted has been accepted and the refund directed to be issued. Ld AGP who appears for the respondent would point out that order dated 06.10.2022

has been clearly passed in error and on account of certain technical glitches. The reason for the petitioner approaching this Court is its inability to challenge order dated 30.09.2022 by way of statutory appeal, since the system does not accept the appeal in light of the order granting refund. Though the Court is inclined to direct that the technical glitches in the system be corrected, Ld respondent counsel would submit that the process for correction of the glitches is on-going and may take some time. Hence, the petitioner is permitted to file an appeal challenging order dated 30.09.2022 manually before the first appellate authority within a period of two (2) weeks from date of receipt of a copy of this order. Appeal, if filed as aforesaid, shall be taken on file without reference to limitation, but ensuring compliance with all other statutory conditions. **M/s.Indian Farmers Fertilizers Co-operative Limited, Puducherry-9.Vs The Commercial Tax Officer, GD-II,Puducherry-5. W.P.No.18849 of 2023 Dated: 26.06.2023**

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**Opportunity of personal hearing:** As it is clear that opportunity of personal hearing has not been granted to the petitioner and the impugned orders are thus set aside. A personal hearing is fixed by this Court on Friday i.e., 30.06.2023, on which date, the petitioner will appear before the respondents at 10.30 a.m., without expecting any further notice in this regard, along with written submissions and supporting materials, if any. Let an order be passed de novo within a period of four weeks from the date of personal hearing, i.e., on or before 01.08.2023.

**HDFC Bank Limited, Vs 1.The Deputy Commissioner (ST)-II, Large Tax Payers Unit, Chennai-35. 2.The Deputy Commissioner (ST)-IV, Large Tax Payers Unit, Chennai-35. W.P.Nos.17989, 17992 & 17996 of 2023**

**Affording Opportunity:** As can be seen from the reference in the impugned orders, the exchange of notices and replies have commenced

effectively in 2019 and there has been no communication after the petitioner's letter dated 18.10.2019. The impugned orders have been passed in July, 2022, after a gap of nearly three years, without even affording an opportunity of personal hearing to the petitioner. On instructions from the assessing authority, the Government Advocate accedes to the factual position as set out above. In view of this factual prosthion, the impugned orders of assessment is set aside in order to enable the proceedings to be conducted in line with the principles of natural justice and in accordance with law. **M/s.KK Granite Marketing Vs The Assistant Commissioner (ST),RS Puram Assessment Circle, Coimbatore. W.P.Nos.12992,12994 & 12996 of 2023 DATED: 20.06.2023**

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

## CASC CHENNAI, MEMBERSHIP FEE

<u>Corporate Membership</u>	Rs.
Corporate Annual Membership	3,000.00
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## CASE LAWS - SERVICE TAX AND GST

1. SERVICE TAX - SCNS TRANSFERRED TO CALL BOOK IN VIEW OF PENDING OF DEPARTMENTAL APPEAL BEFORE SUPREME COURT - NON DISPOSAL OF SCNS BEYOND FOUR AND HALF YEARS FROM THE DATE OF SUPREME COURT ORDER IN DEPARTMENTAL APPEALS - DEMAND NOT SUSTAINABLE



**CA. VIJAY ANAND**

In *Nanu Ram Goyal v. CCGST &CE*, 2023 (74) GSTL 17/(2023)6 Centax 148 (Del.), the petitioner executes contracts for civil works awarded by authorities, institutions and other entities including the Central Government and the State Governments. The petitioner was awarded the contract for construction of residential flats by the Housing Board Haryana, Gurugram (hereafter 'the HBH') for which construction commenced on 28.7.2005. An SCN was issued for

the period 16.6.2005 to 30.9.2008 on the execution of construction works overlooking the benefit of abatement to the extent of 67% of the value of taxable service in terms of the notifications (Notification No. 18/2005-ST dated 7.6.2005 and Notification No. 1/2006-ST dated 1.3.2006), as the petitioner had received free supply of items from the HBH that were not included in the value of services for which the personal hearing was conducted on 2.7.2010. In view of the fact that there was no further communication to the assessee, he held on to the belief that the proceedings have been closed.

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However, the adjudicating authority placed the matter in the 'Call Book' with the approval of the Commissioner.

The petitioner was intimated by letter dated 2.8.2022, about a personal hearing was scheduled on 10.8.2022 at 11:00 AM for which adjournment was sought on the ground that Mr. Nanu Ram Goyal (who was of an advance age of 73 years) was suffering from multiple disorders. Thereafter, the petitioner filed a petition, assailing the impugned letter and recommencement of the proceedings in respect of the impugned show cause notice before the high court which observed as under:-

1. It is settled law that where there is no period stipulated for exercising jurisdiction, the same must be done within a reasonable period as held in *Government of India v. Cital Fine Pharmaceuticals, Madras & Ors.* (1989) 3 SCC 483=1989 (42) E.L.T.

515 (SC)/1989 taxmann.com 618 (SC).

2. Section 73 of the Act, as in force at the material time, did not stipulate any period within which the show cause notice was required to be adjudicated. It merely stipulated the period within which the show cause notice was required to be issued. However, there is no cavil that the authority conferred with the jurisdiction is required to exercise the same within a reasonable period.
3. In the present case, the reasonable period was required to be determined considering the 'Call Book' procedure. Department had resumed the proceedings immediately after finding that the matter was no longer required to be kept in abeyance (in the 'Call Book').
4. CBEC Circular No. 719/35/2003-CX dated 26.5.2003 states that the Chief Commissioner should

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monitor the progress of disposal of the 'Call Book' cases to ascertain whether the 'Call Book' cases have been reviewed by the Commissioner of Central Excise; whether any appreciable progress has been noticed; and there are any avoidable delays.

5. CBEC had issued Circular No. 53/1990-CX dated 6-9-1990 states that if a current case has reached a stage where no action can or need be taken to expedite its disposal for at least 6 months (e.g. cases held up in law courts), it may be transferred to the Call Book with the approval of the competent authority.
6. Circular No. 162/73/1995-CX dated 14.12.1995 notes down the cases which cannot be placed under the said 'Call Book', namely, "(i) Cases in which the Department has gone in appeal to the appropriate authority; (ii) Cases where injunction has been issued by Supreme Court/High Court/CEGAT, etc; (iii) Cases where audit objections are contested; (iv) Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book".
7. The department had done so, as the issue involved in the impugned show cause notice was pending consideration before the Supreme Court in Commissioner of Central Excise & Service Tax, Karnataka v. M/s Sobha Developers Limited [Civil Appeal Nos. 9819-9820/2010=2017 (49) S.T.R. J26 (SC)] which was decided on 17-1-2017.
8. The questions sought to be raised by the Revenue in the case of M/s Sobha Developers Limited [Civil Appeal Nos. 9819-9820/2010=2017 (49) S.T.R. J26 (SC)] were covered by an earlier decision of the Supreme Court in CCE & Cu., Kerala v. Larsen and Toubro Ltd. (2016) 1 SCC 170=2015 (39) S.T.R. 913 (SC)/

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[2015] 60 taxmann.com 354 (SC)/ [2015] 52 GST 1 (SC)/[2015] 84 VST 403 (SC) wherein it was held that prior to the enactment of the Finance Act, 2007 - by virtue of which Section 65(105)(zzzza) of the Act was introduced and Section 67 of the Act was amended - a composite contract was not taxable. The order dated 17.1.2017 passed by the Supreme Court dismissing the Revenue's appeal in M/s.Sobha Developers Limited clearly indicates that the Revenue was seeking reconsideration of the decision in Larsen and Toubro Ltd.

9. Thus, the difficulty to adjudicate the SCN as the controversy involved in the impugned show cause notice was pending consideration before the Supreme Court in M/s.Sobha Developers Limited (supra). Cannot sustain owing to the fact that the Supreme Court had already decided the issue regarding levy of service tax on composite contracts in Larsen and Toubro Ltd.

10. However, even if it is assumed that it was permissible for the respondents to keep the adjudication of the impugned show cause notice in abeyance, pending the decision of the Supreme Court in M/s Sobha Developers Limited (supra) the inordinate delay after the decision was rendered by the Supreme Court cannot be countenanced.

11. The petitioner was provided no information that the impugned show cause notice has been placed in the 'Call Book'. Even if it is accepted that it is permissible for the respondents to place the matter in the 'Call Book', it was necessary for the respondents to have communicated the said fact to the petitioner.

12. In ATA Freight Line (I) Pvt. Ltd. v. Union of India & Ors. 2022 SCC OnLine Bom 648=[2022] 1 Centax 32 (Bom.)/[2022] 145 taxmann.com 246 (Bom.), the high

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court, in somewhat similar circumstances where the show cause notice had been kept in abeyance for more than seven to eleven years, allowed the petition and also observed that if the petitioner was informed about the show cause notice being kept in the 'Call Book', the petitioner would have applied for an appropriate relief by filing for appropriate proceedings. It was not expected for the assessee to preserve evidence and records for a long period of time. Revenue's SLP against this decision before the Supreme Court was dismissed.

13. Accordingly, the proceedings pursuant to the impugned show cause notice were inordinately delayed and cannot continue.

Hence, the respondents were interdicted from taking any action or continuing any proceedings pursuant to the impugned show cause notice and the petition was allowed.

2. **ST - ADVANCE RULING - SERVICES OF ASSOCIATION OF PLANTERS AND GROWERS OF TEA, COFFEE, RUBBER, PEPPER AND CARDAMOM TO ITS MEMBERS BY WAY OF SUBSCRIPTION - EXEMPT UPTO RS.1,000/-**

In RE: United Planters Association of Southern India 2023 (74) GSTL 110/(2023)6 Centax 47 (AAR.-GST-TN), the applicant M/s.United Planters Association of Southern India (UPASI) is a mutual benefit association registered under the Tamil Nadu Societies Registration Act, 1975 established by the planters and growers of Tea, Coffee, Rubber, Pepper and Cardamom in southern India, *viz.*, Tamil Nadu, Kerala and Karnataka, with the object to conduct research and analysis for the benefit of members in whole to achieve maximum productivity and quality in their

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plantation activities and to represent before various authorities for the welfare of members and such other welfare activities (training, meeting etc.) collectively for their benefit. The membership subscription fee received from them used for the above said activities and to meet out administration and other running cost of the association.

Apart from the said activities, the membership subscription fee received is utilized for conducting meetings and to meet out necessary running and administrative costs of the institution. Under its by-laws, subscription amounts payable from its members are as fixed by the Executive Committee of the applicant, unless otherwise determined by the General Meeting of the applicant. The applicant prevents a member from voting or standing for election if the member is in arrears of the subscription, and the Executive Committee of the

applicant, at its discretion may consider any member whose subscription is in arrears for more than one year, to have ceased to be a member of the applicant. Any member classified as a retired planter member' has to only pay a one onetime life membership subscription of Rs. 1000 irrespective of the rate of annual subscription adopted by the Budget General Meeting from time to time. The Executive Committee of the applicant may also waive the subscription to such extent and for such period as deemed necessary.

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

- 1) Whether the applicant is eligible to avail the benefit of Notification No. 14/2018 - Central Tax dated 26-7-2018 as the non-profit association registered under any law engaged for the welfare of farmers vide serial No. 77A, Heading 9995?

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- 2) Whether the doctrine of mutuality as laid down by the Supreme Court in various cases is applicable in our case?
  - 3) It is clear that the Finance Act, 1994 (as amended from time to time) does not abrogate or do away with the doctrine of mutuality. The question that now need to be answered is whether the introduction of GST abrogates or does away with the doctrine of mutuality as laid down by the Supreme Court in various cases.
  - 4) Is the applicant-association a person distinct from the member or a related person?
  - 5) Is there a transaction between the applicant-association and its members which are covered under section 7(1) (a), (c) or (d) of the Central Goods and Services Tax Act, 2017?
1. The question which needs to be answered is whether the applicant is eligible to avail the benefit of Notification No. 14/2018-CT dated 26-7-2018 as a registered non-profit association engaged for the welfare of farmers under Serial number 77A and whether there is a transaction between the applicant association and its members which is covered under section 7(1) (a), (c) or (d) of the GST Act, 2017.
  2. The applicant is an apex body of planters of tea, coffee, rubber, pepper and cardamom in the Southern States of India viz. Tamil Nadu, Kerala, and Karnataka in existence since 1893. There are 3 State Planters' Associations and 13 District Planters' Associations affiliated to UPASI. It is the premier representative body of buyers, sellers, processors, exporters, co-operatives, and all other market intermediaries of tea, coffee, rubber, and spices. It is an association of members

The adjudicating authority observed as under:

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rendering different activities in or in relation to tea, coffee, rubber, pepper and cardamom. Agriculturists or farmers merely engaged in farming are one among them. There is permutation and combination of different activities along with farming by the member of the association.

3. A member engaged only in farming cannot be equated with a member engaged in more than one activity including farming. Further, farming can be done by an individual, partnership firm, company or any other form of organization recognized by law, but qualify as a farmer. For instance, a company registered under Companies Act, 2013 can grow, harvest, process and sell tea to consumers, wherein tea farming is one of the activity in its tea business, but cannot qualify as a mere farmer.
4. The Association's operations cover economic research, market intelligence, industrial relations,

liaison, public relations, scientific research, and publication. The applicant is also engaged in; Preparing action plans for the development of the plantation industry; Involving in international negotiations relating to plantation commodities; Interacting with Commodity Boards to orient decisions/action of the Boards to be conducive to the growth of the planting industry; Analyzing international trends in the plantation commodities covered by UPASI and suggesting appropriate approach change to the planters. All the said activities of the applicant are to fulfil the requirements of its members who are buyers, sellers, processors, exporters, co-operatives, and all other market intermediaries of tea, coffee, rubber, and spices.

5. In order to tax, the activity must be a supply of either goods or service or both end the supply is to be made for a consideration to a person in the course of furtherance of business, i.e., there

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should be a supply of goods or service, recipient, supplier, consideration, in the course or for furtherance of business.

6. In the instant case, it is evident from the submissions of the applicant that their activities are squarely covered under scope of supply and their contention that applicant association is neither a person distinct from the member nor a related person is laid to rest by retrospective amendment of Section 7 by insertion of clause (aa) to sub-section (1) and explanation with effect from 1-7-2017, which states that the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.
7. Notification No. 14/2018-Central Tax (Rate), dated 26th July 2018 amended Notification No. 12/2017 Central Tax (Rate), dated

28th June 2017 by inserting serial number 77A that exempted services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,-

- (i) activities relating to the welfare of industrial or agricultural labour or farmers; or
  - (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee up to an amount of one thousand rupees (Rs 1000/-) per member per year.
8. The contention of the applicant that they are eligible to avail the benefit of Notification No. 14/2018-Central Tax (Rate), dated 26th July 2018. is not entirely acceptable for the following reasons:

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- a. The applicant is a premier representative body of buyers, sellers, processors, exporters, co-operatives, and all other market intermediaries of tea, coffee, rubber, and spices and that apart from Estate category, there are other categories of subscription viz. Firm member, Association member and Retired Planters member.
- b. Even among Estate members, there are sub-classification on the basis of crop area and the amount of annual subscription also varies from Rs. 1000/- to 1750/-.
- c. Estate or small grower member owning Pepper crop within the plantation also subscribe separately for pepper membership.
- d. The exemption provided under Notification No. 12/2017 Central Tax (Rate) as amended by Notification No. 14/2018-Central Tax (Rate) vide serial number 77A is in respect of consideration in the form of membership fee up to an amount of one thousand rupees (Rs 1000/-) per member per year received by a non-profit entity registered under any law for the time being in force, engaged in activities relating to the welfare of agricultural labour or farmers.
- e. It is a settled position of law that any exemption notification should be strictly interpreted. Applicant is an association of members who are engaged in different activities in or in relation to tea, coffee, rubber, pepper and cardamom. Agriculturists or farmers merely engaged in farming are one among them. There is permutation and combination of different activities along with farming by the member of the association.
- f. A member engaged only in farming cannot be equated with a member engaged in more than one activity including fanning. Further, farming can be done by

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an individual, partnership firm, company or any other form of organization recognized by law. but qualify as a farmer.

- g. However, the exemption notification mandates welfare of industrial or agricultural labour or farmers. Here, welfare of labour or farmers refers to natural persons following the doctrine of ejusdem generis.
- h. Therefore, the exemption is applicable to natural persons who are farmers simpliciter and the annual subscription for all membership, under various nomenclature, is up to Rs.1,000/.
- 9. Accordingly, the applicant being a registered society, providing services to their members, who are distinct from the applicant and registered as member on payment of any amount towards subscription/contribution, is a supply of service and is accordingly taxable except subscription received from natural persons who are farmers

simpliciter and the annual subscription for all membership is up to Rs.1000/-.

Hence, the authority ruled as under:

1. The applicant is eligible to claim exemption vide serial number 77A of Notification No. 12/2017-Central Tax (Rate) as amended by Notification No. 14/2017-Central Tax (Rate) in respect of subscription received from natural persons who are farmers simpliciter and the annual aggregate subscription amount for all membership, under various nomenclature, up to Rs. 1000/-, as discussed in para 8.4.2 supra.
2. There is transaction between the applicant-association and its members covered under section 7(1) (a) and clarified by insertion of Section 7(l)(aa) and explanation with effect from 01st July, 2017 by Section 108 of the Finance Act, 2021 - brought into force on 01st January, 2022 vide Notification No. 39/2021-C.T, dated 21st December, 2021.

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3. Interpretation of law is not mandated to Advance Ruling Authority under section 97(2). Therefore, no ruling was given on the remaining issues.

3. **ST - AIRPORT SERVICES - COLLECTION OF UDF - NOT TO BE INCLUDED IN THE TAXABLE VALUE**

In Central GST, Delhi-III v. Delhi International Airport Ltd. 2023 (74) GSTL 129/(2023)6 Centax 199(SC), the assessee had entered into joint venture arrangements/agreements (hereafter "OMDA") with the Airports Authority of India [hereafter "AAI Act"] wherein the assessee agreed to undertake some activities enjoined upon the AAI, by the AAI Act. The assessee was authorised, by various notifications (dated 27th February 2009) issued by the Central Government under section 22A of the AAI Act to collect a "development fee" @ Rs. 100/- for every departing domestic passenger

and Rs.600/- for every departing international passenger at the concerned airports for a period of 48 months.

The adjudicating authority confirmed the demand on the user development fee (UDF) collected which was set aside by the Tribunal. On further departmental appeal, the Supreme Court observed as under:-

1. In Consumer Online Foundation v. UOI – 2011 (5) SCC 360, it was held that the nature of development fee, collected are statutory exactions and not fees or tariffs, as was contended by the Union of India and more specifically, are not charges or any other consideration for services for the facilities provided by the Airports Authority.
2. There is a distinction between the charges, fee and rent etc. collected u/s 22 of the AAI Act and the UDF levied and collected u/s 22A

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of the AAI Act. It is that the UDF is in the form of 'tax or cess' collected for financing the cost of future projects and there was no consideration for services provided by the assessee to the customer, visitors, passengers, vendors etc. The aggregate of collections in the bank accounts do not form part of profit and loss account.

3. CBEC Circular No. 89/7/2006- ST dated on 18.12.2006 clarifies that collection of amounts, by way of taxes, sovereign or statutory dues, would not be subjected to service tax levy.
4. The above circular was interpreted in *Krishi Upaj Mandi Samati v. CCE – 2022 (58) G.S.T.L. 129 (S.C.)* wherein it was held that the fee collected in that case could not be said to be a statutory exaction or levy, but was for consideration:
5. The principal holding was that the discretionary fee could be levied, and that there was no "duty cast

upon the Market Committees to allot/lease/rent the shop/platform/land/space to the traders". The second reason was that the amounts were credited to a market fund, which was later deposited in the government treasury, even after which it remained a market committee fund.

6. In the present case, neither is there any compulsion to levy development fee nor is the collection conditional upon its deposit in the government treasury. However, the absence of these features does not render UDF any less a statutory levy.
7. The ruling in *Consumer Online Foundation v. UOI – 2011 (5) SCC 360* is conclusive that UDF is a statutory levy.
8. The collection is not premised on rendering of any service.
9. The amounts collected are deposited in an escrow account, not within the control of the assesses.

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10. The utilization of funds, is monitored and regulated by law.
  11. The fact that the amount is not deposited in a government treasury, per se, does not make it any less a statutory levy or compulsory exaction. Nor does its discretionary nature,) render it any less a statutory levy.
  12. Airport management has evolved; it is no longer the monopoly of the government; private participation is recognized. This sector is now regulated through a new regulator, i.e., the Airports Economic Regulatory Authority of India. As part of the Union's economic policies, the upgradation and renovation of airports are funded through UDF, which is a statutory levy.
  13. Instead of the conventional practise of ensuring that amounts collected are deposited with the Government, an entirely new

regulatory regime has been envisioned which includes monitoring of amounts, nature of expenditure, submission of plans for expansion, renovation, their sanctioning etc.

14. These rules and controls are in the public interest, and evidently intended to further efficiency in funding and swift taking up and completion of works, rather than funding through Finance Rules, which might entail delay, and cost overruns.
15. However, the public nature of these funds does not in any manner get undermined, merely because they are kept in an escrow account, and their utilization is monitored separately.

Hence, the Revenues' appeals were dismissed.

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## ACCOUNTING FOR WARRANTY GIVEN FOR THE PRODUCTS SOLD UNDER IND AS

Many entities provide warranty in addition to the goods sold to their customers. There are many kinds of warranties provided by the manufacturer or sellers.

The first step for accounting for each kind of warranty provided, is to conclude if it is going to be treated as a separate performance obligation under Ind AS 115: Revenue from Contracts with Customers.

**The intricacies of accounting for different kinds of warranty are as follows:**

A good or service sold will be treated as a separate performance obligation only if it is distinct. A good or service is distinct if both of the following criteria are met:

- The customer can benefit from the good or service on its own or when combined with the customer's available resources; and



**CA. VINAY NAHAR**

- The promise to transfer the good or service is separately identifiable from other goods or services in the contract.

A transfer of a good or service is separately identifiable if the good or service:

- Is not integrated with other goods or services in the contract;
- Does not modify or customize another good or service in the contract; or
- Does not depend on or relate to other goods or services promised in the contract.

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Nature of warranty varies significantly depending on the industry. There are warranties which provide a customer with assurance that the related product will function as the parties intended because it complies with agreed-upon specifications. Other warranties provide the customer with a service in addition to the assurance that the product complies with agreed-upon specifications.

Each type of warranty provided should be analysed and concluded if it is distinct or not.

#### **Manufacture Warranty (assurance warranty):**

- It's an assurance that the related product will function as the parties intended because it complies with agreed-upon specifications.
- This warranty is not distinct from the promise of selling the good. There are no additional services provided to the customer.
- This warranty will not be treated as a separate performance obligation under Ind AS 115. It will be treated as the same performance obligation as selling the goods.
- This promise of warranty will be accounted under Ind AS 37: Provisions, Contingent Liabilities and Contingent Assets and a corresponding provision will be created for the products sold during the year.

#### **Services provided in addition to the manufacturing warranty:**

- In addition to the manufacturing warranty certain services are provided to the customer for example free maintenance services etc.
- These additional services are distinct and will be treated as a separate performance obligation. This is because the customer can get the benefits from the good even without these additional services provided as warranty.

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- The transaction price will be allocated to this additional warranty as well, which is a separate performance obligation and revenue will be recognized for this performance obligation as per the provisions of Ind AS 115.

**Customer has the option to buy warranty separately:** If the customer has the option to buy a warranty separately in addition to the product, then that warranty is a distinct service because the entity promises to provide the service to the customer in addition to the product that has the functionality described in the contract and the customer can get the benefit of the good even without purchasing the warranty.

**Warranty is to be provided as per law:** if the entity is required by law to provide a warranty, the existence of that law indicates that the promised warranty is not a performance obligation because such

requirements typically exist to protect customers from the risk of purchasing defective products. As a result, this warranty will be accounted as per the provision of the standard Ind AS 39.

**Ind AS 115 provides an exemption for the accounting of warranty:** If an entity promises both an assurance-type warranty and a service-type warranty but cannot reasonably account for them separately, the entity shall account for both of the warranties together as a single performance obligation.

**Distinction between “right to return” and warranty:** If an entity provides a refund to customers if they are not satisfied with the goods, it will not be treated as warranty, but will be accounted as a variable consideration under Ind AS 115.

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## SUMMARY OF AAR/AAAR

1. PGs and hostels are akin to guest houses and cannot be termed as 'residential dwelling'

In case of Srisai Luxurious Stay LLP ("Applicant") [KAR ADRG 25/2023 dated July 13, 2023] - Karnataka State Authority For Advance Ruling ('AAR' or 'Authority').

### Facts of the Case:

- The Applicant is engaged in the business of developing, running, subletting and managing paying guest accommodation, service apartments, flats aimed to suit all types of customers. The applicant claims to be taking residential dwelling on rent and creates partitions and arranges cots which are then given on rent to inhabitants.
- The Applicant provides boarding and lodging facilities as a primary service and provides meals, furnished rooms, round



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

the clock security, housekeeping services, washing machine facilities, television, internet and parking facilities as ancillary services the cost of which is also included within the tariff rates for room rents.

- As per Notification No.4/2022 - Central tax (Rate) dated July 13, 2022 GST was charged at 12% on renting of accommodation for hotel/inn/guesthouse, etc., with effect from July 18, 2022.

### Question before AAR:

- In this regard, the Applicant wishes to seek clarification from the AAR on following issues:

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- Whether the paying guest accommodation qualify for GST exemption as a residential dwelling?
  - Whether the charges collected towards ancillary services be treated as bundled services along with the paying guest/hotel accommodation services?
  - Whether GST will be applicable on reverse charge mechanism for the payment of rent to their landlords.

#### **Observation of AAR and conclusion**

- The entry at Sl No. 14 of the Notification 12/2017 - Central Tax (Rate) dated June 28, 2017 as updated vide Notification 4/2022 - Central tax (Rate) dated July 13, 2022, exempts only the renting of residential dwelling for use as residence and has made the services of hotels/inn/guesthouse, etc., for residential or lodging purpose as taxable under GST.
- The Applicant has stated that it provides lodging purposes to the

inhabitants of the hostel wherein the immovable property used for such accommodation is a residential dwelling and is used for the purpose of residence and thereby qualifies for exemption.

- The AAR observed the definition of 'residential dwelling' in the common parlance as an accommodation meant for permanent stay and does not include guest house, lodge or like places.
- Further, the Applicant charges rent for the accommodation basis on the number of people sharing the rooms and hence it is not a residential property left for rent but a room. Moreover, the inhabitants are not provided with any kitchen facilities for cooking which the AAR considered as an essential character for permanent stays.
- Therefore, the AAR held that the services of the Applicant shall not be eligible for exemption as a renting of residential dwelling.

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- Further, the AAR stated that the allied services are provided as an option to the inhabitants and no inhabitants are compelled to use all the facilities provided. Hence, the same would classify as separate services and cannot be stated as naturally bundled.
  - The Applicant is liable to be registered as the service of paying guest/ hostel is held taxable. Thereby, the Applicant becomes a registered person and hence, the Applicant shall be required to pay GST on RCM basis for amount paid to landowner for the residential properties taken on rent.
  - The Applicant shall discharge GST under RCM for the landowner of the residential property rent for paying guest/ hostel services of the Applicant as per the RCM Notification.
- 2. Artificial Insemination Crate/ Travis for use in Veterinary clinics taxable at 18% GST**
- In case of M/s. Kantaben Rameshbhai Chaudhari [GUJ/ GAAR/N2023/25 dated June 30, 2023] referred as 'Applicant' – Gujarat state Authority of Advance Ruling ('AAR' or 'Authority').

### **Ruling of the Authority**

- The AAR held that the services of accommodation by way of paying guest/ hostels are taxable under GST.
- GST Shall be levied separately for any other allied services provided along with the accommodation service as an option to the inhabitants.

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

- The Applicant is engaged in the manufacture of veterinary instruments known as AI Crate (Artificial Insemination crate)/ Travis. This equipment/ instrument is used for medical treatment of animals. It is installed at Veterinary Dispensary Centres.

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- The Applicant is of the view that the product shall be classified under HSN code 9018 and taxed at 12%. The Applicant relied on judgment of Hon'ble SC in case of Delhi Cotton and General Mills Co Ltd
  - In this regard, the Applicant has submitted the detailed information of the product along with the manufacture process and the uses of the same.
  - As per the description, for the product to be classified under HSN 9018, it should be an instrument or an appliance or at least an apparatus.
  - Further, as per the submission of the Applicant of the diagram and photographs of the product, the AAR believed that it is nothing, but a structure made of tubes, pipes of iron and steel.

#### **Question before AAR**

- What is the rate of tax applicable on the AI Crate/Travis?
- What is the HSN classification of AI Crate/Travis?

#### **Observation of AAR**

- The AAR highlighted that the chapter heading 9018 specifies as follows:

*“instruments and appliances used in medical, dental or veterinary sciences, including scientific apparatus, other electromedical apparatus and sight testing instruments”*

- Hence, the AAR has analysed the classification head and held that the product shall be classified under the head chapter heading 7306 that includes pipes or tubes made of iron or steel.
- Consequently, the authority has held that the product shall be taxed at 18% GST.

#### **Ruling of the AAR**

The AI Crate/Travis used in Veterinary clinics shall be classified under the head chapter heading 7306 and be taxed at 18%.

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3. Availability of ITC on inward supply of motor vehicle which are used for demonstration purpose in the course of business of supply of motor vehicle

In case of M/s. Sai Service Pvt. Limited, [TSAAR Order No. 13/2023 dated August 01, 2023] (referred as 'Applicant') - Telangana state Authority of Advance Ruling ('AAR' or 'Authority').

**Facts of the case**

- The Applicant is engaged in the business of supply of automobiles having dealerships of MSIL, Bajaj, KTM, & Chetak Technology Limited. The Applicant is also involved in providing servicing, repair, related auxiliary services with respect to motor vehicles. It also trades in preowned cars.
- The Applicant requires certain demo vehicles for demonstration purpose in the showrooms which is an essential part of sales

promotion activity as it facilitates sale of cars. Every model is registered unlike normal vehicles and are used for demonstration for a period of two years or 40,000 KMs whichever is earlier. These vehicles are used for providing test drives to its potential customers, in order for them to understand the look and feel of the vehicle.

- These demonstration vehicles are procured by the Applicant from MSIL against a tax invoice. MSIL provides these vehicles at a discount on the basic price of vehicle (post launch price in case of a new model/variant) as per the MSIL policy.
- However, the Applicant currently capitalizes the purchase of demo vehicles and claims depreciation as per the Income Tax Act thereby does not claim any ITC at the time of procurement.
- Once the time period of the usage of demo vehicle expires, the Applicant will sell the same as a

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second hand car to B2C or B2B customers.

- At the time of sale, GST shall be paid on the profit arrived as per the margin scheme i.e., the difference between the consideration received on the sale and the depreciated value of vehicle in the books of the Applicant. The margin scheme shall apply only when the Applicant has not availed any ITC at the time of procurement.
- The Applicant is currently intending to avail Input tax credit at the time of purchase and pay the applicable taxes at the time of sale instead of opting for margin scheme.

### **Question before AAR**

Whether the Applicant is entitled to avail the input tax credit charged on inward supply of motor vehicle which are used for demonstration purpose in the course of business of supply of motor vehicle as input tax credit on capital goods?

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

- The Applicant referred to the relevant definitions and Section 16 for analysing the eligibility to avail ITC on purchase of demo cars.
- In this regard, the Applicant analysed the conditions as per Section 16 in order to be eligible to take credit as follows:
  - Be a registered person - Applicant is registered under GST in the state of Telangana.
  - Be entitled to take credit of input tax charged on any supply of goods or services supplied to him - The Applicant is eligible to take credit of Input tax charged on such demo vehicles while purchasing.
  - Goods shall be used or intended to be used - The applicant intends to purchase these demo cars for use in business for test drive and further intends to sell within the limited period as per agreement with MSIL.

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- In the course or furtherance of business - Any activity carried on with a purpose to achieve business objectives, business continuity and stability would per se amount to an activity in course or furtherance of business. The Applicant is in the business of sale of cars in which case providing demo car is an essential activity to enhance, advance sales, continue business etc. Hence it is in the course of furtherance of business.
  - Hence, the Applicant contended that it satisfies all the conditions as per Section 16 and therefore eligible to claim ITC at the time of procurement.

### **Observation of AAR**

- The AAR has analysed the test vehicle policy issued by MSIL to the Applicant and observed that the vehicle shall be registered in the name of the company/ dealership and can be retained as a test vehicle only for (2) years. After (2) years the vehicle can be

used in workshop as a replacement vehicle or sold with the written approval of the vendor company.

- Subsection 5 of Section 17 of CGST Act, 2017 states that the ITC shall not be available on purchase of motor vehicles with a seating capacity of less than 13 (including driver) even when used or intended to be used for furtherance of business.
- Hence, an exception is provided to the blocked credit entry for motor vehicles, that allows availment of ITC on purchase of motor vehicles when bought for further supply of such motor vehicles.
- Further the AAR stated that the exception is for further “supply” of such motor vehicles and not “sale”. Thus the exception is made not only for sale of motor vehicles but for the purpose of lease, rent etc., wherein there is no immediate transfer of property in goods and such

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motor vehicle may be capitalized in the books of the purchaser in case of an intention to lease, rent etc.,

- Hence, capitalizing the motor vehicle purchased does not make the tax paid on their purchases ineligible for ITC if there is a further supply of such motor vehicles within the meaning of Section 7 of CGST Act, 2017.
- Hence, the AAR held that whether the Applicant is eligible for ITC depends on occurrence of a future event i.e., either he retains the vehicle in his workshop as a replacement vehicle or sells such vehicles.

### **Decision of AAR**

The AAR has held that if the applicant is making further supply of such vehicle, it is eligible for the ITC claimed. Otherwise, if the applicant is retaining the vehicle for his workshop as replacement vehicle, he shall not be eligible for ITC as there is no further supply at his hands.

### **4. Applicability of reversal in terms of Rule 42 to the extent of the turnover that relates to sale of alcoholic liquor for human consumption**

In case of M/S. Karnani Fnb Specialities LLP [02/WBAAAR/APPEAL/2023 dated July 31, 2023] (referred as 'Appellant') – West Bengal State Appellate Authority of Advance Ruling ('AAAR' or 'Authority').

### **Fact of the case**

- The Appellant is engaged in business of providing restaurant service from their lounge bar called "The GRID" and is also providing catering services as well as banquet renting services from their banquet called "The Almond".
- At times, the appellant is also engaged in selling/serving of alcoholic liquor for human consumption to its customers from GRID and no alcoholic liquor for human consumption is

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being sold or served at the banquet of the appellant.

- As the Appellant cannot avail ITC on restaurant services, it only avails credit to the extent of inputs and input services procured for the banquet (Almond). Therefore, the principal question that arises is whether the appellant is required to undertake reversal in terms of Rule 42 to the extent of the turnover that relates to sale of alcoholic liquor for human consumption.

### **Issue before AAR**

- Whether the appellant is required to undertake reversal in terms of Rule 42 to the extent of the turnover that relates to sale of alcoholic liquor for human consumption.?

### **Ruling of the AAR**

- The AAR observed that sale of alcoholic liquor for human consumption is a supply under

the GST Act on which tax is not leviable. A supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act is defined as 'Non-taxable supply' in clause (78) of section 2 of the GST Act.

- Further, 'exempt supply' as defined in clause (47) of section 2 of the GST Act includes non-taxable supply. A conjoint reading of section 2(47) and 2(78) thus denotes clearly that the aforesaid supply would also be treated as 'exempt supply' under the GST Act.
- Sub-section (2) of section 17 of the GST Act read with rule 42 of the GST Rules allows a registered person to utilize input tax credit to the extent of input tax paid on inputs and input services that are used for making taxable supplies including zero-rated supply. Credit of input tax attributable to 'exempt supplies' is to be reversed as per the prescribed formula.

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- Hence, the AAR held that the activities of selling of alcoholic liquor for human consumption by the Appellant would be treated as 'non-taxable supply' and therefore falls under the category of 'exempt supply' which is required to be reversed as per rule 42 of the GST Rules.

#### **Appellant's Interpretation of Law:**

- The Appellant stated that the definition of GST under Article 366(12A) of the Constitution of India reads as "Goods and Service Tax means any tax on supply of goods, or services or both except tax on supply of alcoholic liquor for human consumption". Hence, as per the Constitution, alcoholic liquor for human consumption is not goods though the definition of goods does not outrightly excludes the same.
- Further, the Appellant contended that in a situation where supply of alcohol is treated as a non-taxable supply and thereby an 'exempt supply', the Appellant will have to consequently reverse ITC and thereby will be discharging GST liability on output supply of alcoholic liquor by way of reversal of ITC.
- Hence, the Appellant contended that when sale of alcoholic liquor cannot be brought to tax directly, it cannot even be brought to tax indirectly by way of reversal of ITC.
- Further, the Appellant substantiated that if "exempted supply" is read to include sale of alcoholic liquor for human consumption, even though none of the credits availed by the Appellant was on account of procurement of alcoholic liquor for human consumption, then that would run contrary to the very objective of the legislation

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## Observation and conclusion of AAAR

- The AAAR has observed that the Appellant is availing some common input tax credit (ITC) at Head office which is being used both for the supply of services provided at Banquet Hall as well as the services provided at their Restaurant from where alcoholic liquor for human consumption is supplied.
- The AAAR referred to Rule 42 explanation. From the plain reading of the explanation to the Rule 42(1) as well as Entry 51 and 54 of List II of seventh schedule, it is clear that for the purpose of computation of exempt turnover as well as total turnover, duties and taxes on alcoholic liquor for human consumption shall be excluded and not the whole value of sales of alcoholic liquor for human consumption
- The AAAR referred to Clause 12A of Article 366 of the Constitution which was inserted vide Section

14 of the Constitution (101<sup>st</sup> Amendment) Act, 2016. Basis clause 12A, it is established that alcoholic liquor for human consumption is “goods” even under virtue of the Constitution.

- Basis above, the AAAR held that sale of alcoholic liquor for human consumption is a non-taxable supply under Section 2(78) of the GST Act, 2017 and subsequently is an exempt supply under Section 2(47) *ibid*.
- Therefore, the appellant is required to reverse input tax credit (ITC) in terms of sub-section (2) of section 17 *ibid* read with Rule 42 of the GST Rules, 2017 for sale of alcoholic liquor for human consumption.

## Decision of AAAR

The AAAR has confirmed the ruling of AAR and rejects the appeal.

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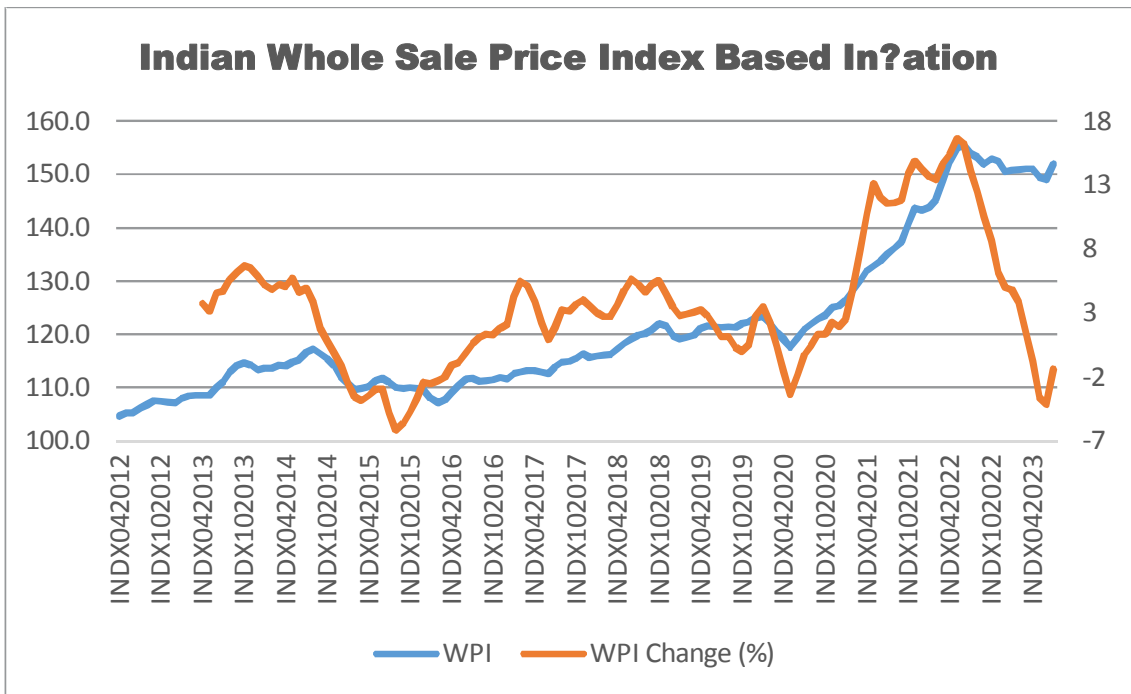
## THE WAIT FOR SOFTER INTEREST RATE REGIME GETS LONGER

India's wait for softer interest rate regime gets longer, as the advanced markets like US continue to raise interest rates. India's Whole Sale Price Index based inflation peaked in the recent times at 16.6% in May 2022, which has scaled down to -4.1% in June 2023. This gave hopes that sooner than later RBI may usher in the softer interest rate regime. But the pace of fall in WPI based



**CA. KANDASWAMY**

inflation took a different turn, and they were only -1.4% in July 2023, with actual Index going up to 151.9 in July 2023 from 149.0 in June 2023.



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The RBI, in its Monetary Policy Committee (MPC) meeting held between 8-10th August 2023, decided to unanimously keep the policy repo rate changed at 6.5%. The MPC also decided by a majority of 5 out of 6 members to remain focused on withdrawal of accommodation to ensure that the inflation progressively aligns with the target, while supporting growth. RBI indicated that domestic economic activity is holding up well and is likely to retain its momentum, despite weak external demand.

RBI expects the upcoming festival season to provide support to private consumption and investment activity. The spillovers emanating from weak external demand and protracted geopolitical tensions, however, pose risks to the outlook. Taking all these factors into consideration, RBI's real GDP growth projection for 2023-24 is 6.5 per cent with Q1 at 8.0 per cent;

Q2 at 6.5 per cent; Q3 at 6.0 per cent; and Q4 at 5.7 per cent. Real GDP growth for Q1:2024-25 is projected at 6.6 per cent.

There is deceleration in the pace of growth in Indian Mining Sector, which recorded 6.3% growth in the Quarter ended June 2023, from 9.2% growth recorded in the corresponding previous quarter ended June 2022.

Similarly, manufacturing sector too recorded mere 4.7% growth in the quarter ended June 2023, from robust 12.8% growth recorded in the corresponding previous quarter.

The deceleration was much steeper in Electricity generation, to mere 1.3% growth in the quarter ended June 2023, from robust 17.1% growth in the corresponding previous quarter ended June 2022.

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On an overall basis, the Index of Industrial production recorded mere 4.5% growth in the quarter ended June 2023, which represents sharp deceleration from robust double digit 12.9% growth in the quarter ended June 2022.

Interestingly use based classification throws some more insights. While there is sharp deceleration in the production of primary goods, capital goods, consumer durable and intermediate goods, there is acceleration in the pace of growth in infrastructure / construction goods as well as consumer non durables during the quarter ended June 2023, which is a redeeming feature amidst overall deceleration in the pace of growth in Industrial production.

Consumer non durables recorded 6.7% growth in the quarter ended June 2023, up from mere 1.2%

growth in the corresponding previous quarter. Similarly, infrastructure / construction goods too recorded improvement from 10.4% growth in the quarter ended June 2022 to 12.5% growth in the quarter ended June 2023.

India's overall trade deficit came down by 45% to US\$ 8.34 billion in July 2023, from US\$ 15.24 billion in July 2022. This was possible due to 21% increase in surplus from net exports of services, while merchandise trade deficit fell by 19% to US\$ 20.67 billion.

India is witnessing sluggishness in exports in general, and textiles, ready-made garments and made ups in particular. The good news on this front is that cotton yarn / fabrics / made ups, handloom products recorded 6.6% increase in July 2023.

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Still, the cumulative exports of the same reported 8.3% fall in the four months ended July 2023. During this 4 months period ended July 2023, man-made yarn / fabrics / made-ups etc. recorded 12.1% fall while ready-made garments of all textiles fell by 17.6%.

Interestingly Iron ore exports rose by 64.5% in the four months ended July 2023, powered by 962.8% spurt in their exports in July 2023. On the flipside, the export of electronic goods rose by 37.6% in the four months ended July 2023, but the growth was relatively low at 13.1% in July 2023. On the positive side, the growth in exports of Ceramic products & glassware recorded 12.4% in the four months ended July 2023.

India is witnessing acceleration in the share of new and renewable energy in the total power generation. The country is ushering in electric powered vehicles, green hydrogen too. The massive investments in capacity additions, physical and social infrastructure, through a good blend of inflows from FIIs, FDI as well as domestic investments together is set to facilitate India move up the Global economic ladder. Whether this growth is going to come with inclusive growth across the entire spectrum of socio economic pyramid, with better employment opportunities remains to be seen.

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## EXCEL TIPS

### MAXIFS and MINIFS FUNCTIONS

#### MAXIFS Function :

The `MAXIFS` function is designed to return the maximum value from a specified range, contingent upon one or more criteria. This function is particularly beneficial when one needs to extract the highest value from a dataset that meets specific conditions.



CA. DUNGAR CHAND U JAIN

Syntax:

MAXIFS (max\_range, criteria\_range1, criteria1, [criteria\_range2, criteria2], ...)

**max\_range** : This is the set of cells from which the function will derive the maximum value.

**criteria\_range1** : Represents the range of cells that one wishes to evaluate against `criteria1`.

**criteria1** : Specifies the condition in the form of a number, expression, cell reference, or text that will determine which cells in the `criteria\_range1` will be assessed.

- Subsequent criteria ranges and their corresponding criteria can be added as optional arguments

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### Illustrative Example:

Consider a dataset representing Score figures:

	A	B
1		
2	<b>Name</b>	<b>Score</b>
3	Alagarsamy	100
4	Periyasamy	200
5	Chinnasamy	150
6	Alagarsamy	250
7		
8		
9	Result	Formula used
10	250	=MAXIFS(B2:B6, A2:A6, "Alagarsamy")
11		

To ascertain the highest score achieved by "Alagarsamy", the formula would be:  
**=MAXIFS(B2:B6, A2:A6, "Alagarsamy")**

The result would be 250, indicating that Alagarsamy's highest score is 250.

### **MINIFS Function :**

The **MINIFS** function is tailored to return the smallest value from a designated range based on one or more set criteria. It is instrumental when there's a need to pinpoint the lowest value in a range that aligns with specific conditions.

Syntax:

MINIFS (min\_range, criteria\_range1, criteria1, [criteria\_range2, criteria2], ...)

**min\_range** : This denotes the range of cells from which the function will extract the minimum value.

**criteria\_range1** : Represents the range of cells that will be evaluated against **criteria1**.

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**criteria1** : Specifies the condition, which can be a number, expression, cell reference, or text, that will determine which cells in the `criteria\_range1` will be assessed.

- Additional criteria ranges and their respective criteria can be appended as optional parameters.

### **Illustrative Example:**

Consider a dataset representing Score figures:

	A	B	C
1			
2	<b>Name</b>	<b>Score</b>	
3	Alagarsamy	100	
4	Periyasamy	200	
5	Chinnasamy	150	
6	Alagarsamy	250	
7			
8			
9	<b>Result</b>	<b>Formula used</b>	
10	100	=MINIFS(B2:B6, A2:A6, "Alagarsamy")	
11			

To determine the lowest score for "Alagarsamy", the formula would be:

=MINIFS(B2:B6, A2:A6, "Alagarsamy")

The result would be 100, signifying that Alagarsamy's lowest score is 50.

*Both the `MAXIFS` and `MINIFS` functions are invaluable tools in Excel, especially when working with large datasets where manual filtering would be impractical. They offer a streamlined approach to data analysis based on specific conditions.*

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## CLAUSE 44 IN FORM 3CD UNDER SECTION 44AB OF THE INCOME TAX ACT 1961. - FAQs

Dear Readers,

I have made the attempt to present this article in FAQ format by curiously and incisively watching and analysing, threadbare, the insightful discussions pertaining to clause 44 reporting in Form 3CD for the benefits of all the readers of this article.



CA. NITIN BHUTA

14/08/2023

### Clause 44 in Form 3CD under Section 44AB of the Income Tax Act 1961. - FAQs

Sr. No	Question	Answers
1	Clause 44 reporting viz. GST Details reporting is applicable to whom?	It is applicable to all the taxpayers who are required to file tax audit reports in Form 3CA/3CB and 3CD u/s 44AB of the Income Tax Act 1961. It is mandatory to report such information.
2	So, if Tax Audit Report filing is not applicable, then I need not report such details in my ITR? Can you share any examples	Clause 44 reporting shall not apply to the cases of Taxpayers who are covered under the provisions of presumptive system of taxations say Section 44AD, 44ADA and 44AE of the Income Tax Act 1961 as they are not filing specified Tax Audit Forms as applicable under the provisions of the Income Tax Act 1961.

3	Is it necessary to have expert knowledge of GST for reporting such information in clause 44?	It would be better if one has expert knowledge in GST law but not necessary, one can possess reasonable knowledge about the Indirect Tax to report such details in reasonable and precise manner.
4	Can I depend upon work of the expert in Indirect Tax, to compile and validate such information for reporting in such clause?	Yes, one can rely on the work of expert as per the guidelines provided by ICAI but one should remember as a Tax Auditor what you certify in Form 3CA/3CB matters a lot as you are expressing your view about the true and correctness of the data provided in Form 3CD. It is suggested that utmost professional care should be taken for such information reported in general.
5	As a Tax Auditor, do I need to compile such information on my own, or through team or through my associates or such information needs to be compiled by the client and as a Tax Auditor I simply verify the data compiled on test check basis and express my views on them?	<p>Normally, such data is compiled by the client.</p> <p>As a Tax Auditor, you simply verify, validate and express your opinion on such data reported.</p> <p>As a Tax Auditor, if you clients need some kind of guidance to compile such information, then, you may guide them as the case may be.</p>

6	Is such reporting compulsory for AY 2023/24 only?	<p>If Tax Audit is applicable, then it is compulsory to report such information in clause 44 of Form 3CD.</p> <p>Thus, Taxpayers opting for presumptive scheme of Taxation as provided under Section 44AD, 44ADA and 44AE would never need to report information sought as per clause 44 of Form 3CD as they are never required to file the Tax Audit report in Form 3CA/Form 3CB/Form 3CD.</p>
7	If Taxpayer is filing his Tax Audit report for AY 18/19, AY 19/20, AY 20/21, AY 21/22 & AY 22/23 on or after 01.04.23 as due to some genuine & pragmatic reasons, he was not able to file them on the respective due dates for each of respective assessment years. If so, does clause 44 information needs to be reported for each of the Assessment years?	<p>In my considered opinion, clause 44 details need to be furnished for each of the Assessment Years viz. AY 18/19, AY 19/20, AY 20/21 AY 21/22 &amp; AY 22/23 if they are filed electronically on or after 01.04.2023.</p>
8	Do I need to generate separate UDIN for reporting the information under clause 44 of the Tax Audit Report?	<p>No separate UDIN is required for reporting of such information in clause 44 of the Form 3CD.</p> <p>UDIN generated for Tax Audit Reports would serve the purpose for the authentication of the data.</p>

9	Whether compilation of such information would be burdensome or humongous or stressful?	<p>If master data maintained by the Taxpayers is accurate then it may be possible to compile such data in a swift manner.</p> <p>If such records are not maintained, then such compilation can be humongous or stressful.</p>
10	Whether such information needs to be reported as per Income Tax Act, 1961 or GST Act, 2017?	<p>In my humble opinion, such information should be reported as per Income Tax Act, 1961 as such requirement is derived as per the provisions of the Income Tax Act directly.</p> <p>Information and data maintained as per GST Act, 2017 can provide desired support reasonably.</p> <p>Though, there is a divergent view prevailing in the public domain that data should be compiled as per the provisions of GST Act, 2017.</p> <p>Whatever view that one is following should be disclosed in the Observation and Remarks fields of Form No 3CA/3CB as the case may be.</p>

11	What information is sought to be reported in clause 44?	<p>Information sought to be provided (Table 1) is as under:</p> <ol style="list-style-type: none"> <li>1. <b>Total Amount of expenditure incurred during the year (Column 1)</b></li> <li>2. <b>Expenditure in respect of entities registered under the GST</b> <ol style="list-style-type: none"> <li>a. <b>Relating to the goods or services exempt from GST (Column 1.1a)</b></li> <li>b. <b>Relating to the entities falling under composition scheme (Column 1.1b)</b></li> <li>c. <b>Relating to the other registered entities (Column 1.1c)</b></li> <li>d. <b>Total Payment to Registered entities (Column 1.1d) = Total of (1.1a+1.1b+1.1c)</b></li> </ol> </li> <li>3. <b>Expenditure relating to entities not registered under GST =Column 1 minus Column (1.1d)</b></li> </ol>
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12	Whether all the above details to be reported is on mercantile basis or cash basis?	<p>In my humble opinion, it is to be reported on mercantile basis in most of the situations because only selective assessee can follow cash system of accounting as per section 145 of the Income Tax Act 1961.</p> <p>Thus, depending on the method of accounting as regularly followed on YOY basis consistently under the Income Tax Act 1961, one can report such information in clause 44 of the Tax Audit Report.</p> <p>Further, literally if we consider the provisions of GST law, everything to be complied based on mercantile basis and there are no provisions under GST law which provides payment of GST on cash basis which was permitted in the erstwhile service tax regime for certain class of service providers. Thus, again I would like to emphasize that for reporting mercantile system should be followed to the extent possible except where Assessee is following cash system of accounting under Income Tax Act 1961.</p> <p>Though, there is divergent view prevailing in public domain that data/information should be compiled &amp; reported on payment basis under the said clause.</p> <p>If data is reported on payment basis, then, it would require additional reconciliation to be maintained which needs to be provided in the Income Tax as well as GST assessments.</p> <p>Whatever view that one is following should be disclosed in the Observation and Remarks fields of Form No 3CA/3CB as the case may be.</p>
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13	Whether expenditure to be reported should be inclusive or exclusive of ITC (Input Tax Credits) for reporting the information under clause 44?	<p>In my humble understanding, information should be reported exclusive of ITC (Input Tax Credits) consisting of Inputs, Input Services and Capital goods as the case may be.</p> <p>I derive my support from the provisions of Section 145A of the Income Tax Act 1961 which provides for making additions and/or deduction while determining total income u/s 28 of the Income Tax Act 1961 in respect of Inventories, stocks and so on.</p>
14	Considering the above, do I need to report Depreciation claimed as per the provisions of Companies Act and/or Income Tax Act, 1961 in value of total expenditure to be reported in clause 44?	<p>In my humble view, Depreciation should not be considered while reporting the details of total expenditure as Depreciation is in the form of Depreciation allowance and it is not an expenditure in true sense. (Column 1)</p> <p>Tax Auditor should suitably disclose the such view in the Observation and Remarks option of Tax Audit Report in Form 3CA/Form 3CB appropriately.</p>

<p>15</p>	<p>Considering the above, do I need to report expenditure incurred for the capital expenditure on purchase/acquisition and transfer of Fixed Assets as per the provisions of Companies Act and/or Income Tax Act, 1961 in value of total expenditure to be reported in clause 44?</p>	<p>In my humble view, expenditure incurred for the capital expenditure on purchase/acquisition and transfer of Fixed Assets as per the provisions of Companies Act and/or Income Tax Act, 1961 should not be considered while reporting the details of total expenditure as in my understanding expenditure which are debited to Profit and Loss account only should be considered bearing few exceptions like Depreciation and Bad Debts written off etc. (Column 1).</p> <p>Further proportionate ownership of Capital expenditure can't be reported as none of vendors shall issue proportionate tax invoice as per section 31 of CGST Act, 2017. Readers can note that till today we have come across any instances of issuing B2B Invoices in respect of procurement of Fixed Assets in proportion to ownership of any such capital expenditure.</p> <p>Thus, in my view Capital expenditure should be excluded for reporting as total expenditure in column 1 of Clause 44.</p> <p>Guidance notes issued by ICAI states that capital expenditure should be considered for reporting in the total expenditure details. (Column 1).</p> <p>Tax Auditor should suitably disclose the such view in the Observation and Remarks option of Tax Audit Report in Form 3CA/Form 3CB.</p>
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16	<p>What should be considered for reporting of <b>Total Amount of expenditure incurred during the year (Column 1)</b></p>	<p>All expenses as debited to Profit and loss account should be considered except the following:</p> <ol style="list-style-type: none"> <li>1. Depreciation as per companies act 2013 or Income Tax Act 1961.</li> <li>2. Bad Debts written off</li> <li>3. Provision for Income Tax</li> <li>4. Provisions for Gratuity</li> <li>5. Provision for Leave Encashment</li> <li>6. Deferred Tax if debited to profit and loss account etc.</li> </ol>
17	<p>Why do you recommend the reporting of Total expenditure in answer to Q.16? Please explain.</p>	<p>I am recommending to report Total expenditure as per Profit and Loss account except certain items in view of the following reasons:</p> <ol style="list-style-type: none"> <li>a. It would ease out the process of calculating, computing and validating details for such reporting in clause 44;</li> <li>b. Such details can be easily extracted from Audited Profit and Loss account as well as accounting reports maintained by the Taxpayer for their internal records.</li> <li>c. If compiled in the above manner, such reconciliation can be easily explained in Income Tax as well as GST Assessments.</li> <li>d. In case of assessee having multiple GSTIN Numbers spread all across the country, would also draw only one set of financial statements based on PAN Number and Tax Audit report is also issued for single PAN number.</li> </ol>

18	<p>If we report total expenditure as explained in Q.16 &amp; Q.17, then whether do we include provision for expenses as well as Prepaid expenditure etc.</p>	<p>In my view, all kinds of the provisions for expenses as well as prepaid expenses should be considered except what is stated in answer to Q.16. Such expenditure should be reported based on the documentary evidences available as per the records of the assessee for each of the previous years.</p> <p>If Provision for expenses is made for FY 2223, TDS is also deducted but Tax Invoice/Invoice is received by the Assessee in next FY viz. FY 2324, then based on the documentary evidences it would be reported appropriately in clause 44 of the next financial year but such provisions for expenses would be reported as expenditure from Unregistered entities for FY 2223 for reporting in clause 44 for AY 2324.</p> <p>There is divergent view prevailing in the public domain but considering my justification in answer to Q.17 one can decide suitably.</p>
19	<p>Is such information should be reported in summary form or detailed form in each of the columns of clause 44?</p>	<p>Details should be provided in the summary form but working papers should be prepared in the detailed manner considering the size, nature and volume of the business activities of taxpayer in general and consolidated values should be considered for reporting in clause 44.</p> <p>MIS reporting can be customized for each assessee as per the requirements and it would always customize appropriately.</p>

20	Is it necessary to reconcile the information of expenditure as per GSTR 9 & GSTR 9C for the respective financial year or previous year?	<p>If possible, to reconcile, such information may be reconciled to the extent possible.</p> <p>Reconciliation issues may arise due to multi GSTIN Registrations as well as claim of ITC pertaining to previous financial year in the current year and current years ITC claimed in the next financial years as per the limits provided u/s 16(4) of the CGST Act, 2017.</p>
21	Whether books of accounts and records maintained as per Income Tax Act 1961 to be considered or whether books and records maintained as per GST Act, 2017?	<p>In my personal view, books and records maintained as per the provisions of Income Tax Act 1961 to be considered primarily because such information is getting reported under the provisions of Income Tax Act 1961 and not GST Act, 2017.</p> <p>Books and records maintained as per GST Act, 2017 can provide additional support.</p> <p>Further it is also clarified by Govt that Books of accounts and records maintained under the provisions of Income Tax law and/or Corporate Law would be termed as books and records maintained under GST law for reporting and compliance purposes also.</p> <p>Practically for Clause 44 reporting, Books and records as per Income Tax Act 1961 should be considered.</p> <p>Taxpayer as well as Tax Auditor can clarify the same in notes to accounts or Tax audit reports as per their professional judgement.</p>

22	Under which sections books of accounts & records are required to be maintained under the provisions of Income Tax Act 1961?	<p>Books of accounts and records that are required to be maintained are specified u/s 44AA of the Income Tax Act 1961 based on the Category A &amp; Category class of Assessee's which excluding persons covered under presumptive sections viz. 44AD/44ADA and 44AE.</p> <p>Notified Professions</p> <p>legal, medical, engineering or architectural or accountancy or <b>authorized representative</b> or technical consultancy or interior decoration, <b>film artist</b>, Company Secretary, Information Technology or other notified + Authorised representative</p> <p>Category A</p> <ul style="list-style-type: none"> <li>• Income exceeding Rs.120000 for others (for Individual and HUF Limit is Rs.250000/-</li> <li>• Sales/Turnover/Gross receipts exceeding Rs.10 Lakhs (for Individual and HUF Limit is Rs.2500000/-</li> <li>• Medical Professionals - 3C Patients Register and Stock register</li> </ul> <p>Category B</p> <ul style="list-style-type: none"> <li>• Rule 6f - Gross Receipts exceed Rs.150000/- &amp; similar amount for Newly set up profession</li> <li>• Cash Book, Journal and Ledgers, Carbon Copies of Bills issued in excess of 25 rupees, Original Bill where expenditure exceeds Rs.50</li> </ul> <p>Notified Professions</p> <p>legal, medical, engineering or architectural or accountancy or <b>authorized representative</b> or technical consultancy or interior decoration, <b>film artist</b>, Company Secretary, Information Technology or other notified + Authorised representative</p>
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23	<p>Under which sections books of accounts &amp; records are required to be maintained under the provisions of GST Act 2017.?</p>	<p>Section 35 read with <b>Rule 56-</b> Accounts and other records – plus correlated with GSTR 3B/GSTR 9/ GSTR 9C/E Way Bills records in general</p> <ul style="list-style-type: none"> <li>• Production or Manufacturer</li> <li>• Inward supply of Goods or services or both (<b>Including RCM Supplies</b>)</li> <li>• Stock of goods</li> <li>• Input Tax Credit availed – <b>Inputs/Input Services/ Capital Goods etc.</b></li> <li>• Output Tax payable and paid</li> <li>• Such other particulars as may be prescribed</li> </ul> <p>Food for Thought: whether such requirement is not provided under any other laws applicable to business enterprises who are subject to Tax Audit like Companies Act etc.</p>
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24	Is there any kind of Interplay between Income Tax/ Corporate Law and GST?	<ul style="list-style-type: none"> <li>• In my understanding there is definitive interplay between Income Tax, Corporate Law and GST. In brief, it can be summarized below</li> <li>• <b>Income Tax &amp; Corporate Law</b></li> <li>• <b>ITR, TAR Reporting &amp; Financial Statements etc. - information reported</b> <ul style="list-style-type: none"> <li>○ ITR -Break of Expenditure in Profit and Loss Account - Part A - Manufacturing, Trading and Profit and Loss Account</li> <li>○ ITR - Inventory valuation &amp; ICDS in Part A-OI &amp; Computation schedule</li> <li>○ ITR - Part A - Quantitative details - principle items (mandatory if liable for TAR)</li> <li>○ ITC availed, booked and Utilised in Clause 27(a) of TAR - Form 3CB</li> <li>○ Inventory details in Clause 35 of TAR - Form 3CB</li> <li>○ Inventory details in Corporate Financial statements - principle items - Notes to accounts &amp; CARO disclosures</li> </ul> </li> </ul>
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		<p><b>GST law - Information reported</b></p> <ul style="list-style-type: none"> <li>• <b>NIL, Exempted and Non-GST Supply</b> <ul style="list-style-type: none"> <li>○ GSTR 3B - Table 5 - Inward Supplies</li> </ul> </li> <li>• <b>GSTR 9- Other Information</b> <ul style="list-style-type: none"> <li>○ Part III - Table 6 -7 &amp; 8- ITC</li> <li>○ Part VI           <ul style="list-style-type: none"> <li>▪ Table 15- if accumulated ITC refund is claimed u/s 54</li> <li>▪ Table 16 - Row A - Supplies received from Composition Taxpayers.</li> <li>▪ Table 18 - HSN wise supplies of Inward supplies</li> </ul> </li> </ul> </li> <li>• <b>GSTR 9C</b> <ul style="list-style-type: none"> <li>○ Table 14- Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account</li> </ul> </li> </ul>
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25	Please define Exempt, NIL rated and non-GST supply made by registered persons under GST Act 2017.	<p><b>Exempt Supply</b></p> <p>Section 2(47) of CGST Act defines Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;</p> <p><b>Nil rated supply</b></p> <p>means supply of any goods or services or both which attracts nil rate of tax as notified under section 11, or under section 6 of the Integrated Goods and Services Tax Act.</p> <p><b>Non-Taxable Supply</b></p> <p>Section 2(78) of CGST Act, 2017 “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;</p>
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26	Please provide illustrative examples of summary information to reported under column 1.1a - Exempt, NIL rated and non-GST supply made by registered persons under GST Act 2017.	<p>Illustrative Examples</p> <ol style="list-style-type: none"> <li>1. High Seas Sales</li> <li>2. Custom Bonded Warehouses</li> <li>3. Purchase of Land</li> <li>4. Purchase of Buildings</li> <li>5. Salaries and Allowances</li> <li>6. Banks - Interest on monies borrowed</li> </ol> <p>There is divergent view in the public domain, examples No 1 to 5 listed above are neither supply of good nor supply of services as per Schedule III of CGST Act, 2017, thus, such information should not be reported in the clause 44.</p> <p>Taxpayer as well as Tax Auditor can clarify the same in notes to accounts or Tax audit reports as per their professional judgement.</p>
27	Please define Composition Supply under the provisions of GST Act 2017.	<p>Registered Taxable person who is registered under section 10 of CGST Act, 2017 viz. Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees.</p> <p>[Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.]</p>

28	Please provide illustrative examples of summary information to reported under column 1.1b- Supply for Composition persons registered under GST Act 2017	<p>Suppliers who are issuing Bill of Supply Invoices without levying any kind of levies viz. GST. In view of such invoices, Buyers cannot claim input tax credit because their invoices no GST levies are charged by such composition dealers.</p> <p>Typically, small vendors who are registered u/s 10 whose aggregate turnover is less than 1.50 crores.</p> <p>Illustrative Examples</p> <ol style="list-style-type: none"> <li>1. Printing and Stationery vendors</li> <li>2. Gift and Articles Vendors</li> <li>3. Certain Professionals earnings less than Rs.20 Lakhs</li> <li>4. AMC Vendors etc.</li> </ol>
29	Please define Registered persons under GST Act, 2017.	Section 2 (94) of CGST Act, 2017 defines “registered person” means a person who is registered under section 25 but does not include a person having a Unique Identity Number;

30	Please provide illustrative examples of summary information to reported under column 1.1c – supply made by Registered persons under GST Act, 2017.	<p>Illustrative examples- Suppliers Registered under GST Provisions</p> <ol style="list-style-type: none"> <li>1. B2B Supplies</li> <li>2. SEZ Suppliers for which BoE filed by the Buyers</li> <li>3. RCM supplies under B2B Supplies viz. GTA, Advocates Firms, Sponsorship Invoices etc.</li> <li>4. Printing and Stationery</li> <li>5. Telephone &amp; Mobile Service Providers</li> <li>6. Electricity Vendors</li> <li>7. Postage, Telegram and Courier services</li> <li>8. Airlines</li> <li>9. Travelling Agents</li> <li>10. Bankers – Bank Charges &amp; Loan Processing charges</li> <li>11. Labour Charges</li> <li>12. Office Rent and Compensation</li> <li>13. Transporters</li> <li>14. Professionals</li> <li>15. Interest on Credit Card Dues etc.</li> <li>16. E commerce operators</li> <li>17. Radio Taxi Operators</li> <li>18. Job work service Providers</li> </ol>
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31	Please define Unregistered persons under GST Act, 2017.	Not defined but a person who is not registered under the provisions of GST Act, 2017 would be termed as Unregistered Persons.
32	Please provide illustrative examples of summary information pertaining to Unregistered supplies for reporting under GST Act, 2017.	<p>Illustrative examples- Supplies from unregistered persons under GST Provisions</p> <ol style="list-style-type: none"> <li>1. Purchases - Unregistered Suppliers</li> <li>2. Salaries</li> <li>3. Director Remuneration</li> <li>4. Imports of Goods - information can be derived from ICEGATE details</li> <li>5. Import of Services for which self-invoices made.</li> <li>6. RCM supplies</li> <li>7. Printing and Stationery</li> <li>8. Electricity Vendors</li> <li>9. Postage, Telegram and Courier services</li> <li>10. Travel Agents</li> <li>11. Labour Charges</li> <li>12. Office Rent and Compensation</li> <li>13. Transporters</li> <li>14. Professionals</li> <li>15. Job work service Providers</li> <li>16. Conveyance</li> </ol>

33	If Tax Audit Report is revised for AY 1819 or any other assessment year today, then whether clause 44 information needs to be reported in such revised tax audit report?	In my humble opinion, clause 44 needs to be reported such Revised Tax Audit Report to be filed as on today.
34	If details can't be compiled for reporting as per the information desired in clause 44, what should be done?	In my humble view, Tax Auditor should be extremely studied and cautious while reporting on such aspects in observations and remarks, as such narrative needs to drafted in a meticulous manner - so that such remark prima facie doesn't trigger any undesirable issues during Income Tax as well as GST Assessments of the Taxpayers
35	Last but not least can you kindly suggest any suitable thumb rule to be followed for reporting under this clause in general?	As a thumb rule, source document in the form of Suppliers Invoice/Bills/Vouchers etc. and its data configuration data mapping in the accounting systems would determine the classification of value to be reported for the purpose GST Reporting under clause 44.

(Note: Views expressed are my personal views and they are based on my understanding of the subject as dealt by this article and views shared may be acceptable or may not be acceptable to the readers of this article. All readers are requested to take their considered views based on their own study to reach any suitable conclusions. There can be many other situations under the law but through this article I have tried to sow the seed of thought in the minds of readers. Suggestions to improve the article are always welcome with folded hands).

**Table 1- Clause 44 - GST Reporting Information**

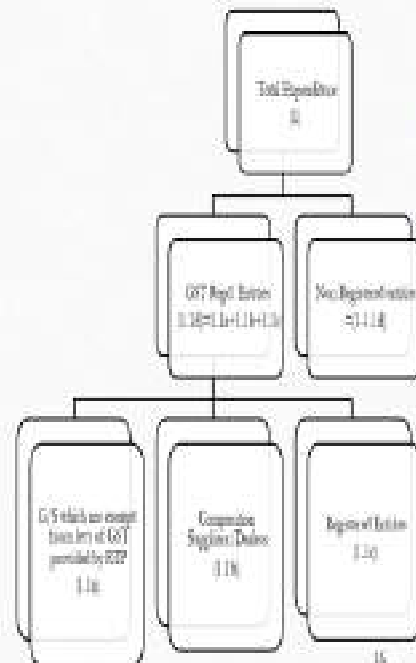
## Clause 44 – Reporting Requirements

- Total Amount of expenditure incurred during the year (1)

### Expenditure in respect of entities registered under the GST

- Relating to the goods or services exempt from GST (1.1a)
- Relating to the entities falling under composition scheme (1.1b)
- Relating to the other registered entities (1.1c)
- Total Payment to Registered entities (1.1d) = (1.1a)+(1.1b)+(1.1c)

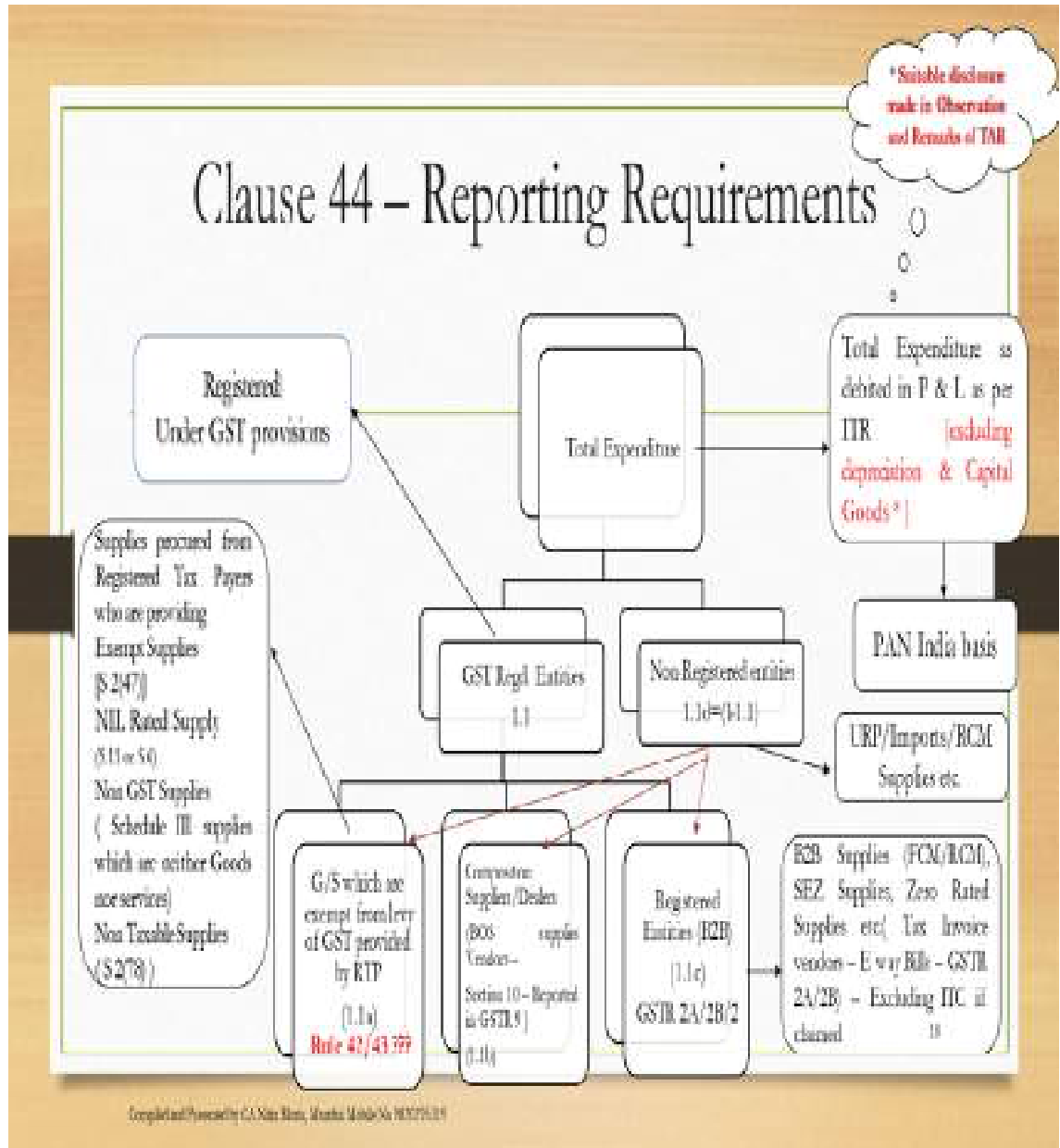
- Expenditure relating to entities not registered under GST = 1 - (1.1d)



Compiled and Presented by C.A. Vignesh, Member, Madhya Pradesh No. 84/2003/20

16

**Table 2- Clause 44 - GST Reporting Information - Detailed**



## RECENT CASE LAWS & NOTIFICATION IN INSOLVENCY AND BANKRUPTCY CODE

**Can Adjudicating Authority defer the Resolution Plan approval application holding that it can be taken only after PUFЕ/avoidance transaction applications are decided?**  
- **Vinay Jain Vs. AVJ Developers (India) Pvt. Ltd. - NCLAT New Delhi**

NCLAT held that:

- (i) The legislative intent is very clear that avoidance application is not to affect the proceedings in the CIRP.
- (ii) PUFЕ Applications are a different scheme of proceedings which has to be concluded to its logical act which shall have its consequences as contemplated in the statute.
- (iii) The Adjudicating Authority is well within jurisdiction to consider both the Resolution Plan Approval Application as well as PUFЕ Application but the



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**RAMYA A & GAJENDRAN RAVI, Advocates**

Adjudicating Authority erred in observing that the consideration of Plan Approval Application has to be deferred and can be taken only after PUFЕ Applications are decided.

**CIRP u/s 7 of IBC can be initiated against both Principal Borrower and Corporate Guarantor, there is no inhibition in proceeding against Corporate Guarantor although CIRP against Principal Borrower u/s 7 was admitted - Mohan Kumar Garg Vs. Omkara Assets Reconstruction Pvt. Ltd. & Anr. - NCLAT New Delhi**

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NCLAT held that law is well settled that proceeding under Section 7 can be initiated against both the Principal Borrower and Corporate Guarantor and there is no inhibition in proceeding against the Corporate Guarantor although proceeding against Principal Borrower under Section 7 was admitted.

**Whether interest payments accrued during CIRP suspension period, as per Section 10A of IBC is to be deducted while computing the threshold limit of Rs. 1 crore as per Section 4 of IBC - *Narayan Mangal Vs. Vatsalya Builders & Developers Pvt. Ltd. - NCLAT New Delhi***

In this important judgment on Section 10A, NCLAT held that if the default is committed prior to Section 10A period and default continues there is no prohibition in initiating proceedings under Section 7 and we are not persuaded to accept the submission of the counsel for the respondent that the liability of interest which accrued during Section 10A period should be ignored or should not be computed in the amount while finding the

threshold. Liability to pay interest which default committed prior to Section 10A period continues and is not obliterated by Section 10A.

### NCLT

**Whether the parties under an agreement can convert an “Operational Debt” into a “Financial Debt” and file Section 7 application on the basis of such agreement? - Mr. Santosh Mate (Prop. of Mahalaxmi Traders) Vs. Satyam Transformers Pvt. Ltd. - NCLT Mumbai Bench**

In this case, filed CIRP application u/s 7 of IBC, the applicant has supplied goods and services to the Corporate Debtor and accordingly the Corporate Debtor was indebted to an amount of Rs.1,69,00,000/-. Since, the Corporate Debtor was not in a position to clear the outstanding due and payable to the applicant, both the parties have entered into a Debt Conversion Cum Agreement dated 01.04.2019 whereunder both parties agreed to convert the “Operational Debt” of the applicant into “Financial Debt”.

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NCLT Mumbai Bench held that it is very clear from the definitions of the 'Financial Creditor' and 'Financial Debt' as defined under Section 5(7) and (8) that the above claim of the applicant does not fall under any of the categories of the "Financial Debt" and the Petitioner does not fall under definition of "Financial Creditor" within the meaning of the Code. The Counsel appearing for the applicant could not cite any authoritative pronouncement of Hon'ble Supreme Court or Hon'ble NCLAT to show that such a debt conversion is legally permissible under an agreement between the parties. In the absence of any such authoritative pronouncement of higher forum, this tribunal is unable to accept that the parties under an agreement can convert "Operational Debt" into a "Financial Debt". If Courts and Tribunals recognise such agreement as valid and permissible it would defeat the very object of the Code and would lead to rewriting the Code.

**Pursuing the matter before MSME facilitation Council under MSME Act, 2006 is not a bar for filing a petition u/s 9 of IBC, the proceedings before Council are not in nature of dispute - LBF Publications Pvt. Ltd. Vs. A & A Business Consulting Pvt. Ltd. - NCLT Mumbai Bench**

NCLT held that in the case of M/s Consolidated Construction Consortium Ltd. v. M/s Hitro Energy Solutions (P) Ltd. (2022) ibclaw.in 09 SC, the Hon'ble Supreme Court held that debt arising out of advance payment for supply of goods and services is an operational debt. Accordingly, we find no substance in the agreement that the amount of advance cannot said to be an Operational Debt.

Further, pursuing the matter before MSME facilitation Council under MSME Act is not a bar for filing a petition u/s 9 of the Code, the proceedings before Council are not in nature of dispute. Further the plea of bar u/s. 10A also does not have any

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merit, as section 10A bars filing of petitions arising from defaults occurring during the period specified therein, and the default arises when a debtor fails to pay the debt to the Creditor on the date on which it falls due. The date of post-dated cheques does not result into any default, hence, such cheques issued for presentation during 10A period cannot bar filing of an application.

**Even if CIRP Regulation 6A was not applicable on the date of CIRP, RP as a part of his duty to get complete information from all the Creditors, is expected to inform all the Creditors, about whom he has knowledge, in order to have an effective CIRP - Union Bank of India Vs. Mr. M. Madhusudhana Reddy RP of Cura Technologies Ltd. - NCLT Hyderabad Bench**

NCLT Hyderabad Bench held that:

(i) The fact remains that the publication for EoI was made in Newspapers which do not have

wide circulation. As per the Audit Bureau of Circulations, the papers in which the publication was carried out in this case are not in the list of highly circulated newspapers.

(ii) Even if Regulation 6A was not there on the date of CIRP, the RP as a part of his duty to get complete information from all the Creditors, is expected to inform all the Creditors, about whom he has knowledge, in order to have an effective CIRP. As rightly contended by the Counsel for the Applicant, the approval of the CoC with regard to the Resolution Plan cannot be a ground to reject the Application.

**Only given an advance to the corporate debtor for purchase of goods is not covered by the definition of operational debt as stated in Section 5(21) of IBC, 2016 - Sanam Fashion & Design Exchange Ltd. Vs. Ktex Nonwovens Pvt. Ltd. - NCLT Ahmedabad Bench**

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In Section 9 CIRP application, applicant has given 100% advance of USD 200000 to the corporate debtor for purchase of goods, which it had failed to deliver and has refused to pay back the advance.

NCLT Ahmedabad Bench observed that there is no evidence annexed with the application to show that the goods were to be delivered at Hongkong. The so-called purchase order only has Bank details and there are no terms and conditions of the purchase or delivery. Further, the Bench held that even otherwise, the applicant had not provided any goods and services to the corporate debtor and had only given an advance, and therefore is not covered by the definition of operational debt as stated in Sub-Section 21 of Section 5 of IBC, 2016.

**An appeal pending before NCLAT against Resolution Plan in respect of proceeding against Corporate Debtor is not a ground to keep the application for Bankruptcy Order against Personal Guarantor in**

**abeyance - State Bank of India Vs. Mr. Jose M M - NCLT Kochi Bench**

NCLT Kochi Bench held that:

- (i) Appeal pending before the NCLAT Chennai against the resolution plan in respect of proceeding against the corporate debtor is not a ground to keep this proceeding under cold storage.
- (ii) This present application is filed to pass an order of Bankruptcy against the respondent/personal guarantor, the applicant filed this application in time and complied all pre-requisite requirements as provided under the regulation and there is no valid reason attributed on the respondent side hence the plea of the applicant is accepted and this application is admitted.

*(The Author is a Chennai based Advocate in practice. He can be reached at ramanakumar@ovopaxlegal.com)*



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