



ECONOMIC  
LAWS  
PRACTICE  
ADVOCATES & SOLICITORS



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# DIRECT TAXATION



## RECENT CASE LAWS

### Deductee eligible for credit of tax withheld and not paid by deductor

*Shri Jasjit Singh (ITA no. 4097/Del/2016) (Delhi ITAT)*

#### SUMMARY OF THE CASE

- The taxpayer, a non-resident holding a British passport had sold 25% shareholding in a private limited company. The deductor at the time of remitting the consideration, had withheld taxes (**TDS**) on the capital gains earned, but failed to deposit the same with the Government treasury.
- The taxpayer was assessed to tax under Section 143(3) of the Income-tax Act, 1961 (**IT Act**), wherein the Tax Officer (**TO**) denied granting of the TDS credit on account of non-deposit of taxes withheld by the deductor. The TO treated the taxpayer as an '*assessee in default*'.
- The Commissioner of Income-tax (Appeals) (**CIT(A)**) partly allowed the appeal of the taxpayer to the extent that the taxpayer cannot be treated as an '*assessee in default*'. It however denied grant of credit for TDS on the ground that the deductor had not deposited the tax with the Government treasury.
- The Income-tax Appellate Tribunal (**ITAT**) observed that the legislative intent of Section 195 and Section 205 of the IT Act pursuant to which the Office Memorandum was issued by the Central Board of Direct Taxes (**CBDT**)<sup>1</sup> was that the taxpayer whose tax had been deducted by the deductor shall not be treated as an '*assessee in default*'. Fresh demand on account of mismatch of credit due to non-deposit of tax by the deductor shall not be enforced on the deductee and credit for TDS shall be granted to him irrespective of the fact that tax had not been deposited with the Government treasury.
- The ITAT relying on the ruling of the Hon'ble High Court (**HC**) of Gujarat in the case of *Devarsh Pravinbhai Patel vs. ACIT* (dated September, 25 2018) held that when the TO had accepted the fact that the tax was deducted by the deductor, though not deposited, the taxpayer cannot be considered as an '*assessee in default*'. Accordingly, the TO cannot deny credit for TDS because the IT Act was a complete code in itself.
- Further, the ITAT highlighted that the TO was under a statutory obligation to recover the TDS from the deductor by resorting to coercive methods, if need be.

### Issue of preference shares at INR 10,000/- per share by a company with negative net-worth held as a colourable device

*M/s. Sindya Securities and Investments Pvt. Ltd. (ITA no. 1816 of 2019) (Chennai ITAT)*

#### SUMMARY OF THE CASE

- The taxpayer, engaged in the business of investment activities, filed its return of income (**ROI**) declaring total income as Nil. During the year under consideration, the taxpayer had issued 17,500 preference shares at face value (**FV**) of INR 10,000.
- The TO question the commercial expediency of the transaction since the taxpayer had issued preference shares at FV of INR 10,000 per share, whereas the FV of equity shares was fixed at INR 10 per share. Further, the Fair Market Value (**FMV**) of shares as on the date of issue was negative.
- In view of the above, the TO came to the conclusion that excess consideration received on allotment of preference shares above FMV of shares as on the date of allotment was to be treated as an unexplained income of the taxpayer. The TO accordingly, assessed the same to tax under Section 56(2)(viib) of the IT Act.
- The CIT(A) held that the receipt of share capital by allotment of preference shares with FV of INR 10,000 per share

<sup>1</sup> vide F.No.275/29/2014-IT(B) dated March 11, 2016

was not based on a realistic valuation and therefore, genuineness of the same was doubtful and unacceptable.

- The ITAT observed that in order to invoke Section 56(2)(viib) of the IT Act, shares should be issued above FV of such shares. In the instant case, however, the taxpayer had issued shares at FV of INR 10,000 per share. Therefore, the provisions of Section 56(2)(viib) had no application, if shares were not issued with a premium.
- Having said the above, the ITAT also observed that it is essential to see whether transaction of issue of preference shares was a commercial transaction between two prudent persons or a sham transaction arranged by parties to overcome the provisions of Section 56(2)(viib) of the IT Act.
- The ITAT noted that the taxpayer had amended its share capital clause in Memorandum of Association, where share capital had been divided into equity shares and preference shares. The taxpayer had retained FV of equity shares at INR 10 per share, whereas the FV of preference shares had been fixed at INR 10,000/- per share.
- Further, it was observed that at the time of amendment to share capital and also at the time of issue of preference shares, net worth of the taxpayer was negative. Accordingly, the amendment carried out to share capital clause and fixation of FV of INR 10,000 per share, certainly raises doubt about the manner in which such share capital was amended and how the FV of preference shares was fixed.
- The ITAT observed that the taxpayer had not explained the basis for fixing FV of preference shares at INR 10,000/- per share, although Rule 9 of the Companies (Share capital and Debentures) Rules, 2014 says so.
- The ITAT observed that there is no significant business activity of the taxpayer except investment in equity shares of two companies, one of which has almost become a defunct company.
- In view of the said circumstances, the ITAT held that fixing share price at INR 10,000 per preference share was not based on any scientific method or method prescribed under Rule 11UA of the Income-tax Rules, 1962 (**IT Rules**).
- The ITAT upheld the order of the TO and held that - From the sequence of events and the manner in which preference share capital was raised, including terms of repayment, rate of return and period of shares, it can be easily concluded that the transaction of issue of preference share capital was a sham transaction to overcome the amended provisions of Section 56(2)(viib) of the IT Act.

### **Goodwill acquired on business acquisition, basis future economic benefits, eligible for depreciation**

*JX Nippon Two Lubricants India Private Limited*

#### **SUMMARY OF THE CASE**

- The taxpayer was engaged in the business of marketing, distributing, selling, manufacturing (including toll manufacturing) of lubricating oil. During the year under consideration, the taxpayer had claimed depreciation on goodwill as per Section 32(1)(ii)(b) of the IT Act.
- The taxpayer had capitalized the goodwill on account of excess consideration paid to another oil company for purchase of 'Eneos Business Segment' (EBS).
- The TO had examined the business transfer agreement and noted that taxpayer and the transferee company are related parties and thus, rejected the valuation report substantiating the sale consideration - as the valuation was without any basis.
- The TO disallowed the claim of depreciation on goodwill by holding that the whole exercise was carried out to create a large amount of goodwill in the books of the taxpayer on which the depreciation could be claimed - whereby income of the concerned year or thereafter would get reduced.
- The CIT(A) concurred with the order of the TO and held that the valuation of assets was determined without any basis, which has been done to claim depreciation on the goodwill generated.
- The issue for consideration before the ITAT was to determine whether (i) the payment made by the taxpayer under

the business transfer agreement was excessive and (ii) if so whether goodwill accounted in the books of accounts of the taxpayer was correct. Moreover, whether such goodwill raised was eligible for depreciation under Section 32(1)(ii) of the IT Act.

- The ITAT held that the value analysis was undertaken by taking into consideration the average cost of capital and financial performance of EBS. Further, the ITAT took note of various factors such as growth rate of 32-44% of EBS, increase in market share of factory fields from 28% to 39% and operative margins for past 3 years ranging between 8.7% to 11%.
- The ITAT observed that during the year, the taxable income of the oil company was INR 214 crores which included tax on the long-term capital gains. The ITAT remarked that no prudent businessmen would transfer a running business at net asset value (INR 25.7 lakhs) which is giving a return of INR 70.89 crores within just 3.5 years of transfer.
- The income earned by the taxpayer post business transfer agreement was to the tune of INR 70 crores over a period of 3 years against purchase value of INR 108 crores. Accordingly, the ITAT held that the price paid by the taxpayer for entering into a business transfer agreement cannot be suspected or alleged to be with any other motive.
- The ITAT relied on the Hon'ble Supreme Court (SC) ruling in the case of *Smif Securities (348 ITR 302)* and the Delhi HC ruling in the case of *Areva T&D India Ltd. & Others (345 ITR 421)* to hold that goodwill would fall under the expression 'Any other business or commercial right of a similar nature' as per Section 32(1)(ii) of the IT Act.
- The ITAT taking into account the entire facts and circumstances of the case (*viz. the value paid by the taxpayer, valuation report, profits earned by the taxpayer, tax payment by the recipient, right and process of the taxpayer to raise the goodwill and the accounting thereof, the provisions relating to depreciation on intangibles, the judgements relating to treatment of intangibles as goodwill*) concluded that the difference between the cost of the asset and the consideration paid would constitute goodwill and that goodwill was an asset eligible for depreciation under Section 32(1)(ii) of the IT Act.

### Refund claim of foreign taxes rejected based on superficial approach

*Bank of India (ITA no. 869/Mum/2018) (Mumbai ITAT)*

#### SUMMARY OF THE CASE

- The taxpayer is a major Indian bank, with several branches abroad. During the relevant year, the taxpayer had earned business profits from its branches outside India, namely in UK, USA, France, Belgium, Kenya, Japan, Singapore, China, Hong Kong, Cambodia and Jersey. The taxpayer had paid income-tax aggregating to INR 165.96 crores in treaty partner jurisdictions and INR 15.79 crores in non-treaty partner jurisdictions. Income tax amounting to INR 87.54 lakhs was withheld from the foreign dividend income received by the taxpayer.
- However, the taxpayer's global income, which was taxable in India resulted in a net loss of INR 191.38 crores. The claim of the taxpayer was that taxes so paid to the overseas tax jurisdictions where the related profits are earned, should be given due credit in the computation of refund. Accordingly, therefore, the income tax paid to foreign tax jurisdictions should be refunded by the Indian tax authorities.
- This claim of the taxpayer was rejected by the TO on the grounds that Section 90 of the IT Act provides relief of taxes paid in foreign countries against the income-tax chargeable under the IT Act. The IT Act does not say that the tax paid in foreign countries would be refunded in matters where income-tax chargeable under the IT Act is Nil. The CIT(A) also rejected the claim of the taxpayer. Accordingly, the taxpayer preferred an appeal before the ITAT.
- The ITAT referred to Article 24(2) of the India-UK Double Taxation Avoidance Agreement (DTAA) and noted that foreign tax credit was available only to the extent of Indian tax payable i.e. when Indian tax payable in respect of income is Nil, there cannot be any foreign tax credit available to the taxpayer.
- The ITAT referred to *the works of Prof Klaus Vogel, Prof Michael Lang and Peter Harris and David Oliver* and observed that in no situation will a taxpayer be entitled to a refund of taxes paid in the source jurisdiction by the residence

jurisdiction.

- Further, the ITAT stated that the interpretation which results in the refund of taxes paid abroad by the Indian exchequer was something which cannot be said to be *'in good faith in accordance with the ordinary meaning given to the terms of the DTAA in their context and in light of its object and purpose'*. This was clearly contrary to Article 31 of the Vienna Convention of Law of Treaties.
- The ITAT held that the decision of the Karnataka High Court in the case of **Wipro Ltd (62 taxmann.com 26)** was outside the territorial jurisdiction which only has a persuasive value and not a binding effect. The ITAT remarked that *'To a forum like us, following a jurisdictional High Court decision is a compulsion of law and absolutely sacrosanct that way, but following a non-jurisdictional High Court is a call of judicial propriety which is never absolute, as it is inherently required to be blended with many other important considerations within the framework of law, or something which cannot be, in deserving cases, deviated from.'*
- Further, the ITAT addressed the taxpayer's alternate plea of deduction in respect of taxes paid abroad while computing business income by relying on the Bombay HC ruling in the case of **Reliance Infrastructure (390 ITR 271)** and held that *'when such huge national revenues, involving thousands of crores, are involved in this macro issue, we cannot afford to be superficial, or perfunctory, in our approach. On a separate note, nevertheless, we do uphold the claim of the assessee that these taxes paid abroad will be allowed as a deduction in the computation of the business income of the assessee.'*

### Loss in value of shareholding due to capital reduction by subsidiary, allowable as a business loss

*GHCL Ltd (Ahmedabad ITAT)*

#### SUMMARY OF THE CASE

**ITA No. 1120/Ahd/2017 filed by the TO & CO 29/Ahd/2018 filed by the taxpayer for Assessment Year (AY) 2012-13**

- During the year under consideration, due to heavy losses, the capital reduction/redemption was carried out by the subsidiary company. Due to the aforesaid capital reduction, the taxpayer had incurred a loss of INR 99.89 crores on investment made in equity shares of the subsidiary. This was claimed as business loss during the course of assessment proceedings as against long-term capital loss claimed in the ROI filed for AY 2012-13.
- The TO by placing reliance on the Hon'ble SC decision in case of **Goetz (India) Ltd. (157 taxman 1)** held that since the taxpayer had not filed revised ROI such loss should not be allowed as a deduction. ITAT observed that the TO had not made any observations on the merit of allowability of such business loss in the assessment order.
- ITAT observed that the taxpayer had submitted before the CIT(A) that due to recession in Europe and USA and continued financial difficulty (and other adverse factors) its subsidiaries had incurred huge losses and which resulted in sick units.
- Accordingly, the subsidiary passed a resolution to reduce its share so that such amount can be set off against the accumulated deposit. The resultant loss incurred by the taxpayer was on account of reduction in value of share of its subsidiary company. ITAT held that since the taxpayer had made an investment in the subsidiary on account of business development and out of commercial expediency, the loss incurred on reduction in the value of share should be allowed as business loss. The ITAT thus upheld the order of CIT(A).

**ITA No. 976/Ahd/2014 for AY 2009-10 filed by the TO**

- The taxpayer had claimed deduction under Section 37(1) of the IT Act on account of development of Standing Business Letter of Credit (SBLCs). The TO erred in holding that the expenses were in the nature of capital contribution to the subsidiary company and thus were not allowable as revenue expenditure.
- ITAT observed that the SBLC was issued for working capital requirement of the acquired company. Due to deteriorating financial conditions, the acquired company could not repay the loan to the Bank of India vendors,

therefore SBLC devolved on the taxpayer. During the year under consideration, the acquired company went into liquidation and chances of recovery were quite remote. The taxpayer had thus written off the amount in books and claimed the same as business losses.

- ITAT observed that the taxpayer had provided guarantee against SBLC to Bank of India, Manchester and directly to vendors of the acquired company as a temporary measure to tide over the financial difficulties and to further expand its business. ITAT relied on Supreme Court ruling in case of *Amalgamation (P) Ltd (226 ITR 188)* to hold that the loss suffered on account of devolvement of guarantee was revenue in nature and thus allowable under Section 37(1) of the IT Act.

## NOTIFICATION/CIRCULARS

### **CBDT notifies Rule for calculation of perquisite under Section 17(2)(viiia) w.e.f. April 1**

- CBDT vide Notification no 11 of 2021 dated March 5, 2021 has inserted Rule 3B in the IT Rules for valuation of perquisite under Section 17(2)(viiia) of the IT Act.
- CBDT has notified the method for calculation of annual accretion by way of interest, dividend or any other amount of similar nature to the balance or to the credit of the fund or scheme on the amount contributed by the employer to: (a) in a recognised provident fund; (b) in the scheme referred to in sub-Section (1) of Section 80CCD; and (c) in an approved superannuation fund.

### **CBDT amends Rule 10V for computation of remuneration payable to fund manager under Section 9A**

- CBDT vide Notification no. 13 of 2021 dated March 9, 2021 has inserted a third and fourth proviso to Rule 10V(12) of the IT Rules.
- Third proviso contains that sub-rules (3) to (12) of Rule 10VA shall mutatis mutandis apply to the application made under second proviso as it applies to sub-rule (2) of Rule 10VA. Fourth proviso contains that sub-rule (3) of Rule 10VA shall not apply to application made under second proviso of Rule 10V, if the application is for previous year beginning on April 1, 2021 made before February 1, 2021.

### **CBDT introduces new Rule and Form for making an application for grant of certificate under Section 195**

- CBDT inserts new Rule 29BA for making an application for grant of certificate determining appropriate proportion of sum chargeable to tax in case of payment made to non-residents. Further, CBDT has also notified Form 15E for making the said application under Section 195 of the IT Act. The new Rule shall come into force with effect from April 1, 2021.

### **CBDT enhances scope of Statement of Financial Transactions (SFT)**

- CBDT enhances scope of SFT, includes furnishing information related to capital gains on transfer of listed securities or units of Mutual Funds, dividend and interest income for certain class of persons.



# INDIRECT TAXATION



## RECENT CASE LAWS

### Recovery of refund granted based on a judgement which is later declared per incuriam is not sustainable

*Topchem India v. UOI & Ors. [2021-VIL-217-GAU]*

#### FACTS OF THE CASE

- The Petitioner was granted refund of Education Cess and Secondary and Higher Education Cess pursuant to the Apex Court's decision in *SRD Nutrients Pvt. Ltd. v. CCE [(2018) 1 SCC 105]* and the said decision was later *inter-alia* held to be "per incuriam" by the Apex Court in a recent decision of *Unicorn industries v. UOI [(2020) 3 SCC 492]*.
- The Department issued a demand cum show cause notice on the premise that once the judgement on the basis of which the refunds were granted have been *inter-alia* held to be *per incuriam*, the refunds granted earlier will become unavailable to the Petitioner because of the change in law. Therefore, the same will be an erroneous refund enabling the Department to invoke its statutory powers under Section 11A read with Section 11AA of the Central Excise Act, 1944.

#### JUDGEMENT

- The High Court *inter-alia* held that the term "erroneous" means any error deviating from law and a change of law subsequently would not make an action taken earlier in terms of law, to be held as "erroneous". Thus, Education Cess and Secondary and Higher Education Cess - which have already been refunded in terms of an earlier decision in *SRD Nutrients Pvt. Ltd.* - could not be revoked co-laterally by a quasi-judicial authority of the Department without taking recourse to the statutory and/or judicial remedies available to the Department.
- The Court further held that refunds were released based on an order passed by the Apex Court and/or the Gauhati High Court. Since no further appeal and/or review was passed against the different orders passed by the Gauhati High Court, the *lis* between the Petitioner and the Department had attained finality in respect of the issues which are now sought to be re-opened. Such a procedure sought to be invoked by the Department is completely alien in law as established by the constitution as well as the law laid down by the Apex Court in a catena of judgements
- In such circumstances, the High Court set aside the show cause notice of the Department as they were issued without jurisdiction and by wrong interpretation of powers under Section 11A read with Section 11AA.

### Allows transition of TDS under VAT regime to GST regime

*M/s DMR Constructions v. The Asst. Commissioner [TS-101-HC(MAD)-2021-GST]*

#### FACTS OF THE CASE

- Under the Tamil Nadu VAT Act, 2006, when a contract was awarded to the Petitioner, the Petitioner was paid the contract value less TDS at the rate of 2% of the contract value. The TDS amount used to get reflected in the Petitioner's return as 'tax deduction at source credit'. While paying the output VAT liability, the Petitioner could set off the TDS credit and pay the balance tax. The excess of TDS over the tax payable was reflected as a refund and a Refund Adjustment Order was issued.
- The Petitioner contended that the TDS is a tax in terms of Section 140 of the TNGST Act, 2017. Since the transition of VAT is already envisaged, the transition of the TDS amount into the GST regime should therefore be allowed. The Department on the other hand argued that TDS is in nature of "deposit" or "amount" and unless it was utilized as adjustment, it did not partake the character of tax and thus carry forward of the same should not be permitted under the transitional provisions of GST.
- The appellant submitted that TDS is the nature of advance collection of tax and relied upon various decisions to support this jurisprudence.

#### JUDGEMENT

- The High Court rejected the contention of the Department and observed that once any deduction is made towards anticipated tax liability, it would assume the character of tax and will not change or fluctuate depending on whether it is held as credit or whether it is an adjustment against tax liability. The Court applied the rationale laid down in *Seaford Court Estates Ltd. v. Asher [(1949) 2 ALL ER 155]*, wherein Kings Bench speaks eloquently about the language to be employed in interpreting a provision. It stated that a provision would have to be interpreted on the strength of the object and reasons for which it was inserted and bearing in mind the overall scheme of the Act.

- The High Court *inter-alia* held that since the amount deducted (TDS) has been captured in the returns of turnover filed under the erstwhile TNVAT regime. The Bench concurred with Petitioner to the effect that such amounts would stand included for the purposes of transition under Section 140 of the TNGST Act, 2017.

**Target based incentives received by air travel agents cannot be termed as consideration for services and hence not leviable to Service Tax**

*M/s Kafja Hospitality & Travels Pvt. Ltd. v. CST [2020-VIL-101-CESTAT-DEL-ST]*

**FACTS OF THE CASE**

- The appellant is a travel agent who receives target-based incentives from the airlines in addition to the standard commission. The Central Reservation System (CRS) companies also pay commission to the appellant for using their IT system and when they achieve booking of a minimum number of tickets through the system.
- The Department issued a SCN to demand Service Tax on the grounds that target based incentives and the CRS commission paid to the travel agents was a consideration for 'promoting and marketing' the business of airlines and CRS companies. The Commissioner confirmed the demand. Aggrieved by the same, the appellant approached the Tribunal.
- Before the Tribunal, the appellant contended that they never promoted the business of airlines or the CRS companies as the passengers are free to choose the option best suited to them. Also, the appellant does not promote any one airline over the other. It was submitted that they have merely provided services of air travel agents to the passengers.

**JUDGEMENT**

- The Tribunal referred to the decisions of the High Courts in **Airlines Agent Association and Shabeer Travels**, where the Courts *inter-alia* held that commission paid to air travel agents had a straight nexus to the air travel agent services rendered to the passengers, even if it indirectly benefitted the business of the airlines. The Tribunal concluded that by rendering services connected to air travel, the appellant would render air travel agent services which cannot be said to be promoting or marketing of airlines.
- The Tribunal noted that as per Section 67(1), only such amount is subject to Service Tax which represents consideration for provision of service and target-based incentives. This case on the other hand is based on general performance of the service provider and not related to any particular service. Hence, it was *inter-alia* held that incentives paid for achieving targets cannot be termed as 'consideration' and no Service Tax can be levied on such amount.

**Allows sanction of refund which was delayed due to technical errors on GST portal**

*M/S Rameshwar Udyog Pvt. Ltd. v. UOI [TS-127-HC-(GUJ)-2021-GST]*

**FACTS OF THE CASE**

- The Petitioner is an exporter who committed certain errors at the time of filing the details of outward supplies in GSTR -1. Due to the errors, there arose some mismatches between data on the GST portal and the data available in the custom's ICEGATE portal. The Petitioner approached the concerned authorities and was allowed to amend 28 invoices on the portal but were denied amending other 14 invoices due to technical glitches. Resultantly, the refund of IGST was denied to the Petitioner.
- The Petitioner approached the High Court with a writ of mandamus for seeking directions to allow amendment to the remaining invoices.

**JUDGEMENT**

- The High Court passed its order in favour of the Petitioner and *inter-alia* held that the Petitioner may approach the Customs Zonal Office with copy of GSTR-1 and GSTR-3B along with a CA certificate stating that there is no discrepancy between the IGST amount to be refunded on the exports and actual IGST amount paid on exports.
- The Court also instructed the Department to follow the four-step procedure as enumerated in *Circular No. 12/2018-Customs* dated 29.05.2018 and sanction the refund.

### Bail to be granted where charge sheet is not filed, and the accused is in custody for considerable time

*Anuj M. Gupta v. Assistant Commissioner of State Tax [2021-VIL-191-BOM]*

#### FACTS OF THE CASE

- The Petitioner was arrested for allegedly receiving invoices without any actual supply of goods or services and claiming fraudulent Input tax credit (ITC) to the extent of INR 31 crores. The Department held the Petitioner liable for violating the provisions of Section 132(1)(b)(c) of the Maharashtra GST Act, 2017.
- Being aggrieved by the detention of 54 days, Petitioner filed the writ seeking his release on bail.

#### JUDGEMENT

- The High Court took note of the fact that the offence is punishable for a term of 5 years and in terms of Section 167(2)(a)(ii) of the Code of Criminal Procedure, the maximum time frame for which the accused (Petitioner) can be held in detention is 60 days. In the present case, the Petitioner had completed 54 days in the custody without any charge sheet being filed before the competent court.
- Reference was drawn from the decision of *Daulat Samirmal Mehta v. UOI* to rely on the basic rule of “Bail, not jail”. Thus, the High Court released the Petitioner on bail, subject to the condition of cash surety of Rs. 5 lakhs and furnishing of Petitioner’s passport.

## RECENT ADVANCE RULINGS

### Facilitation of parking space for employees is a supply of service but no GST is payable due to ‘pure agency’

*In re: M/s Ion Trading India Pvt. Ltd. [TS-1232-AAAR(UP)-2020-GST]*

#### FACTS OF THE CASE

- The Applicant is engaged in the business of development and export of software.
- The office of the Applicant is situated in a rental premise. In the rental premise, the Applicant facilitates procurement of parking space from the owner of the building upon payment of monthly lease charges for each parking slot. It recovers a portion of the lease charges from its employees who use the parking space.
- The following questions were raised before the Appellate Authorities for Advanced Ruling (AAAR):
  - Whether the Applicant is supplying any service to its employees when it recovers car parking charges from the employees?
  - Whether the Applicant qualify as a Pure Agent and therefore the value of supply would be Nil?
- The Applicant contended that the facilitation of parking spaces by the Applicant to the employees does not amount to supply of services as the activity is not in the course of furtherance of business of software development. Even if the same is considered as a supply, the taxable value would be Nil as it is merely acting as a Pure Agent.

#### JUDGEMENT

- The AAAR observed that the Applicant is providing right to its employees to use the parking spaces provided by the building owner and is in the nature of easement which means “a right to cross or otherwise use someone else’s land for a specified purpose”. Hence, the Applicant is supplying a service as per Schedule II of the CGST Act.
- In relation to the question as to whether the Applicant is a Pure Agent, the AAAR relied on e another advance ruling in **DRS Marine Services Pvt. Ltd.** to arrive at the conclusion that in the present case the entire amount collected from the employees towards parking charges was transferred to the building owner. Further, parking spaces are solely used by the employees who formally request the Applicant to arrange such a facility for them. The AAAR concluded that the Applicant fulfills all the conditions of a Pure Agent and therefore the value of services would be NIL.

### Supply of parts under repair services qualify as a composite supply of service

*In re: M/s Premier Car Sales [2021-VIL-161-AAR (UP)]*

#### FACTS OF THE CASE

- The Applicant is engaged in the sale of cars and its accessories. It entered into agreement with a car manufacturer for providing repair services to the customers on behalf of the manufacturer during the warranty period. As consideration from the manufacturer, it receives money towards labour charges and reimbursement of cost of parts replaced, if any.
- The question before the Authorities for Advance Ruling (**AAR**) was whether repair services including supply of spare parts would amount to a composite supply or not and taxable at 18% GST?

#### JUDGEMENT

- The AAR observed that repair services form an integral part of warranty. Supply of spare parts along with the repair services are naturally bundled together and supplied in conjunction with each other in the normal course of business. It noted that without replacing the defective spare parts, the warranty services could not have been provided.
- The AAR thus *inter-alia* held that repair services involving supply of parts, carried out under the dealership agreement with the car manufacturer to fulfill warranty obligations qualify as a composite supply under “Repair & Maintenance Services” and hence exigible to 18% GST.

### ITC is available on expenses incurred for CSR activities

*In re: M/s. DwariKesh Sugar Industries [2021-VIL-168-AAR (UP)]*

#### FACTS OF THE CASE

- The Applicant is engaged in the manufacture and sale of sugar. Under the statutory obligations for Corporate Social Responsibility (**CSR**) it undertakes construction of schools, free supply of school furniture, free supply of electrical goods for use in school and other free supply of goods to trusts etc.
- The following questions were raised before the AAR:
  - Whether the statutory CSR expenses qualify as being incurred in course of business and thus eligible for ITC?
  - Whether ITC on free supply of goods as part of CSR activities is blocked under Section 17(5)(h) of the CGST Act?
  - Whether ITC on goods and services used in construction of school which were not capitalized in the books of accounts of the Applicant is blocked under Section 17(5)(c) and (d) of the CGST Act?
- The Applicant contended that the ITC on CSR activities must be allowed as they are legally mandated to undertake CSR activities which are ancillary activities in the course of business. Moreover, credit on CSR activities is not restricted under Section 17(5) of the CGST Act.

#### JUDGEMENT

- The AAR observed that CSR expenses were not voluntary but statutorily mandated under the Companies Act, 2013. These form an essential part of business and hence it was concluded that CSR activities are undertaken in the course of furtherance of business. ITC shall be admissible for such activities under Section 16 of the CGST Act.
- The AAR stated that free supply of goods by the Applicant were mandated by the law and not in nature of gifts as they were not voluntary and occasional in nature. Therefore, ITC on goods given as part of CSR obligations would not be blocked under Section 17(5)(h) of the CGST Act.
- The AAR also stated that ITC is restricted under Section 17(5)(c) and (d) of the CGST Act only in respect of goods and services used for construction of immovable property to the extent of capitalization. Since the Applicant did not capitalize such expenses in its financials, ITC would be allowed on such expenses.

**Money collected by RWA towards Corpus Fund is in nature of advance for future supply and taxable at 18%**

*In re: M/s Olety Landmark Apartment Owners Association [TS-116-AAR(KAR)-2021-GST]*

**FACTS OF THE CASE**

- The Applicant is a Resident Welfare Association (**RWA**) formed by individual flat owners for the purpose of maintaining and managing the common areas in the condominium. The RWA collect money from the members towards a “Sinking Fund/Corpus Fund” to meet large capital outlay in future such as replacement/repair of lifts, generators etc.
- The “Sinking Fund/Corpus Fund” is a mandatory fund under the bye-laws of the co-operative societies/RWAs.
- The question posed before the AAR was whether the Applicant is liable to pay GST on the amount which it collects from the members of the RWA for setting up the “Sinking Fund/Corpus Fund”?
- The Applicant contended that in terms of the definition of “consideration” under Section 2(31) of the CGST Act, there must be actual supply or a promise to supply. In the present case the amount is in nature of a deposit for future events. The amount which is collected from the members is not for any supply arising out of any contractual obligation and should not be treated as a consideration. Hence, the amount deposited in the Fund would not be liable to tax.

**JUDGEMENT**

- The AAR observed that there was no bye law to state that the balance amount of the “Sinking Fund/Corpus Fund” would be refunded to the members after utilizing the same in future. This is a distinguishing feature and the amount that are not returnable can be termed as advances – and advances differ from deposits which are refundable.
- The AAR *inter-alia* held that the amount deposited in the Fund is liable for GST as advances towards future supply of services and the time of supply as per Section 13(2)(a) of the CGST Act shall be the date of receipt of amount towards the Sinking Fund. It further held the activity to be classified under SAC 9995 as “Services of Membership Association” which are taxable at the rate of 18%.

**Renting of individual rooms with amenities is falls under “accommodation service” and not “renting of residential dwelling for use as residence”; Leasing of residential dwelling for further sub-letting is not entitled to exemption**

*In re: M/s Bishop Weed Food Crafts Pvt. Ltd. [2021-VIL-188-AAR]*

**FACTS OF THE CASE**

- The Applicant is engaged in leasing of residential units for use as residence along with basic amenities such as maintenance, security and housekeeping. In addition, it is also involved in leasing the premises to other service providers who sub-let the residential units for use as residence.
- The following questions were raised before the AAR:
  - Whether the leasing of property with basic amenities would classify as composite supply and whether the same is covered under Sl. No. 12 or 14 of the Notification No. 12/2017 – CT (Rate)?
  - Whether leasing of property for sub-letting would be covered under exemption as “Residential Dwelling” or not?

**JUDGEMENT**

- The AAR *inter-alia* held that services provided by the Applicant gets covered under “accommodation services” under SAC 996311 and not under “renting of residential dwelling”. It also held that such accommodation services along with basic amenities such as housekeeping, maintenance, security etc., qualify as composite supply under Section 2(30) of the CGST Act, with the principal supply being “accommodation services” which shall be taxed as per principal supply in terms of Section 8 of the CGST Act. Moreover, the benefit of exemption under S.No. 12 of *Notification 12/2017-CT(Rate)* would not be available to applicants as the exemption is only for renting of “residential dwelling for use as residence” and not for “accommodation services”. The “accommodation services” will qualify for exemption under Sl. No. 14 of the said exemption notification which exempts accommodation services if value of supply is less than or equal to INR 1000/- per day.
- The AAR also stated that leasing of property to another business entity for further sub-letting to tenants would not be covered under Sl. No. 12 of said Exemption Notification as there is no renting of residential dwelling for use as residence by such business entity.

**Pick up charges paid to the driver is incidental to transportation service and hence taxable at 5% GST**

*In re: Kou Chan Technologies Pvt. Ltd. [2021-VIL-191-AAR]*

**FACTS OF THE CASE**

- The Applicant is in the business of providing mobile based taxi aggregation service and is responsible for linking the driver to the passenger. The Applicant does not own any vehicle, nor does it employ the drivers. The business model comprises of three entities – the Applicant itself as a taxi aggregator, an in-charge for each district known as ‘associate partner’ and the taxi driver. The associate partner is responsible for on-boarding taxis, drivers and passengers and receives a certain percentage of the fare.
- The Applicant is paying GST on the basic fare, pick up charges, service charge, Associate Partner charge and payment gateway charge collected from the passengers. In addition, it collects toll charges, luggage charges, waiting charges, cancellation charges, insurance etc. which may be shared with the drivers. Lastly, there is a Participation Fee which is paid by the drivers to the Applicant.
- The following questions were raised before the AAR:
  - Whether the various supplies of the Applicant qualify as a composite supply?
  - Whether the pickup charges paid to the owner/driver fall under the GST rate of 5%?
  - Whether supply of service exists between the Applicant and the associate partner?
  - Whether the amount received from drivers/owners towards bidding gets covered in the 5% GST or should it be separately charged at 18%?
  - Whether the charges for trip cancellation attract GST liability?
  - Whether the service charges collected by the Applicant on the Goodwill bonus being paid by passenger to the driver attract GST liability?

**JUDGEMENT**

- At the outset, the AAR observed that the Applicant is providing two taxable services, i.e. providing an online platform and insurance coverage to the passenger, which is optional. Also, online platform service is neither related to nor ancillary to insurance service. Thus, these two supplies are not naturally bundled and are not in conjunction with each other in the ordinary course of business. Therefore, the activities performed by the Applicant do not amount to a composite supply.
- Regarding the second issue, the AAR inter-alia held that the pick up charges is incidental to the main service of transportation of passengers and hence the Applicant is liable to pay GST at the rate of 5% on the pick up charges also.
- In respect of the third issue, the AAR inter-alia held that the associate partner is providing support services to the applicant in terms of increasing the business of the applicant and does not form part of transportation of passenger service. Thus, GST at the rate of 18% is liable to be paid by the associate partners.
- On the fourth issue, the AAR inter-alia held that the bidding charge is outside the fold of basic fare i.e. the relevant service is not related to the service provided by the owner/driver to the customer through the e-commerce operator. Thus, the service is classifiable under heading 998599 as "other support services" and liable to 18% GST.
- In relation to the fifth issue, the AAR inter-alia held that cancellation charges collected from the passengers is an act of tolerating the cancellation by the applicant for a consideration and hence exigible to 18% rate of GST.
- In relation to the sixth issue, the AAR inter-alia held that the service charge collected for facilitating the payment of goodwill amount to drivers is consideration in terms of Section 2(31) of CGST Act, 2017 and hence is liable for GST at 18% under heading 9985.

## NOTIFICATIONS/CIRCULARS

S. No.	Reference	Particulars
1.	<b>Central Tax Notification No. 06/ 2021 – Central Tax dated 30.03.2021</b>	<ul style="list-style-type: none"> <li>Amends earlier Notification No. 89/2020 – CT dated 29.11.2020 to grant extension of 3 months in waiver of penalty for not capturing the QR code till 30.06.2021, provided that the person complies with the provision from 01.07.2021.</li> <li>Earlier, waiver of penalty for non-complying with provisions of capturing QR code on the invoice was granted for the period 01.12.2020 till 31.03.2021.</li> </ul>
2.	<b>Notification No. 23/ 2021 – Customs dated 31.03.2021</b>	<ul style="list-style-type: none"> <li>Extends the exemption from IGST and Compensation Cess on goods imported against Advance Authorization/EPCG licenses upto 31.03.2022.</li> </ul>
3.	<b>Notification No. 19/2021- Customs dated 30.03.2021</b>	<ul style="list-style-type: none"> <li>Extends exemption from IGST and Compensation Cess for imports made by EOUs till 31.03.2022</li> </ul>
4.	<b>Notification No. 33/2021 – Customs (N.T.) dated 29.03.2021</b>	<ul style="list-style-type: none"> <li>CBIC has notified 'ICEGATE' (<a href="https://www.icegate.gov.in">https://www.icegate.gov.in</a>) as a Common Customs Electronic Portal under newly inserted Section 2(7B) of the Customs Act, 1962 for registration, payment of duty, filing of bills of entry, shipping bills, other documents and forms prescribed under the Customs law.</li> </ul>
5.	<b>Notification No. 34/2021 – Customs (N.T.), Notification No. 35/20201 and Circular No. 08/2021, all dated 29.03.2021</b>	<ul style="list-style-type: none"> <li>Notifies Bill of Entry (Forms) Amendment Regulations 2021 which prescribes time limit for filing of advance Bill of Entry by importers as before end of the day (including holidays) preceding the day on which the vessel/aircraft carrying the goods arrive at the customs port/airport.</li> <li>But in case the goods are consigned from Bangladesh, Maldives, Myanmar, Pakistan and Sri Lanka, the bill of entry shall be filed before the end of the day (including holidays) on which vessel carrying the goods arrive at the customs port/airport. This exception will not apply on import through Inland Container Depot.</li> </ul>
6.	<b>Notification No. 36/2021 – Customs dated 29.03.2021</b>	<ul style="list-style-type: none"> <li>An importer can supplement Bill of Lading details in Bill of Entry on Common Customs Electronic Portal</li> </ul>
7.	<b>Instruction No 04/2021- Customs dated 17.03.2021</b>	<ul style="list-style-type: none"> <li>CBIC has instructed that for all matters being investigated by the DRI, the SCNs are required to be issued by the jurisdictional Commissioners.</li> <li>It may be noted that the instruction has been issued post the Apex Court's decision in <i>Canon India Pvt Ltd. v. CC [2021-VIL-34-SC-CU]</i> wherein the Court <i>inter-alia</i> held that the DRI is not a "proper officer" and does not have powers to issue SCN under the Customs law.</li> </ul>
8.	<b>DGFT Notification No. 60/2015-2020 and DGFT Public Notice No. 48/2015-2020, both dated 31.03.2021</b>	<ul style="list-style-type: none"> <li>Extends the operation of Foreign Trade Policy (2015-2020) and the Handbook of Procedures (2015-2020) upto 30.09.2021.</li> </ul>
9.	<b>DGFT Trade Notice 49/2020-21 dated 30.03.2021</b>	<ul style="list-style-type: none"> <li>DGFT has revamped its IT system to enable online filing for closure of Advance Authorization. It has been instructed that AA license holders may use online submissions for redemption, surrender, duty paid regularization, clubbing of license, closure of license on the online system.</li> </ul>

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