ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

RECENT DEVELOPMENTS IN DIRECT & INDIRECT TAX

Contents

DIRECT TAX - RECENT CASE LAWS

Bileshivale Muddanna Govardhana Murthy[1]: Joint Development Agreement ("JDA") execution alone does not trigger capital gains where property rights are under dispute

FACTS OF THE CASE

- The Assessee, an individual, along with his mother and brothers, jointly inherited immovable properties. The Assessee and co-owners executed development-related agreements with M/s Total Environment Constructions Pvt. Ltd ("TECS"), including an irrevocable General Power of Attorney ("GPA") in favour of the developer's group concern authorising negotiation, execution of sale deeds, handing over of possession, and receipt of consideration. In pursuance of the said agreement, the Assessee had received substantial advances.
- The receipt of advances was regarded as capital gains by the Assessing Officer ('AO') against the transfer of development rights.
- On appeal, the CIT(A) held that, on examination of the Agency Agreement and irrevocable GPA, the appellant had effectively parted with possession and rights over the property, indicating a transfer within the meaning of section 2(47) of the Income-tax Act, 1961 ("ITA") and section 53A of the Transfer of Property Act ("TOPA"). Accordingly, the contention that no transfer had taken place was rejected.

ASSESSEE'S STAND

- The Assessee contended that no transfer under section 2(47) of the ITA arose in the relevant year as the development agreement, agency agreement, and irrevocable GPA did not result in effective transfer of ownership or possession in favour of the developer. In the absence of a registered conveyance, there is no transfer under section 2(47) of the ITA.
- The Assessee submitted that the amounts received were only advances and not sale consideration, and that the GPA was merely for limited facilitation without conferring any substantive rights in the property.
- It was further argued that the land in question was agricultural land and therefore outside the definition of "capital asset" under section 2(14) of the ITA.
- Additionally, the Assessee contended that the property was ancestral property and did not belong to him in his individual capacity but as a member of the Hindu Undivided Family ("HUF"). It was further argued that the income must be assessed only in the hands of the correct taxable entity (i.e., HUF and not the individual). Thus, making the addition in the hands of the Assessee in his individual capacity unsustainable.
- Without prejudice, the Assessee submitted that there was a family dispute, and a partition suit was filed after execution of the JDA. Pursuant to the final partition decree, the properties covered under the agreement were allotted to other family members, and the Assessee did not receive any substantial benefit or consideration except a minor share.

REVENUE'S STAND

- The revenue contended that the 2012 development agreement, agency agreement, and irrevocable GPA constituted a "transfer" under section 2(47)(v) of the ITA read with section 53A of TOPA, as they effectively conferred possession and enforceable rights on the developer, and the Assessee had thereby parted with substantial rights in the property, triggering capital gains in relevant year.

[1] ITA No. 2192 & 2193/Bang/2025 (ITAT Bangalore)

TRIBUNAL DECISION

- The core issue before the Hon'ble ITAT was whether a "transfer" under section 2(47) of the ITA had triggered capital gain in the Assessee's hands.
- The Hon'ble ITAT noted that although the Assessee was a signatory to the JDA, Agency Agreement, and irrevocable GPA, mere execution of such documents does not constitute a transfer unless rights in the property are effectively and irrevocably parted with and the transaction attains finality.
- It was found that post-JDA, family disputes led to a civil partition suit and a subsequent decree reallocating substantial properties, and a subsequent JDA was executed only with the Assessee's brother, excluding the Assessee, showing that the earlier arrangement had not crystallised into a completed transfer.
- While the CIT(A) relied on broad powers under the JDA/GPA to infer a deemed transfer under section 2(47)(v) of the ITA read with section 53A of TOPA, the Hon'ble ITAT held that the partition decree and later JDA were material facts ignored, and they negated irrevocable rights in favour of the developer.
- The Hon'ble ITAT further held that section 53A of TOPA requires a final, enforceable contract with possession and irrevocable rights, which was absent here due to ongoing partition disputes, thereby failing the conditions for deemed transfer.
- Accordingly, it was held that no transfer under section 2(47) of the ITA occurred in the relevant year and the LTCG addition was deleted.

ELP Comments

The ruling clarifies that mere execution of JDA, and the irrevocable GPA, does not, in isolation, constitute a "transfer" under Section 2(47)(v) of the ITA. One of the pertinent tests remains whether the developer's rights have achieved the requisite certainty, enforceability, and finality to signal a shift in control. The Hon'ble ITAT has emphasized that tax liability must hinge on the actual crystallization of legal rights rather than the mere existence of a contractual framework.

Subhash Chander Agarwal & Shanti Devi[2]: The Hon'ble ITAT upholds the genuineness of short-term capital loss on CCDs, rejects revenue's allegation of a "colourable device" and permits set-off against long-term capital gains arising from the sale of a residential property

FACTS OF THE CASE

- The Assessee was a promoter and director of a road construction company. The company undertook a road construction project and faced financial distress, leading to loan defaults and SARFAESI proceedings by the banks, for which the assessee was a personal guarantor.
- To facilitate repayment of bank dues, the Assessee raised funds by mortgaging his residential property and invested in Compulsorily Convertible Debentures ("CCD") of the company, which were utilised to settle outstanding bank loans.
- The mortgaged property was subsequently sold by the assessee, resulting in Long-term capital gain ("LTCG").
- Subsequently, the Assessee sold the CCDs at a nominal value based on an independent valuation, due to which a substantial short-term capital loss ("STCL") arose.
- The Assessee set off such STCL against LTCG on the sale of residential property.
- While the Assessing Officer ("AO") characterised the arrangement as a colourable device lacking commercial substance and disallowed the set-off & carry forward of losses.
- On appeal, the Commissioner of Income-tax (Appeals) deleted the disallowance, holding that the transactions were genuine and that the allegation of a colourable device was unsupported by evidence and based on conjecture. The same was on appeal by the revenue.

ASSESSEE'S STAND

- The Assessee's investment in CCDs was driven by commercial necessity arising from his position as guarantor in SARFAESI proceedings and was undertaken to safeguard personal and business interests.
- All transactions were genuine, duly documented, and routed through banking channels, with no allegation by the AO of sham or round-tripping.
- The investment in CCDs of a distressed company was a commercially prudent decision to protect personal guarantees and business interests, not a tax-driven arrangement.
- The set-off of STCL against LTCG is permissible in law and cannot be disregarded merely on account of timing.

REVENUE'S STAND

- The CCD transaction was a pre-ordained colourable device structured solely to engineer artificial short-term capital losses to offset same-year long-term capital gains.
- Investing in a distressed entity with eroded net worth and no going-concern status lacked commercial rationale, as no prudent investor would subscribe to CCDs at face value without a contemporaneous valuation. Funding the investment through high-interest borrowings, despite the absence of any potential return, confirms a tax-driven motive rather than a genuine business purpose.
- The strategic sequence of events- including the Assessee's resignation as Managing Director, investment in CCD and the subsequent transfer of CCD indicates a pre-designed arrangement intended to generate capital losses.

[2] ITO v. Subhash Chander Agarwal, ITA No.4604/Del/2025 (ITAT Delhi).

TRIBUNAL DECISION

- The Hon'ble ITAT upheld the Ld. CIT(A)'s order and dismissed the Revenue's appeal, confirming the assessee's right to set off STCL against LTCG and carry forward the remaining balance loss.
- The Hon'ble ITAT found the transactions to be entirely genuine and transparent, noting that the CCD subscription, fund utilization for loan repayment, and subsequent sale were fully documented and routed through banking channels.
- It was held that the investment was a result of financial distress and guarantee obligations under SARFAESI rather than tax avoidance, emphasizing that commercial prudence cannot be judged with hindsight or labelled a colorable device due to adverse outcomes.
- The Hon'ble ITAT observed that no artificial loss was created and no funds flowed back to the Assessee; furthermore, since the CCDs were sold based on an independent valuer's report, the loss was deemed *bona fide* in the absence of any evidence of sham or round-tripping.
- Hon'ble ITAT held that the principles laid down in *McDowell & Co. Ltd. (1986 AIR 649)* and *Sumati Dayal (1995) 214 ITR 801* were held to be inapplicable due to the lack of artificiality and that the Assessee's case was a genuine commercial distress transaction.

ELP Comments

By upholding the set-off of STCL against LTCG, the ruling confirms that the mere timing of losses and gains does not indicate tax avoidance where transactions are bona fide, documented, and routed through banking channels. In hindsight, the Tribunal also touched upon the importance of real loss vs artificial loss, where the loss claimed does not flow back to the assessee. This outcome reinforces the importance of maintaining commercial substance in structuring a transaction.

INDIRECT TAX - RECENT CASE LAWS

Kerala HC holds that delay cannot defeat genuine refund claims; rejection on jurisdictional grounds set aside

FACTS OF THE CASE

- *Silver Exim*[3] ("Petitioner"), engaged in export of FMCG products such as tea, coffee, masala and curry powders, filed refund claims of IGST paid on export consignments.
- Certain refund applications were auto-generated under Rule 96(5A) of the CGST Rules pursuant to risk alerts flagged by DGARM in the Customs system and were transmitted to the jurisdictional proper officer for verification of genuineness.
- The jurisdictional authority rejected the refund applications on the ground that such claims fall within the domain of Customs authorities and not within its jurisdiction.
- The Petitioner submitted that the rejection was based on a mistaken understanding, as DGARM-flagged applications are required to be examined by the jurisdictional officer.
- The appeal filed against such rejection was dismissed as time-barred, leading to filing of writ petition challenging both the rejection order and appellate order.

RULING OF KERALA HIGH COURT

- The HC held that the rejection of refund claims was based on a clear misconception regarding jurisdiction, as evident from the record. The Court observed that as per CBIC instructions, where refund claims are flagged by DGARM and transmitted, such applications must be examined by the jurisdictional proper officer for verification of genuineness.
- It was held that the authority failed to discharge its statutory obligation by rejecting the claim on technical grounds without examining merits. The Court further noted that the rejection order itself was passed on a mistaken notion and therefore could not be sustained in law.
- On the issue of limitation, the Court held that mere delay in filing appeal cannot defeat a genuine claim, particularly where the initial rejection is legally flawed. The HC emphasised that technicalities should not stand in the way of adjudicating a prima facie genuine claim, especially in export refund matters.
- Accordingly, the Court quashed both the rejection order and the appellate order and directed the authority to reconsider the refund application on merits and process the same in accordance with law.

ELP Comments

This ruling reinforces that technical objections cannot override the statutory obligation to examine refund claims on merits, particularly in cases arising from system-driven mechanisms such as DGARM alerts. The High Court has clarified that once such applications are transmitted to the jurisdictional officer, the responsibility to verify genuineness and process the claim cannot be avoided on technical grounds.

Significantly, the decision adopts a liberal approach towards condonation of delay, holding that where the initial rejection is founded on an erroneous understanding of law, delay in pursuing appellate remedies cannot be used to defeat a substantive entitlement. The Court's emphasis on examining claims on merits, coupled with its reluctance to allow technicalities to prevail, provides important relief to exporters facing procedural rejections in the GST refund framework.

[3] 2026-TIOL-484-HC-KERALA-GST

Bombay HC reiterates safeguards governing provisional attachment under section 83

FACTS OF THE CASE

- In *Nivara Infradevelopers LLP vs. Union of India*[4] ("Petitioner"), the department-initiated proceedings against the Petitioner under Section 67 of the CGST Act. Further, a pre-attachment intimation (Form DRC-23) was issued alleging possible tax liability.
- On the very same day, the officer proceeded to issue provisional attachment orders (Form DRC-22) to the Petitioner's bankers, freezing its bank accounts without awaiting any response. Both the pre-intimation and attachment communications were vague, cryptic and devoid of reasons, failing to disclose any formation of opinion or existence of tangible material justifying such drastic action.
- The Petitioner filed a detailed representation/ objection, specifically pointing out the legal position and the mandatory requirements under Section 83 as laid down by various courts.
- The Petitioner also offered alternate security to safeguard the interest of revenue, demonstrating cooperation.
- Despite this, the department neither responded to the objections nor considered the alternate security and allowed the attachment to continue. The attachment remained in force for nearly three months, resulting in complete disruption of business operations and severe civil consequences.
- The action was taken without issuance of any show cause notice, leaving the Petitioner with no option but to approach the High Court.

RULING OF BOMBAY HC

- The Court reiterated that provisional attachment under Section 83 is an extraordinary and coercive power, which must be exercised with utmost caution and strict compliance with statutory safeguards. It emphasized that such power can be invoked only upon prior formation of opinion, based on tangible material, that attachment is necessary to protect the interest of revenue.
- In the present case, the Court found a complete absence of such opinion and material, rendering the action legally unsustainable. Issuance of pre-intimation and attachment on the same day was held to reflect a mechanical and pre-determined exercise of power, demonstrating clear non-application of mind.
- The Court noted that the department's failure to consider the Petitioner's objections and alternate security further aggravated the illegality. It observed that such attachment had serious civil consequences, including bringing the Petitioner's business to a standstill, thereby affecting constitutional rights.
- The action of the officer was termed high-handed, arbitrary and in breach of the principles of law and due process. The Court held that mere availability of power does not justify its exercise, especially when statutory conditions are not fulfilled.
- Accordingly, the impugned attachment orders were quashed, with liberty to the department to initiate proper proceedings in accordance with law.
- Notably, the Court treated the case as a gross abuse of power and imposed personal costs on the officer, emphasizing accountability for misuse of statutory authority.

ELP Comments

This judgment is relevant in the current landscape where provisional attachment is increasingly invoked at the investigation stage. It reinforces that such power is not meant to be used as a routine recovery mechanism or

[4] TS-236-HC(BOM)-2026-GST

pressure tactic, but only in cases where there is a demonstrable and immediate necessity to protect revenue. It becomes evident that clear boundaries must govern the invocation of Section 83 and such powers cannot be exercised mechanically or without due process.

Equally important is the Court's approach of imposing personal costs on the officer, which signals a shift towards accountability in tax administration. This could act as a deterrent against casual or high-handed invocation of Section 83 and may encourage a more disciplined and reasoned exercise of powers by authorities.

The ruling also aligns with the principles laid down by the Supreme Court in Radha Krishan Industries vs. State of Himachal Pradesh[5], where it was held that provisional attachment must be based on tangible material, preceded by a reasoned formation of opinion along with safeguards like the right to object & be heard, and the ability to approach courts against arbitrary action.

[5] TS-168-SC-2021-GST

Karnataka HC reads down section 16(2)(c): Relief for bonafide ITC claims

FACTS OF THE CASE

- *Instakart Services Private Limited*[6] ("Petitioner"), had availed input tax credit ("ITC") on procurements made in the course of its business. The tax authorities proposed denial of ITC on the ground that suppliers had failed to deposit the tax collected with the Government and/ or comply with return filing requirements.
- The denial was based on Section 16(2)(c) of the CGST Act read with Rule 36(4), which link ITC entitlement to actual payment of tax by the supplier.
- The Petitioner contended that these provisions impose an onerous and impractical obligation on recipients to ensure supplier compliance, which is beyond their control. It was further argued that ITC cannot be denied in cases of genuine transactions supported by valid tax invoices and documentation, in the absence of fraud or collusion.
- Accordingly, the Petitioner challenged the constitutional validity of the provisions and alternatively sought their reading down to protect bonafide recipients.

RULING OF KARNATAKA HC

- The Karnataka HC did not strike down the provisions but read down Section 16(2)(c) and Rule 36(4) to ensure they operate in a constitutionally valid manner. It held that ITC cannot be denied to a bonafide recipient who has complied with all other statutory conditions, merely because the supplier has defaulted in payment of tax.
- The Court observed that casting an obligation on the recipient to ensure supplier compliance amounts to requiring the impossible, which is impermissible in law. It emphasized that the scheme of GST does not envisage shifting the entire burden of supplier default onto the recipient, particularly where transactions are genuine.
- The Court reaffirmed that ITC is a vested and substantive right, which cannot be denied arbitrarily in the absence of any wrongdoing by the recipient. It relied on a consistent line of precedents to hold that once the purchaser establishes genuineness of the transaction and payment of tax to the supplier, denial of ITC is not justified.
- The Court clarified that tax authorities are at liberty to initiate recovery proceedings against defaulting suppliers but cannot penalize bonafide recipients for such defaults.

ELP Comments

This ruling is a welcome development and adds to the growing line of decisions protecting bonafide taxpayers from ITC denial arising solely due to supplier non-compliance. The decision is consistent with several favorable High Court rulings such as M/s Sahil Enterprises[7] (Tripura HC), National Plasto Moulding[8] (Gauhati HC), Malaya Rub-Tech Industries[9] (Tripura HC), which have emphasized that recovery should primarily be pursued against the defaulting supplier. This principle also finds support in pre-GST jurisprudence, including Shanti Kiran India Pvt. Ltd.[10] and Quest Merchandising India Pvt. Ltd.[11] (affirmed by the Supreme Court in Arise India Limited[12]), which recognized protection for bonafide purchasers.

[6] TS-201-HC(KAR)-2026-GST
[7] W.P.(C) 688/2022
[8] (2024) 21 CENTAX 182(Gau)
[9] (2026 (2) TMI 654
[10] (2025) 25 Centax 222 (SC)
[11] 2018 (10) GSTL 182 (Del)
[12] 2022 (60) GSTL 215 (SC)

Further, the Press Release dated 04.05.2018 pursuant to the 27th GST Council Meeting clarified that there should be no automatic reversal of ITC in the hands of the recipient, and recovery should ordinarily be made from the supplier except in exceptional cases - an aspect that strengthens the taxpayer's position in such disputes.

However, the issue remains far from settled. Divergent views continue to emerge, with High Courts in cases such as Aastha Enterprises[13] (Patna HC), M Trade Links[14] (Kerala HC), Shree Krishna Chemicals[15] (Madhya Pradesh HC), etc. taking a stricter view and upholding denial of ITC where statutory conditions are not fulfilled. This judicial divergence continues to create uncertainty and increases litigation exposure.

Until the issue is conclusively settled by the Hon'ble Supreme Court, conflicting precedents are likely to persist. Mechanical denial of ITC in such cases risks imposing a double tax burden on bonafide purchasers, which undermines the core objective of the GST framework.

[13] 2023 (77) G.S.T.L. 372 (Pat.)

[14] (87) G.S.T.L. 4 (Ker.)

[15] (2025) 28 Centax 105 (M.P.)

AP HC holds that GST authorities lack jurisdiction over IGST on imports; cross-empowerment not universally applicable

FACTS OF THE CASE

- *Avanti Feeds Limited*[16], ("Petitioner"), was engaged in manufacturing aquatic feed, imported inputs such as fish meal, soya and algal oil and claimed exemption from IGST on such imports for multiple financial years.
- The Petitioner was admittedly assigned to Central jurisdiction under the GST regime.
- The State tax authorities conducted an inspection and issued an intimation under Section 73(5), alleging incorrect exemption claims and classification of imported goods. The Petitioner furnished a detailed response on merits.
- Subsequently, a fresh intimation in the nature of a show cause notice ("SCN") was issued, raising additional issues and proposing demand of tax on imports. The notice:
  - disputed exemption on specific imported inputs (including feed additives);
  - sought to reassess classification and taxability; and
  - covered multiple financial years in a single proceeding
- The proceedings also relied upon a Circular dated 31.12.2018 which had already been struck down by another High Court.
- Aggrieved, the Petitioner approached the High Court challenging the jurisdiction of the State tax authorities as well as the validity of the notice.

RULING OF BOMBAY HC

- The High Court set aside the SCN and held as under:
  - The proviso to Section 5(1) of the IGST Act requires IGST on imported goods to be levied and collected in accordance with the Customs Tariff Act, 1975 at the stage when customs duties are levied.
  - The Court observed that determination of classification, valuation, exemption and tax liability in respect of imported goods forms part of "assessment" under Section 2(2) read with Section 28 of the Customs Act, 1962, and therefore falls within the domain of customs authorities. Consequently, GST officers do not have jurisdiction to undertake such assessment or recovery. In this regard, reliance was placed on *Union of India v. Mohit Minerals Pvt. Ltd.*[17] and *Ajwa Dry Fruit Impex v. Union of India*[18].
  - The Court further held that cross-empowerment under Section 6 of the CGST Act and Section 4 of the IGST Act is not automatic or general in nature and operates only where the taxpayer is administratively assigned to the concerned authority. Since the Petitioner was assigned to the Central jurisdiction, the State tax officer could not assume jurisdiction under the IGST framework.
  - It was also observed that reliance placed on Circular a dated 31.12.2018 which had already been struck down was untenable. Following *Kusum Ingots & Alloys Ltd. v. Union of India*[19], the Court held that such circular becomes inoperative across the country and need not be challenged again.
  - Further, the Court held that the SCN was liable to be set aside as it covered multiple financial years in a single proceeding, which is impermissible, in line with its earlier ruling in *S.J. Constructions v. Assistant Commissioner*[20].

[16] 2026 (4) TMI 361 - ANDHRA PRADESH HIGH COURT

[17] (2022) 10 SCC 700:(2022)

[18] (2023) 156 taxmann.com 448 (Kerala)

[19] 2004 (4) TMI 342 - SC (LB)

[20] [2025 (9) TMI 1215 – AP HIGH COURT

ELP Comments

This ruling is important as it clarifies a recurring area of confusion regarding jurisdiction over import transactions. The Court has reaffirmed that IGST on imports is inherently part of the customs assessment mechanism, and therefore cannot be examined by GST authorities at all.

The clarification on cross-empowerment is also significant. In practice, authorities often rely on cross-empowerment to justify initiating proceedings across jurisdictions. This decision makes it clear that such powers are limited and depend on administrative allocation of the taxpayer, and cannot be used to assume jurisdiction otherwise not available.

From a litigation standpoint, the ruling provides strong support in cases where GST authorities have issued notices in respect of import transactions or where jurisdiction is assumed without proper allocation.

Uttarakhand Authority for Advance Ruling (AAR) holds that contractual operation and management of Government health centres is taxable; exemption not available as healthcare or pure services

FACTS OF THE CASE

- M/s Indovation Healthcare LLP[21] ("Applicant") was engaged in operating Government Urban Health & Wellness Centres and polyclinics under a public health programme in the State of Uttarakhand. The programme involved provision of healthcare services to the public free of cost, in accordance with prescribed Government guidelines.
- For implementation of the scheme, the Government of Uttarakhand appointed Braithwaite & Co. Limited as the executing agency. Pursuant to a selection process, the Applicant was selected and entered into an agreement with the executing agency for implementation, operation, and monitoring of the centres.
- Under the arrangement, the applicant was responsible for providing comprehensive healthcare services including consultations, diagnostics, pharmacy, preventive care and outreach activities through these centres, without charging any consideration from beneficiaries. The Applicant had no authority to levy any user charges or introduce any commercial element. The amounts to be received by the Applicant were routed through the executing agency out of Government grants and were subject to audit and monitoring.
- The Applicant filed an application for advance ruling to seek clarity on the GST implications of such services undertaken under this arrangement, inter alia, on the following grounds:
  - Such services constitute "healthcare services" and accordingly, exempt from GST in terms of entry no. 74 of the Exemption Notification[22];
  - Alternatively, such services are provided under Government funded public health programme and are directly related to public health functions entrusted to local authorities under Article 243W of the Constitution of India. Accordingly, the services qualify as pure services provided in relation to functions entrusted under Article 243W of the Constitution, hence exempt under entry no. 3 of the said Exemption Notification.

RULING OF UTTARAKHAND AAR

- The Uttarakhand AAR examined the nature of supply and ruled that contractual operation and management of Government health centres does not qualify as "healthcare services" and is therefore not exempt under GST. Key findings of the AAR include:
  - The Applicant was providing operational, managerial and administrative services to the executing agency under a contractual arrangement and not healthcare services directly to patients.
  - The consideration was linked to the cost associated with the contractual obligations and not to individual patient care.
  - Exemption for healthcare services applies strictly to services provided by a clinical establishment directly to patients, and cannot be extended to entities providing support, facilitation or management services, even if such services are connected with healthcare delivery.
  - Accordingly, the Applicant could not be regarded as supplying healthcare services to the recipient (i.e. Braithwaite & Co. Limited), and exemption under Entry 74 of the Exemption Notification was held to be not applicable.
  - Further, the "pure services" exemption was also not applicable, as the supply was made to the executing agency (and not directly to the Government) and the arrangement involved composite elements involving operational, managerial and infrastructural elements, and therefore did not qualify as pure services.
- Accordingly, the AAR ruled that the Applicant's services are taxable supplies and not eligible for exemption under Entry 74 or Entry 3 of the Exemption Notification.

[21] 2026 (3) TMI 1673 – AAR Uttarakhand

[22] Notification 12/2017- Central Tax (Rate) dated 28.06.2017

ELP Comments

This ruling adopts strict and narrow interpretation of the healthcare exemption and accordingly, observed that it is available only where services are provided directly to patients.

In contrast, Karnataka AAR in M/s. Matrix Imaging Solutions India Private Limited[23] inter alia held that operation and management of clinical laboratory and radiodiagnostic services, even when provided under a contract with hospitals or other establishments (and not directly with patients), would qualify as "healthcare services" by a "clinical establishment" and therefore covered under Entry 74 of the Exemption Notification and thus exempt from GST.

Thus, divergent views exist and accordingly, the applicability of the said exemption entry would depends on the specific facts and nature of arrangement.

Further, the CBIC, vide Circular No. 32/06/2018-GST dated 12.02.2018 has clarified that services provided by senior doctors, consultants, or technicians engaged by hospitals, even without a direct contractual relationship with patients, would still qualify as exempt healthcare services, as they form part of the overall healthcare services rendered by the clinical establishment. However, the AAR does not appear to have examined or applied this clarification.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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[23] 2019 (10) TMI 1019 – AAR Karnataka

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