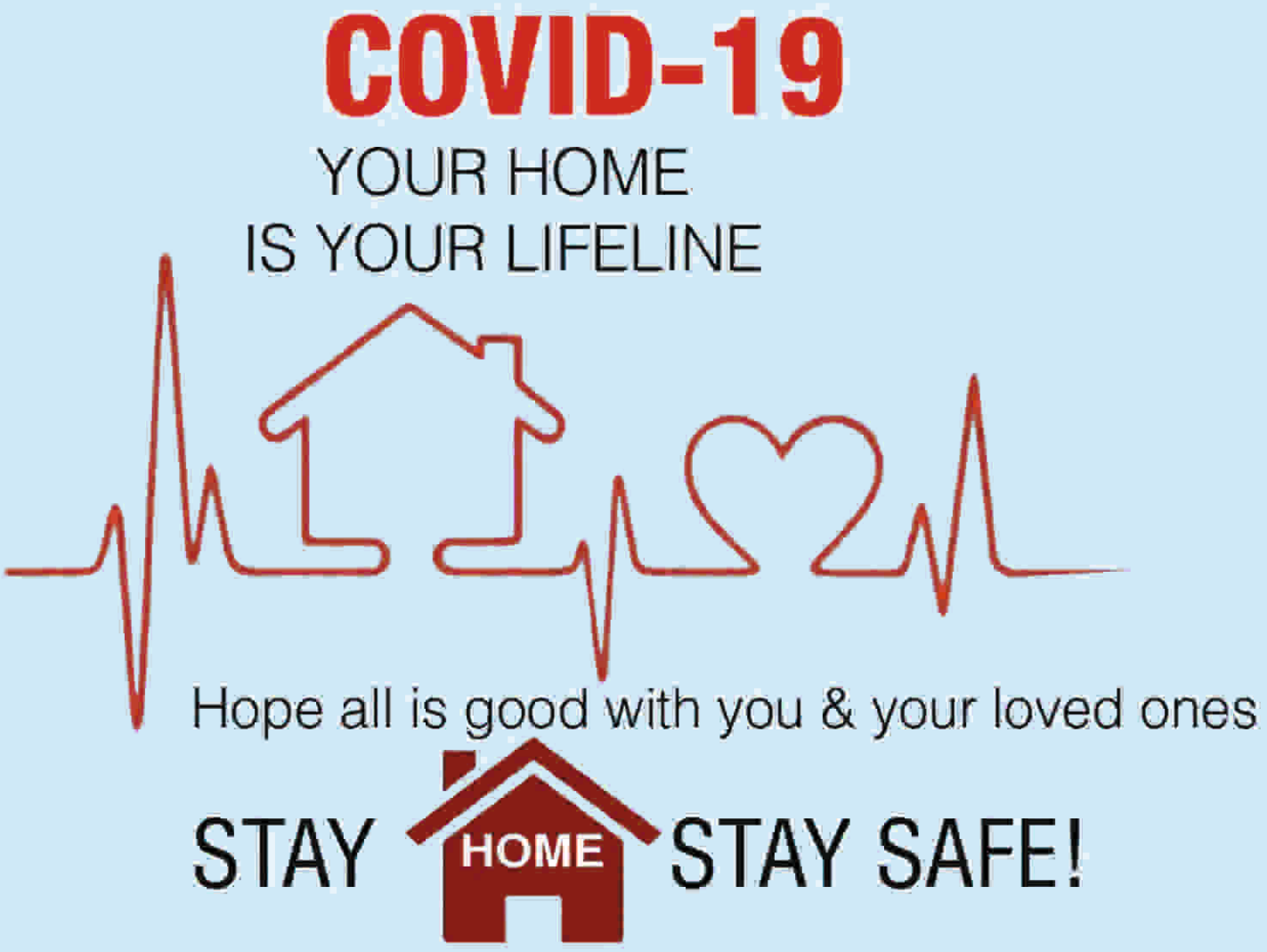
AIFTP

INDIRECT TAX & CORPORATE LAWS JOURNAL

ETHICS EDUCATION EXCELLENCE

Volume-2 | Part-4-5 | April-May-2021



APPEAL TO MEMBER TO CONTRIBUTE FOR FINANCIAL SUPPORT TO MEMBERS (COVID-19) SCHEME, 2021

All India Federation of Tax Practitioners
215, Rewa Chambers, 31, New Marine Lines, Mumbai-400 020
Tel.: 22006342/49706343, 22006343 | E-mail : aiftpho@gmail.com | Website : aiftponline.org

CHIEF-EDITOR'S COMMUNIQUE

Dear All,

This issue is a common issue for the months of April and May 2021 for the reason that due to the restrictions and lock down in many States and particularly in Rajasthan. We could not print the April issue and even this May issue is an online issue due to COVID-19 restrictions.

Friends, the last two months have been very difficult for India in particular and for all of us as the COVID-19 have spread throughout the country and have affected almost everybody.

The severity of the COVID-19 this time is devastating and because of it there are many deaths and complete family is being infected. AIFTP through it's messages has been asking its members to remain safe and be at home and take care of the families.

The Federation felt the need that there should be a benevolent fund for the members to support in case of necessity and it was the brainchild of our Past President Dr. Ashok Saraf that benevolent fund for the purpose of providing financial support to COVID-19 affected member, should be immediately created and he drafted the basic rules for it. He, himself contributed an initial substantial amount and asked all the members to contribute for the benevolent fund and on his appeal and on the appeal of the National President, substantial amount has been contributed by members from throughout the country and the fund has almost crossed the value of over Rs.1,00,00,000 and continuous inflow of contribution is still coming. The details of the **FINANCIAL SUPPORT TO MEMBERS (COVID-19) SCHEME, 2021,** are being published in this journal and AIFTP appeal to all the members to contribute generously for the benevolent fund.

The Government has extended most of the timelines under the Income Tax Act and other relevant Acts and even under the GST the same is under consideration of the Government and the GST Council. It is expected that the GST timelines would also be extended and there would also be some amnesty for the late fees and also for the input tax credit matching.

It is high time that we all, professionals take care of ourselves and the staff because the work will go on but the life is most important. The family depends on you and it is the time that you take care of that aspect also.

I wish all the members that they remain safe and take care of themselves and their families.

JAAN HAI TO JAHAAN HAI

(IF THERE IS LIFE THAN THERE IS THE WORLD)

Regards,

PANKAJ GHIYA

Chief Editor
pankaj.ghiya@hotmail.com
Mob. No. 98290-13626

ALL INDIA FEDERATION OF TAX PRACTIONERS

215, Rewa Chambers, 31,
New Marine Lines, Mumbai-400 020
E-mail: aiftpho@gmail.com Website: www.aiftponline.org

Membership of All India Federation of Tax Practitioners as on 25th March, 2021

Life Members

Zone Name	Associate	Individual	Association	Corporate	Total
Central	0	1163	25	0	**1188**
Eastern	6	1885	37	0	**1928**
Northern	0	1355	18	2	**1375**
Southern	1	1580	21	5	**1607**
Western	5	2690	37	6	**2738**
Total	**12**	**8673**	**138**	**13**	**8836**

Subscription Rates

1.	Life Membership of the AIFTP	Rs. 2,500/-*
	ID Card Fees	Rs. 100/-*
	Subscription of AIFTP Journal (for 1 year)	Rs. 1,000/-
	Subscription of AIFTP Journal (for 3 years)	Rs. 2,600/-
2.	For Non-Members	
	Subscription of AIFTP Journal (for 1 year)	Rs. 1,400/-
	Subscription of AIFTP Journal (for 3 years)	Rs. 3,750/-
	Singlecopy of the AIFTP Journal	Rs. 80/-

3. Corporate Membership

Nature of fees	*Type I (5 Yrs.)*	*Type II (10 Yrs.)*	*Type III (15 Yrs.)*	*Type IV (20 Yrs.)*
Admission	500/-*	500/-*	500/-*	500/-*
Subscription	5,000/-	7,500/-	11.500/-	15,000/-
Total	5,500/-	8,000/-	12,000/-	15,500/-

Note: Members may ether apply through website or download the membership form from the website of AIFTP., i.e. www aiftponine.org
*18% GST as applicable.

ADVERTISEMENT TARIFF FOR AIFTP INDIRECT TAX & CORPORATE LAW JOURNAL

	Particulars	Per Insertion
1.	Ordinary Half Page.....	Rs. 5000.00*
2.	Ordinary Full Page.....	Rs. 10000.00*
3.	Back Inner Page.....	Rs. 20000.00*
4.	Back Page.....	Rs. 50000.00*

*5% GST as applicable.

CONTENTS

SECTION: I

SECTION: II - GOODS & SERVICE TAX

SECTION: III - CORPORATE & OTHER LAWS

SECTION: IV - JUDGMENTS

SECTION: V – MISCELLANEOUS

ALL INDIA FEDERATION OF TAX PRACTITIONERS FINANCIAL SUPPORT TO MEMBERS (COVID-19) SCHEME, 2021

In view of the current pandemic Covid-19, many of the members of the Federation have been hospitalized for treatment. Many of the Members have also lost their lives. Due to the present Covid-19 pandemic situation, such members and/ or their families are facing financial exigencies. With a view to give financial support to such members and/or their families, the Federation has framed a scheme to provide financial support to the needy members and/or their families.

1) This scheme shall be called AIFTP Financial Support to Members (COVID-19) Scheme, 2021.

2) The scheme shall come into force with immediate effect. The object of the scheme is to provide financial support to the members who are facing financial exigencies because of the hospitalization due to Covid-19 and to the family of the member who lost his/her life due to the Covid-19.

3) A Committee shall be constituted who shall provide financial assistance to the needy members and their families. The composition of the Committee shall be as under-

   i. Chairman: Dr. Ashok Saraf, Past President, Guwahati

   ii. Member: Shri. Sanjay Kumar, Allahabad

   iii. Member: Shri. S. Venkataramani, Bengaluru

   iv. Member: Shri. Vivek Agarwal, Kolkata

   v. Ex-Officio Member: Shri. M Srinivasa Rao, National President

   vi. Ex-Officio Member: Shri. S. S. Satyanarayana, Secretary General

   vii. Ex-Officio Member: Shri. Vijay Kewalramani, Treasurer

4) The decision of the Committee in providing financial support shall be final and shall not be questioned by anyone at any level.

5) The quantum of financial support shall be as under-

Sl. No.		Amount
1.	Hospitalization of members upto 7 days due to Covid- 19	Rs. 20,000
2.	Hospitalization of the member due to Covid-19 for a period of more than 7 days	Rs. 35,000
3.	Death of a member due to Covid- 19	Rs. 50,000

6) The member or their family who needs financial support shall send such a request to the Committee duly recommended by the Chairman and/or Secretary of the Zone to which the member belongs.

7) The concerned member must be a member of the Federation as on 31.12.2019.

8) The member seeking financial support of the Scheme of 2021 shall not have an average Net Income above Rs.7,50,000 during the years 2017-18, 2018-19 and 2019-20 from any of the sources.

9) The member concerned and/or family member of the member shall provide necessary Bank details for the transfer of the financial support amount. The name of the member of the Federation and/or family to whom the financial support is given shall be confidential and shall not be disclosed to anyone under any circumstances.

10) A self declaration to that effect shall be given by the member or the family member of the said member to the aforesaid effect. After the Covid period is over, the member and/or the family member shall give necessary documentary proof in support of the aforesaid to the head Office of the Federation. If the declaration given by the member or the family member as the case may be, is found to be incorrect, the membership of the said member shall be terminated immediately and the said member and/or the family of the said member shall be liable to refund the amount of the financial support to the Federation forthwith.

*****

RECENT NOTIFICATIONS & CIRCULARS UNDER CGST ACT

Adv. Deepak Garg

NOTIFICATIONS - CENTRAL TAX

DATE	NOTIFICATION NO.	REMARKS
30.03.2021	06/2021-CENTRAL TAX	Seeks to waive penalty payable for non-compliance of provisions of Notification No. 14/2020 dated 21st March 2020.
27.04.2021	07/2021-CENTRAL TAX	Seeks to make second amendment (2021) to CGST Rules.
01.05.2021	08/2021-CENTRAL TAX	Seeks to provide relief by lowering of interest rate for the month of March and April, 2021
01.05.2021	09/2021-CENTRAL TAX	Seeks to amend notification no. 76/2018-Central Tax in order to provide waiver of late fees for specified taxpayers and specified tax periods
01.05.2021	10/2021-CENTRAL TAX	Seeks to extend the due date for filing FORM GSTR-4 for financial year 2020-21 to 31.05.2021
01.05.2021	11/2021-CENTRAL TAX	Seeks to extend the due date for furnishing of FORM ITC-04 for the period Jan-March, 2021 till 31st May, 2021.
01.05.2021	12/2021-CENTRAL TAX	Seeks to extend the due date of furnishing FORM GSTR-1 for April, 2021
01.05.2021	13/2021-CENTRAL TAX	Seeks to make third amendment (2021) to CGST Rules
01.05.2021	14/2021-CENTRAL TAX	Seeks to extend specified compliances falling between 15.04.2021 to 30.05.2021 till 31.05.2021 in exercise of powers under section 168A of CGST Act.
18.05.2021	15/2021-CENTRAL TAX	Seeks to make fourth amendment (2021) to CGST Rules, 2017.

CIRCULARS - CENTRAL TAX

DATE	CIRCULAR NO.	REMARKS
18.05.2021	148/04/2021-GST	Seeks to prescribe Standard Operating Procedure (SOP) for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under section 30 of the CGST Act, 2017 and rule 23 of the CGST Rules, 2017.

TIMELINE - GST

Adv. Abhay Singla

GOODS & SERVICE TAX

Sr. No.	GSTR 3B	Tax Period	Due Date	No Late Fees Till	Interest Rate
(i)	Turnover More than Rs. 5 Crore	March, 2021	20th April 2021	05th May 2021	9% till 05.05.2021 after that 18% from 06.05.2021
		April, 2021	20th May 2021	04th June 2021	9% till 04.06.2021 after that 18% from 05.06.2021
(ii)	Turnover Upto Rs. 5 Crore (not opting QRMP Scheme)	March, 2021	20th April 2021	20th May 2021	NIL till 05.05.2021 after that 9% from 06.05.2021 to 20.05.2021 and after 20.05.2021 @ 18%
		April, 2021	20th May 2021	19th June 2021	NIL till 04.06.2021 after that 9% from 05.06.2021 to 19.06.2021 and after 19.06.2021 @ 18%
(iii)	Turnover Upto Rs. 5 Crore (opting QRMP Scheme)	March, 2021	22nd April 2021	24th May 2021	NIL till 07.05.2021 after that 9% from 08.05.2021 to 22.05.2021 and after 22.05.2021 @ 18%
(iv)	Turnover Upto Rs. 5 Crore (opting QRMP Scheme)	April-June, 2021	22nd July 2021	-	
		April 2021 (Tax Payment)	25th May 2021	-	NIL till 09.06.2021 after that 9% from 10.06.2021 to 24.06.2021 and after 24.06.2021 @ 18%
		May 2021 (Tax Payment)	25th June 2021	-	

Sr. No.	Particulars	Form	Period	Due Date
(i)	Detail of Outward Supplies: -	IFF	April, 2021	28th May 2021
	(a) QRMP			
	(b) Monthly Filing	GSTR-1	April, 2021	26th May 2021
			May, 2021	11th June 2021
(ii)	Payment of Tax under QRMP	PMT-06	By 25th of next month	
(iii)	Quarterly return for Composite taxable persons	CMP-08	Jan to March 2021	18th April 2021
(iv)	Return for Non-resident taxable person	GSTR-5	April, 2021	31st May 2021
(v)	Details of supplies of OIDAR Services by a person located outside India to Non-taxable person in India	GSTR-5A	Those non-resident taxpayers who provide OIDAR services have to file GSTR-5A by 20th of next month.	
(vi)	Details of ITC received by an Input Service Distributor and distribution of ITC.	GSTR-6	April, 2021	31st May 2021
(vii)	Return to be filed by the persons who are required to deduct TDS (Tax deducted at source) under GST.	GSTR-7	April, 2021	31st May 2021
			May, 2021	10th June 2021
(viii)	Return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST	GSTR-8	April, 2021	31st May 2021
			May, 2021	10th June 2021
(ix)	Annual GST return (Composition Taxpayers)	GSTR-4	FY 2020-2021	31st May 2021

*****

INPUT TAX CREDIT UNDER SPECIAL CIRCUMSTANCES - AN OVERVIEW

CA S Venkataramani
CA Siddeshwar Yelamali

A. Many columns / articles have been written on eligibility / availment of input tax credit (ITC), time limit for availing of ITC and blocked ITC under the Central Goods and Services Tax Act, 2017 (for brevity, 'GST Law' / 'CGST Act, 2017'). In this article an attempt is made to discuss about ITC under special circumstances under Section 18 of the CGST Act, 2017.

B. Section 18 of the CGST Act, 2017 carves out ITC availability under circumstances which is discussed hereunder:

1. A person who applies for registration within 30 days from the date the person becomes liable to registration and has been granted registration is entitled to input tax credit of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the GST law. Here, it is important to note that the person should apply for registration within 30 days from the date he becomes liable to registration not just under Section 22 of the CGST Act, 2017 but also when registration is required to be taken under Section 24 of the CGST Act, 2017. Further, it may be noted that input tax credit of*capital goods* and *input service* prior to the date of registration *cannot be claimed*.

   [Reference Section 18 (1) (a)of CGST Act, 2017]

2. A person who registers voluntary when mandatorily not required to take registration under the CGST Act, 2017 is entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration. Here againinput tax credit of *capital goods* and *input service* prior to the date of registration *cannot be claimed*.

   [Reference - Section 18 (1) (b) of CGST Act, 2017]

3. A registered person who has taken registration under composition levy and later ceases to be eligible to continue to be registered under composition levy is be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from

which he becomes liable to tax under Section 9 of CGST Act, 2017.

The amount of input tax credit of capital goods to be claimed shall be determined by reducing tax paid on capital goods by 5% points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.

[Reference - Section 18 (1) (c) of CGST Act, 2017 read with Rule 40 (1) (a) of CGST Rules, 2017]

4. Where an exempt supply of goods or services or both by a registered person becomes taxable supply, registered person is entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply. Further, input tax credit of capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable can be claimed. The amount of input tax credit of capital goods to be claimed is to be determined as discussed in paragraph B (3) supra.

   [Reference - Section 18 (1) (d) of CGST Act, 2017 read with Rule 40 (1) (a) of CGST Rules, 2017]

5. Following conditions needs to be complied in respect of input tax credit claim to be made under circumstances discussed in paragraph B (1) to B (4)supra:

   a. Registered person is eligible to take input tax credit of inputs of invoices within one year from the date of invoice subject to conditions that the same are in stock.

   b. File a declaration in on the common portal in Form GST ITC 01 within 30 days the registered person becomes entitled to credit in the circumstances discussed supra.

   c. Form GST ITC 01 needs to be certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds Rs. 2 lakhs. The certificate needs to be uploaded along with the Form GST ITC 01.

   d. In respect of claim of input tax credit in circumstances discussed in paragraph B (3) an B (4) supra, it should be ensured that the supplier has uploaded the invoices in Form GSTR 1 or Form GSTR 4 as applicable on the common portal.

[Reference –Section 18(2) of the CGST Act, 2017 read with Rule 40 (1) of CGST Rules, 2017]

6. Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person is allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business. Following conditions to be fulfilled for transfer of unutilized input tax credit:

   a. In case of demerger, the proportionate unutilised input tax credit to the extent of proportion of value of assets of the new unit should be transferred by the demerged company.

   b. Transferor to file Form GST ITC-02 with a request for transfer of unutilized input tax credit lying in his electronic credit ledger electronically on the common portal to the transferee.

   c. Transferor should also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

   d. The transferee should accept on the common portal the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in Form GST ITC- 02 shall be credited to his electronic credit ledger.

   e. The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

   [Reference Section 18 (3) of CGST Act, 2017 read with Rule 41 of CGST Rules, 2017]

7. A registered person who has availed input tax credit,exercises option to pay tax under composition levy subsequently, such registered person is liable to pay equivalent to credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day preceding the date of exercising such option. Input tax credit taken on capital goods also needs to be paid. The following steps to be undertaken for payment of input tax:

   a. Inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated

proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs.

b. If tax invoices related to the inputs held in stock are not available, input tax should be determined based on the prevailing market price of the goods on the date of exercising the option.

c. Input tax of capital goods to be determined on pro rata basis of remaining useful life to total useful life of capital goods. Total useful life of 5 years should be considered for the purpose of this computation. In the illustration provided in Rule 44(1) of the CGST, it is mentioned that part of the month of useful life should be ignored while determining the input tax credit to be paid.

d. The amount of input tax determined to be paid by debit in the electronic credit ledger or electronic cash ledger. After payment, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

e. File Form GST ITC- 03 within 90 days from the day on which such person commences to pay tax under composition levy.

[Reference - Section 18 (4) of CGST Act, 2017 read with Rule 44 of CGST Rules, 2017]

8. The discussions in paragraph 8 supra are equally applicable in circumstances where goods or services or both being supplied by a registered person become wholly exempt.

9. Where capital goods[@] or plant and machinery# are supplied on which input tax credit has been taken, registered person shall pay:

(i) an amount equal to the input tax credit taken on the said capital goods or plant and machinery or

(ii) tax on the transaction value of such capital goods or plant and machinery determined under section 15,

whichever is higher

Determination of input tax credit to be paid is provided in Rule 40(2) of CGST Rules, 2017 and Rule 44(6) of CGST Rules, 2017 which is discussed as under:

a. Compute input tax credit to be paid by reducing the input tax on the said goods at the rate of 5% points for every quarter or part thereof from the date of the issue of the invoice for such goods - Rule 40(2) of CGST Rules, 2017;

b. Input tax of capital goods to be determined on pro rata basis of remaining useful life to total useful life of capital goods. Total useful life of 5 years should be considered for the purpose of this computation. In the illustration provided in Rule 44(1) of the CGST, it is mentioned that part of the month of useful life should be ignored while determining the input tax credit reversal - Rule 44(1) of CGST Rules, 2017.

The value of input tax credit to be paid determined under Rule 40(2) of CGST Rules, 2017 and Rule 44(1) of CGST Rules, 2017 may vary. In such a situation, a question may arise as to which Rule should be adopted. In paper writers view, the computation which is beneficial to the registered person may be adopted; however, it may be noted that this view is not free from litigation.

In case of supply of refractory bricks, moulds and dies, jigs and fixtures as scrap on which input tax credit is claimed, tax may be paid on the transaction value of such goods.

@Capital goods - means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business – Section 2(19) of CGST Act, 2017.

Plant and Machinery – means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports excluding (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises – Explanation in Section 17 of the CGST Act, 2017.

[Reference - Section 18 (6) of CGST Act, 2017 read with Rule 40 (2) and Rule 44(1) of CGST Rules, 2017]

An attempt has been made in this article to make a reader understand the issue involved in the input tax credit under special circumstances under Section 18 of the CGST Act, 2017. This article is written with a view to incite the thoughts of a reader who could have different views of interpretation. Disparity in views, would only result in better understanding of the underlying principles of law and lead to a healthy debate or discussion. The views written in this article is as on12.04.2021.

*****

IMPORTANT ADVANCE RULINGS UNDER GST

CA Manoj Nahata

1. Whether the amounts collected by the Co-operative Societies/ RWA towards sinking fund form part of consideration towards the services under Section 2(31) of the CGST Act and amounts to advances for supply of future services?

Held: Yes

In case of ***Olety Landmark Apartment Owner's Association - AAR Karnataka*****,** the applicant is a non-profit making resident welfare Association formed by individual apartment /flat owners and was registered under the provisions of Karnataka Apartment Ownership Act, 1972 and also GST. The applicant is engaged in providing maintenance and repairs of common areas such as corridors, garden, play area, pathway, clubhouse, swimming pool, gymnasium, electric equipment etc. and payment of electricity and other outgoings by collecting monthly maintenance charges from its members based on the area of occupancy. The applicant also collects certain amounts towards Sinking Fund, in addition to regular maintenance amounts, to meet the expenditure of planned /unplanned outlay in future, under its bylaws. The question put before the authority is whether they are liable to pay GST on the Sinking Fund collected from its members?

The applicant contended that as per section 9 of the CGST Act, 2017 the amount received becomes taxable only when such amounts are received as "Consideration for supply of goods or services or both". Further in terms of section 2(31) which defines consideration for an amount collected to get transformed into "consideration" there should be actual supply of goods or services or there should be promise to supply goods or services. But in the instant case the amount received is in the nature of deposit for future planned /unplanned event and thus not liable to GST.

The authority examined the matter in the light of the definition of consideration u/s 2(31) and found that the deposit given in respect of a future supply shall not be considered as payment made for such supply until the supplier applies such deposit as consideration. The authority found that there is no provision in the bye laws whereby the balance amount of the Sinking Fund will be refunded to the members after utilizing the same in future. Thus the moot question before the authority was whether the amount collected is towards

advance for supply of goods or services or deposit. The amounts that are not returnable can be termed as advances. In the instant case the applicant receives the payment first and hence in terms of section 13(2) (a) the time of supply gets attracted on receipt of amount. Therefore the said amount is liable to GST as they are advances towards future supply of services but not deposit.

Comment: The above ruling has opened a Pandora's Box again with respect to taxability of Sinking Fund and Time of Supply thereof. The amounts collected towards Corpus / Sinking Fund do not form part of consideration towards supply of services at the time of collection and is not liable to GST, at the time of collection. However the amounts so utilized for provision of service are liable to tax at the time of actual supply of service and the time of supply has to be determined in terms of Section 13 of the CGST Act 2017. ***[M/s Vaishnavi Splendour Home Owners Welfare Association-Karnataka AAR]***

2. Whether the service of supply, erection, commissioning, and installation of waste-water treatment plant followed by operation and maintenance of such plant attracts rate of 12% of GST in terms of notification No. 11/20217 Central Tax(rate) dated: 28.06.2017?

Held: Yes

In case of ***M/s Arvind Envisol Limited- AAR Karnataka*****,** the applicant is awarded a contract by M/s Karnataka Power Corporation Limited (KPCL) for supply, erection, commissioning and installation of a waste-water treatment plant (ZLD Plant) followed by its operation and maintenance for a period of 5 years. The applicant has to carry out the work as detailed in the letter of award issued by KPCL.

The applicant contended that in the instant case they are supplying the goods for erection of ZLD Plant along with the services of installation, erection, commissioning of the said plant including operation and maintenance plant for 5 years after handing over ZLD plant to KPCL. Hence supply of materials along with provision of services is naturally bundled in the ordinary course. Thus they are supplying combination of goods and services for erection of ZLD plant and satisfy the condition of 'composite supply' u/s 2(30). Further the KPCL is a wholly owned subsidiary of Govt. of Karnataka and thus qualifies to be a Government entity.

The authority examined the matter in the light of definition of provisions of section 2(30), Section 7(1) (d) and section 2(119) of the CGST Act and held that the applicant has undertaken erection, installation, commissioning of the ZLD plant which is permanently fastened to earth and hence the ZLD plant

becomes immovable property. Construction, supply of relevant goods, assembly, commissioning of such immovable structure qualifies as composite supply of 'works contract' transaction. Also, KPCL is established by the Govt. of Karnataka with 90% or more participation by way of equity or control, to carry out a function entrusted by the State Govt.

Thus the said activities are classifiable under SAC 9954 and liable to CGST @6% and KGST @6% in terms of entry No. 3(iii) of the Notification 11/2017-Central Tax (Rate) dated: 28.06.2017 as amended by Notification 20/2017-Central Tax (Rate) dated 22.08.2017 and Notification 31/2017-Central Tax (Rate) dated: 13.10.2017.

3. Whether 'supervisory charges' charged towards supervision of loading , transportation and unloading of agricultural produce like Rice, Wheat, etc. by handling and transportation contractor is chargeable to tax under CGST/KGST ? If yes, at what is the applicable rate of tax and the HSN /SAC code applicable thereto?

Held: Yes @ 18% under SAC 9997 covered by entry serial number 35 of NN-11/2017 CT(R)

In case of ***M/s Karnataka State Warehousing Corporation -AAR Karnataka*** the applicant is a registered person under GST law. They are a State Govt. undertaking wherein Central Warehousing Corporation and Govt. of Karnataka are shareholders in equal proportion. The applicant provides "Storage and Warehousing" services to the depositors such as FCI, for storing the agricultural produce. The applicant, at the request of FCI, undertakes the handling and transportation of the goods to be warehoused or to be removed through Handling and Transport (H&T) contractors and claims the actual charges plus 8% of the said charges (supervision charges) for having supervised the said H&T work. So they need clarification about taxability of such Supervisory charges.

The applicant contends that supervisory charges would fall under the heading 998619 "Other support services to agriculture, hunting , forestry, and fishing " or under SAC 996799 "Other supporting transport service n.e.c." or under the SAC 999799 "Other services n.e.c." and accordingly would be liable to tax @9% CGST and 9% KGST or @18% IGST.

The authority examined the matter in the light of the copy of order, letter issued by the FCI, Section 15 of the CGST Act and Rule 33 of the CGST Rules, 2017. In terms of the documents furnished, the FCI clarified that applicant can't be a pure agent as there is no contractual agreement between them. However, the authority found that the letter issued by the FCI contains

all the ingredients required for a contract and hence the said letter is nothing but contractual agreement between applicant and FCI whereby the applicant is acting as a "pure agent" of FCI. Further the applicant procures the services of H&T contractors for and on behalf of FCI and charges actual separately in the invoice along with the supervisory charges separately. Thus the applicant is indubitably is pure agent of the recipient FCI. Further in the instant case, the services provided by the applicant i.e supervision charges are squarely covered under other services n.e.c. and the supervisory services are squarely covered under other services n.e.c. and thus are exigible to tax @9% CGST and 9% KGST or @18% IGST on the value equivalent to 8% of the sum of actual amount paid to H & T contractors in terms of section 15 of the CGST Act,2017.

4. Whether the amount recovered from the employees towards provision of parking would be deemed as a 'supply of service' by the applicant employer to its employees and whether the Company is acting as a 'pure agent' of the employees while procuring such services?

Held: Yes but as pure agent only.

In case of ***M/s Ion Trading India Private Ltd -AAAR, Uttar Pradesh***, appellant aggrieved by the order of AAR filed a petition before the AAAR. The AAR has issued no rulings on the questions asked in absence of requisite documents. The facts of the case is that the appellant is a private limited company, wholly owned subsidiary of M/s ION Trading UK Limited and engaged in the business of software development which is exported to the overseas company. The appellant entered into a rent agreement with M/s Shantiniketan Properties Private Limited (Building Authority in short) for renting of office premises including certain number of free car parking spaces and certain number of parking spaces on payment of agreed rent per car parking space per month. The appellant bears part of the lease charges and the balance amount is equally recovered from all the employees using the parking spaces depending on whether the employee uses the parking space for four-wheeler parking or for two-wheeler parking. The appellant does not claim input tax credit of the lease charges paid to the Building Authority.

The appellant contends that facilitation of parking spaces between its employees and Building Authority does not amount to supply of services as per the applicable provisions of Central Goods and Services Tax Act, 2017 and Uttar Pradesh Goods and Services Act, 2017. Under GST law, due to reason that for an activity to qualify as supply, it is required to be made in the course or furtherance of business. But the appellant is engaged in the business of

development and export of software to the Overseas Company. The appellant relied upon the Advance Ruling pronounced by the Maharashtra AAR, in case of ***M/s. Posco India Pune Processing Center Private Limited*****,** wherein it was held that that "*the applicant is of parents' health insurance expenses from employee does not amount to 'supply of service' under Section 7 of the CGST Act, 2017."*It was also contended that they are acting as a "pure agent" only and thus the value of supply shall be NIL.

The authority first examined the matter in the light of definition 'Supply' under section 7 and held that the activity in question, provided by the appellant, is squarely falls under the Schedule II i.e. "Activities to be treated as Supply of Goods or supply of Service" of the CGST Act, 2017.Further in respect of "pure agent" the authority found that the conditions enumerated under rule 33 of the CGST rules are fully satisfied by the appellant in the instant case. Further the authority also observed that AAAR, Maharashtra, in the case of ***M/s DRS Marine Services Pvt. Ltd.***, has observed that, *"Applicant will be acting as a pure agent of RMS in as much as the entire amount received by them as Crews' Salary will be disbursed to the Crew and no amounts from the said receipt will be used by the Applicant for his own interes*t". Thus the value of the services in the present case will be NIL, as the appellant is providing the same in the capacity of a Pure Agent.

5. Whether the expenses incurred by the Company in order to comply with requirements of Corporate Social responsibility (CSR) under the company's Act,2013 (CSR Expense) qualify as being incurred in the course of business and eligible for input tax credit ('ITC') in terms of section 16 of the Central Goods and Services Tax Act,2017 ("CGST Act,2017) ?

Held: Yes

In case of ***M/s Dwarikesh Sugar Industries Limited - AAR Uttar Pradesh*** the applicant is a Company engaged in the business of manufacture and sale of sugar and allied products. In order to comply with the CSR norms in terms of Section 135 of the Companies Act, the Applicant undertakes certain activities and in order to undertake the CSR activities, the Applicant procures various goods and services on which GST is charged by the supplier. The applicant contends that the activities undertaken by them are "in the course of business" as they are compulsorily required to undertake CSR activities to run its business. Further considering the wide definition of term 'business' u/s 2(17) there is no requirement to establish a direct one to one linkage in order to avail ITC. So ITC should available to them and restrictions under section

17(5) will not be applicable.

The authority examined the matter discussing the provisions of section 16(1), 2(17) & 17 of the CGST Act, 2017. Further the provisions of section 135 of the Companies Act, 1956 was also discussed at length.

Further the authority also followed the judgments of Hon'ble CESTAT Mumbai, in the case of ***M/s Essel Propack Ltd. Vs. Commissioner of CGST, Bhiwandi*** and Hon'ble High Court of Karnataka in case of ***M/s Commissioner of Central Excise, Bangalore Vs. Millipore India (P) Ltd***. The authority observed that any company who meets the criteria for CSR is mandatorily required to incur in CSR activities to be in compliant with the Companies Act, 2013 and non-compliance of these provisions may lead to business disruptions. So CSR expenses are necessarily in the course of business.

As regards the restrictions under section 17(5)(h) the authority found that the term 'gift' should not be min-interpreted in the context of CSR activities. A clear distinction needs to be drawn between goods given as 'gift' and those provided /supplied as a part of CSR activities. While the former is voluntary and occasional, the later is obligatory and regular in nature. So CSR expenses/ distribution of goods cannot be termed as 'gift'. Also, with regards to ITC on the goods and services used in construction of school building by the applicant which is not capitalized in the books, the authority found that provisions of sections 17(5) (c) and 17(5) (d) are applicable only to the extent of capitalization. In this context the decision of ***AAR Rajasthan in case of Hotel Rambagh Palace Hotels Pvt. Ltd.*** was also discussed and relied upon.

Note: There is/are some conflicting ruling (s) as well in respect of availability of ITC on CSR expenses. So this ruling is again going to raise a debate on the topic. Reference can be made to the case of ***M/s Polycab Wires Pvt. Ltd. – AAR Kerala***

6. Whether the subsidized shared transport facility provided to employees in terms of employment contract through third party vendors, would be constructed as "Supply of Service" by the company to its employees?

Held: No

In case of ***M/s North Shore Technologies Private Limited -AAR Uttar Pradesh***, the applicant is a private limited company, engaged in the business of software development, consultancy & staff augmentation services from

its business premises. they provide optional subsidized shared transport facility to their employees for to and fro commutation between office and residence. This facility is provided by third party vendor who issues bill in the name of the applicant and charges GST therein. However, the applicant has not availed any input tax credit on the same. As regard to the payment to the third party vendor, towards transport charges, the applicant deducts subsidized amount from the salaries of employees and bear the balance cost itself. Further in terms of provisions of U.P. Dukaan our Vanijya Adhisthan Adhiniyam, 1962 they are required to arrange transport facility for the female workers for onwards and return journey, between work place and home, if the female workers are employed from 7.00 pm to 10.00 am. In view of this, the applicant is providing transport facility to its employees.

The applicant submitted that its core business is of software development and staff augmentation and therefore arrangement of transport facility for employees is not their business activities rather incidental to its core business activities. So such facility is not in the course of or furtherance of business. The applicant further submitted that the Central Board of Indirect Taxes and Customs, vide press release dated 10.07.2017, has clarified that any supply by the employer to employee in terms of contractual agreement entered into between both the parties shall not be subject to GST, provided the employer pays the tax on the facility so procured. Accordingly, the applicant has concluded that the activity of arranging the transport facility for the employees and recovery from employees towards such transport facility, under the terms of the employment contract, cannot be considered as supply of service.

The authority examined the matter discussing the provisions of Section 7 defining the scope of supply and section 2(17) defining the term 'business' and found that the applicant is not retaining any amount collected from the employees towards said transportation charges. Further they are also not in the business of providing transport service. Rather, this is a facility provided to their employees under the obligation of Law of the Land. Accordingly, providing transport facility to its employees cannot said to be in furtherance of business. Reliance was also placed on AAR ruling of ***M/s Ion Trading India Private limited*** by the same authority. So authority held that arranging the transport facility for the employees and recovery from employees towards such transport facility, under the terms of the employment contract, cannot be considered as supply of service in the course of furtherance of business.

incorporated under section 18 of the Warehousing Corporation Act, 1962, which is an Act of Parliament. The equity of the Applicant is held equally by

the Government of Haryana and Central warehousing Corporation, which is established under section 3 of the Warehousing Corporation Act, 1962. The management of the applicant is regulated as per section 20 of the Warehousing Corporation Act, 1962 under which five Directors are nominated by the Central Warehousing Corporation and five Directors are nominated by the Government of Haryana along with a managing Director.

7. Whether exemption provided in Sl. No.54(e) under Heading 9986 of GST Notification No.12/2017-Central Tax (Rate) dt.28.06.2017 applies while rendering services such as loading, unloading, packing, storage or warehousing of imported agriculture products including wheat, to any importer or trader?

Held: Not eligible to importer

In case of ***M/s Karaikal Port Private Limited - AAR Puducherry*****,** the applicant is registered under GST providing services such as loading, unloading, packing, storage or warehousing of Agricultural produce including wheat that are being imported by any importer or trader through the Karaikal Port.

They contended that the service of loading, unloading, packing, storage or warehousing of such agricultural produce, is covered under SI.No.54 (e) under heading 9986 of Notification No. 12/2017 -Central Tax (Rate) dated 28.06.2017. The applicant have cited the case of S.S.S.V.K Cold Storage (P) Ltd., and have stated that AAR, AP in the said case has accepted the applicant's claim of applicability of exemption under Notification No. 12/2017 -Central Tax (Rate) dated 28.06.2017 under Entry No.54(e) for both farmers and also traders. So accordingly the benefit of entry serial number 54(e) should also be available to the trader as well as importer.

The authority observed that on perusal of the Notification No. 12/2017 -Central Tax (Rate) dated 28.06.2017, it is clear that the said services of loading, unloading, packing, storage or warehousing rendered by a taxpayer can be eligible for exemption only if they are rendered for the above purposes as clearly defined in the Notification i.e. only if the services are extended till the products are taken to primary market for disposal and as a corollary any services extended beyond the stage of primary market are not eligible for classification under the Service Accounting Code 9986 and hence cannot be considered for exemption under the said Notification. Further the term Primary Markets in common parlance generally means and include as a platform or a place, like a mandi, where the farmers are directly selling to the buyers and these are located in rural and interior areas and serve as focal points to a great majority of the farmers. Further on perusal of the agreement entered

into between the applicant – supplier of services and the recipient of service it is very clear that the applicant is providing the services of loading, unloading, packing, storage or warehousing in respect of the 'wheat' which is procured from the farmers from the foreign country and after getting imported into India at Karaikal Port is destined to importer's factory for further processing and it is not destined to the primary market as required for the services to be classified under sl. No. 54(e) of Heading 9986 of the said exemption Notification. Therefore, the said services rendered by the applicant in the instant case are not eligible for the exemption under the said Notification. Reference was also made to the ruling by ***West Bengal AAR*** in case of ***T.P. Roy Chowdhury & Company Pvt. Ltd*** wherein the benefit of entry 54(e) was denied in case of import of yellow peas.

8. Whether services relating to lease for mining and extracting merit classification under heading 9973 as "Licensing services for right to use minerals including its exploration and evaluation" attracting 18% GST?

Held: Yes

In case of ***M/s Ajay Kumar Singh - AAR Uttar Pradesh*****,** the applicant is engaged in the business of sand mining and have been granted mining lease for extraction of sand at Basti District. The said product is classifiable under tariff heading 2505, leviable to GST @5%. During the lease period of five years the applicant has to pay lease rent as per mutually agreed terms and conditions. The applicant sought ruling on the question whether service provided by the Government of Uttar Pradesh to M/s Ajay Kumar Singh in accordance with the Notification No. 11/2017-CT (Rate) dated 28.06.2017 can be classified under Chapter number 9973 as "Licensing services for the right to use minerals including its exploration and evolution" or any other service under the said chapter.

The authority considered the matter and observed that Government provides license to various companies for exploration of natural resources. For this, the licensee company is required to pay the consideration to the Government in the form of annual licensing fee, lease charge, royalty, dead rent etc. In the State of Uttar Pradesh the mining lease is governed by the U.P. Minor Minerals (Concession) Rules, 1963. Rule 13 of the said Rules deals with "Security Deposit", Rule 21 deals "Royalty" and Rule 22 deals "Dead Rent". This activity of payment of lease charge/dead rent/royalty is towards the supply of

service i.e. Licensing service for the right to use minerals including exploration and evolution, wherein the Government of Uttar Pradesh is supplier and the applicant is recipient. The liability of payment of GST liability on the amount of royalty paid to the Government is on the Service recipient i.e. the applicant in the instant case, in terms of Sl. No. 5 of Notification No. 13/2017-Central Tax (Rate) dated 28-06-2017.

With regards to classification of services the authority referred Explanatory notes to the scheme of classification of Service. The authority observed that the applicant has been awarded with a lease of the area specified in the lease agreement and conferred the right to extract the minerals lying underneath for appropriation. In such a case of mining lease service granted by the Govt., on payment of royalty as applicable, there is transfer of right to exploit the minerals lying under the lease hold area and to appropriate the exploit. Hence the services received by the applicant from the State Govt. merits classification under the head "Licensing services for right to use minerals including its exploration and evaluation" at serial number 257, Heading 9973, Group 99733.

Further in respect of rate of tax the authority referred entry serial number 17 of NN-11/2017 CT(R) dated: 28.06.2017 amended by NN-31/2017-CT (R) dated: 13.10.2017 and further amended by NN -27/2018 –CT (R) dated: 31.12.2018 along with the minutes of the 31st GST Council meeting. The authority found that the rate of GST applicable on lease of goods may have been prescribed as the rate of GST applicable to supply of like goods involving transfer of title over the goods, but the rate of GST prescribed for lease of goods can't be made applicable for leasing of mining area conferring the right to extract and appropriate the minerals. The lease by Govt. not being a lease of any goods, the conditional rate of tax applicable to sale of like goods cannot be imported for prescribing the rate of GST applicable to leasing of mining area. Further the authority also referred the ruling of ***Rajasthan AAR M/s Aravali Polyart (P) Ltd.*** which was further upheld by the AAAR andtax rate @18% was decided. Similar was the position in case of ***M/s Penguin Trading And Agencies Limited*** which was decided by AAAR, Odhisha.

*****

ADJUDICATION UNDER GST

Adv. M.M. Bhonde

It is a normal practice in profession of law to ascertain the dictionary meaning of any term to understand the basic meaning. The definition of a term in respective Act helps us to understand the meaning intended to be used in understanding the content of the sections of the Act.

The Oxford Dictionary meaning of the term "Adjudication" is acting as a judge in Court or to decide judicially regarding a claim. Use of words Judge and Judicially have fastened great responsibility to the process of adjudication.

In order to make the process of adjudication lawful and binding, it is paramount that the person doing adjudication has been delegated with the power by way of notification issued under appropriate section.

Since the title of the writeup is adjudication under GST, it would be necessary to ascertain the meaning assigned to the term under GST law. Unfortunately, the CGST Act has not defined "Adjudication" but Sec. 2(4) of the CGST Act defined the term "Adjudicating Authority" means the authority authorized to pass the order or decision under the Act but excluded CBIC Board, Revisional Authority, Advance Ruling Authority, Appellate Authorities, Tribunals and the Authority appointed to decide the matters relating to anti-profiteering.

After considering these exclusions one can ascertain that the adjudicating authority means the first fact finding authority. Introduction of the definition of the term "Assessment" in section 2(11) of the CGST Act separately seems to differentiate between Adjudication and Assessment. Under the circumstances it is necessary to refer other laws and/or judicial interpretation to understand the scope of the term "Adjudication".

Under the union laws of indirect taxes, the Adjudications seem to have been assigned significant role to determine the classifications, valuation, refund claims and to create liability to pay the taxes. The adjudicating authorities are quasi-judicial authorities and Adjudication is quasi-judicial process and the rules of natural justice needs to be followed strictly to complete the proceedings. As per the provisions made in relevant sections of Finance Act following were the powers of Adjudication Authority:

1) Demand of service tax and its recovery Sec. 73
2) Rectifications of mistake by amending own orders Sec. 74
3) Imposition of penalty Sec. 83A

4) Refund of services tax and interest Sec. 11B of Central Excise Act.

Notifications issued under the Finance Act and the circulars used to determine the scope, powers, restrictions of Adjudication Authority. Under CPC 1908 also adjudication has prime role to play while issuing the decree: -

1. There should be an adjudication in a suit.

2. The adjudication should result in a formal expression which is exclusive.

3. The adjudication should determine the rights of the parties with regards to any matter of controversy.

Thus, the adjudication has imperative role to play in judicial process. There are number of judicial pronouncements to regulate adjudication process and to restrict the adjudication powers. Those are as under: -

1. TNS India Pvt. Ltd. v/s CCE, Bangalore (2009) 14 STR 239; (2009) 18 STT (cestat, Bangalore), it was held that since fundamental principal of law is that adjudication has to be within four corners of allegation made in show cause notice, and any findings given beyond terms of show cause notice will be hit by principles of natural justice, there was sufficient reason for assessee in making submissions, and order was to be set aside.

2. Ganesh Polytex Ltd. V/s Union of India (2011) 264 ELT 35(Allahabad), it was held that reasonable time may be given for adjudication to take place. Issue of order one day after the SCN has been held to bad.

3. Rungta Projects Ltd. V/s CCE, Allahabad 2011 (24) STR 495 (Cestat, Delhi), it was held that adjudication order was non-speaking order and discussion in order was just reproduction of show cause notice and submission of assessee. Therefore, it needed reconsideration by adjudicating authority.

4. Rameshchandra C Patel V/s Commissioner of Service Tax, Ahmedabad 2012(25) STR 471 (Cestat, Delhi), it was held that Commissioner (Appeals) simply agreed with view of adjudication authority and found that assessee had willfully suppressed facts of service and assessee failed to pay service tax but there was no discussion about liability of impugned service to tax. So, such order was held as non-sustainable.

5. Delta Consultants V/s CST, Delhi (2012) 27 STR 44 (Cestat, Delhi), it was held that law does not approve an abrupt conclusion simply stating the provisions of law in the adjudication order and law which was applicable should be clearly brought to test the material facts governing the issue and appellant should be exposed for rebuttal during fresh adjudication.

6. Shree Renuka Sugars Ltd V/s CCE, Mangalore (2013) 293 ELT

616(Cestat, Bangalore), it was held that adjudicating proceedings were to be based on evidence relied upon in show cause notice and adjudicating order could not go beyond those evidence.

7. Jost's Engg. Co. Ltd v/s Union of India (2013) 40STT 327 (Cestat, Ahmedabad), it was held that the issue whether assessees was engaged in provision of taxable service, would have to be determined on basis of facts and after an adjudicating in pursuance of a notice to show cause, hence, it could not be decided on basis of affidavits in a writ petition.

8. Bestilo Packaging Pvt. Ltd v/s CCE, Chandigarh 2012 (25) STR 440 (Cestat, Delhi), it was held that adjudication order cannot be based only on audit observation which were basis to issue show cause notice when the authority fails to examine the issue independently.

If you go through various judicial decisions as quoted and unquoted one will realize that the power of adjudication is not unrestricted and unreigned. Rather it needs to be exercised within four corners of law i.e. Natural Justice, Equity, Good Conscience and Reasonable interpretation of statutes. In order to defeat unnatural process of adjudication one needs to understand and the importance of four ingredients as under.

A. Natural justice

Literal meaning of these words is justice as per nature. But in legal terms it has different connotation, and it implies opportunity of being heard and passing the orders based on the facts and law argued during hearing to which reference and cognizance need to be made. Further the order so passed shall manifest that findings of the authority passing the order based on such reference. In absence of it, would amount to violation of principle of natural.

B. Equity

The dictionary meaning of Equity is quality of being fair and impartial. As per the jurisprudence while enacting the taxation statutes there is limited scope to employ the principle of equity but while implementing the enacted laws the principle of equity holds the ground to achieve the desired purpose. Unfortunately, it does not seem to happen in day to day profession may be due to various known and unknown reasons.

Any trial shall be under fair and impartial atmosphere. If any office has been under pressure of any instruction of higher authority, then such proceedings can not be said to be fair and impartial.

C. Good Conscience

The dictionary meaning of the term conscience is person's moral sense of right or wrong. Dictionary meaning has lot of relation with the behavior of the authority who is exercising the powers. While applying this term to taxation statute it would relate to the mental condition of the officer to rely on the evidence submitted by the taxpayer in support of the claims of deductions, reduction, exemption and so on. If the authority is satisfied with genuiness of the claim made by the taxpayers but still denies allowing the same, then it would be against the principle of Good Conscience.

Even though it would be difficult for judge to decide absence of Good Conscience but can draw the inference of absence of Good Conscience based on weak or non-argument of the authority against the claim of the taxpayer.

D. Reasonable interpretation of statute

Statute is enacted to achieve certain objects and necessary efforts are made to transpire the object while drafting section or related rule. The assessing authority shall act according to the mandate of the section. In other words, law implementing authority shall provide reasonable interpretation to the section and shall not make artificial effort to offer the meaning to the section or rule so that intended relief will be denied to the taxpayer. For example, rule 53(6) provides that if receipts on account of sale are less than fifty percent of total receipts then the dealer has been entitled to claim the set-off on corresponding purchases. But rule 54(h) does not allow to claim the set-off on erection of immovable property.

Whereas rule 55B clearly states that rule 53(6) and rule 54(g) and (h) are not applicable to SEZ unit and the developers in processing area of special Economic Zone. But in one case while disallowing the set-off eligible to software developer in SEZ overlooked this provision and denied the claim of set-off applying the provision of Sec. 53(6) and denied the set-off u/r 54(g) for erecting business premises. Further the concerned authority denied the claim of set*-off under relevant rules on the grounds that the dealer engaged in developing software is the service provider and therefore will not be covered by the definition "dealer". This type of interpretation would be against the principles of reasonable interpretation of statutes.

Assessment and Adjudication

The tax professional practicing in sales tax laws are familiar with assessment procedure. Assessment is very comprehensive and detail procedure which involves the redermining the TO of sales and purchases and redetermination of tax liability based on the documents and papers submitted by the dealers in support of claims of deductions. The notice normally issued under assessment speaks of verification of the returns filed by the dealer without identifying specific area of enquiry. In

rare cases SCN might be issued but at concluding stage of assessment.

Whereas in case of Adjudication the SCN is issued at the initial stage only specifying the issue of misclassification, claiming ITC in excess or not available to the claimant persons, concealment of value of transaction liable to tax and so on. Thus, adjudication proceedings are initiated with the assumption of existence of irregularity or evasion. Adjudication proceedings focused on specific item and to be dealt on the said issue only. Any addition to the existing issue would demand issue of fresh SCN. Further adjudication in respect of SCN shall not be mechanical but after adducing to the evidence gathered by the authority issuing SCN. The concerned authority shall provide necessary cognizance to the arguments made by the taxpayers by making appropriate comments on the argument made or documents submitted by the taxpayers.

IBA and Adjudication

There is little similarity between Issue Based Audit proceedings and Adjudication proceedings IBA also focuses on specific issue based on the returns and VAT Audit report. But the nature and scope of the proceeding are different because the findings of IBA are restricted to particular year and limited to the information submitted in the return or VAT Audit report. Whereas Adjudication relates to the issue gathered from the source outside the returns and would involve detailed procedure.

The adjudication proceedings have close relevance with the proceedings contemplated u/s 23(5) or u/s 23(6) which aims to focus on the transaction wherein the Assessing Authority has been convinced or has reason to believe that the person against whom notice has been issued has sought to evade the tax by resorting to claiming excess set-off, concealment of turnover or by furnishing inaccurate particulars of turnover but SCN under adjudication attempts to provide one opportunity to prove the facts against the findings made in the notice. Failure of the taxpayer to respond strong would compel

the authority to draw the inference of excess liability and accordingly proceedings would be finalized raising additional demand.

We, tax professionals practicing under MVAT Act need to develop the professional habit to learn the basics of Adjudication to counter the unfair allegations of the authorities by understanding the law subject to which notices would be issued and the procedure that would be followed.

*****

HOW TO HANDLE GST COMPLIANCES IN THE CASE OF DEATH OF SOLE PROPRIETOR

CA Poorvi Choudhary

No one has ever imagine death but one cannot escape from the consequences that the person's loved ones or family might face. Have you ever imagined if a person who is registered under GST and running a business as a sole proprietor suddenly dies, then what steps needs to be taken by his loved ones or legal heirs and what are the implications of GST over it. So let's begin with the GST implications in case of Death of Sole Proprietor. There are two situations arises in case of death of sole proprietor of a business which is registered under Goods & Service Tax Act, 2017 :

I. Discontinuing of Business.

II. Continuing of Business by legal representative/ legal heir of deceased proprietor.

Let's discuss one by one both the situations and GST implications under both the circumstances. We need to understand what steps would be taken by the legal heirs of such deceased sold proprietor.

I. GST implications in case of Discontinuing of Business: *In this situation if the legal heir/legal representative/successor of deceased person do not intend to continue the business, even then he will have some compliances under GST law which he have to fulfil or complied with GST law. Let's discuss each of them as given hereunder:*

i. Get GST Credentials :

- *In case GST Log in credential is available , then the legal heir needs to visit www.gst.gov.in and navigate the following path- services tab > returns > track return status, to check the current return filing status of the deceased proprietor.*
- *In case GST Log in credential is not available, then the legal heir needs to visit www.gst.gov.in and go to the tab Search as taxpayer. There you would need to key in the GSTIN and you will get the details of the jurisdiction and also the filing status.*

ii. Change in Authorized Signatory : *Before applying for cancellation of registration, the legal heir need to update his contact details and add himself as authorized signatory for such GSTIN. The legal heir needs to arrange the following docs for change in authorized signatory for GSTIN of deceased person.*

- Death Certificate / Succession Certificate
- Identity Proof of the deceased
- Identity Proof of the legal heir which will prove the relationship status with the deceased
- GST Certificate of the deceased
- Return filing status (as presented above)

Once the above documents are arranged the legal heir can visit the Proper Officer for the change of the authorised signatory. On verification of the same, Proper Officer will change the authorised signatory and send a temporary link for updating of details. Once the signatory has been changed then the process of cancellation of registration can be initiated.

iii. Filing of Returns: Before proceeding further for the cancellation of registration of the deceased proprietor, it is the first liability of legal heir/ legal representative/successor of deceased person to file all the pending GST returns after the death of proprietor and discharge the tax liability for the tax period during which the proprietor is died. It may be GSTR-1, GSTR-3B, GSTR 4, GSTR 4A, GSTR-9, GSTR-9A, GSTR-9C etc. Otherwise it may attract late fee, interest, penalty and prosecution against the legal heir/legal representative/successor of deceased person.

iv. Liabilities Outstanding at the Time of Death or Before Death of Proprietor : Where a person, liable to pay tax, interest or penalty under this Act, dies, then the legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death. Any amount which is payable by the deceased under the ACT or Rules made therein would be added to the output tax payable in the final return Form GST RET 10 if not paid at the time of the cancellation application.

v. Refund at the Time of Death or Before Death of Proprietor : There might be a situation where refund is available due to export or excess payment of tax etc. In this scenario refund could be from either Electronic credit ledger or Electronic Cash Ledger.

- Electronic Credit Ledger : The balance of electronic credit ledger can be adjusted against tax payable under this act and rules made therein but refund of ITC as per section 54 is not possible except it is a case of refund as a result of Inverted Duty Structure and Export

with or without payment of taxes. Balance ITC cannot be adjusted against Interest, Penalty, Fines, Late Fees or any other amount payable under this act and rules made therein

- Electronic Cash Ledger :The balance of electronic cash ledger can be adjusted against tax Interest, Penalty, Fines, Late Fees or any other amount payable under this act and rules made therein and can be transferred by PMT 09 if not available in the particular head. However, refund of the remaining cash balance as per section 54 can be made but the same need to be claimed as excess cash balance in electronic cash ledger.

vi. Cancellation of Registration & Payment of Tax on Available Stock: After that legal heir can apply for cancellation of the said GST registration. As per Section 29(1) of the act, the proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration as per the law prescribed under the CGST Act, 2017. However, As per Rule 20, the application should be submitted within thirty days of the occurrence of the event warranting cancellation, herein due to the death of the proprietor.

Further, as per section 29(5) of the act every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed. In short, for input tax in respect of inputs held in stock and inputs contained in semi- finished or finished goods held in stock, it is computed on a proportionate basis based on the higher of two:

- Corresponding invoices on which credit has been availed on such inputs; or
- Output tax payable on such goods

However, in case of input contained capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

i.e. It is computed on a proportionate basis based on the higher of two:

- ITC involved in the remaining useful life in months of the capital goods taking useful life as 5 years; or
- Tax on the Transaction Value

vii. Filing of Final Return : After filing application of cancellation and payment of all dues, legal heir will receive cancellation order issued by respective authority. Once the cancellation order is received, the legal heir is required to file the final return which is GSTR 10 electronically through the common portal. The final return is required to filed within 3 months of Date of Cancellation or Date of order of Cancellation, whichever is later.

II. GST Implications in case of Continuing of Business by Legal representative/ legal heir of Deceased Proprietor: *If the business will be continuing by the successor of deceased proprietor then he has to comply with some GST provisions. Below are some steps which is to be taken by the successor of proprietor just after the death of the Proprietor to taken up the business :*

i. Submit Death Certificate : *In case of Death of sole proprietor, Legal heir has to visit office of the Proper Officer (Jurisdiction Officer) and submit the Death Certificate of the sole proprietor along with the Succession Certificate before the Proper Officer as documentary evidence.*

ii. Add himself as Authorized Signatory : *Proper Officer will add legal heir as the authorized signatory on the GST Portal.*

iii. In case of minor legal heir : *In case the successor is minor, he cannot be added as an authorized signatory. In such cases, minor successor needs to be represented by his legal/ natural / testamentary (appointed by will) guardian. The legal guardian needs to be appointed or nominated by the competent authority (Normally District Judge). Legal guardian can take decisions on behalf of minor legal heir/ successor and he can also appoint authorized signatory for this purpose.*

iv. Application for Cancellation : *Legal heir or his/ her authorized signatory has to submit the application for cancellation for the old GSTIN of deceased person by selecting the "Death of proprietor" as reason of Cancellation of Registration and attach sufficient proof. The reason of cancellation is that the law also required to the*

transferee or successor to obtain new registration as the GST is PAN based registration and the transferee or successor have to obtain registration under his own PAN. Section 29(1) of the act says that the proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration as per the law prescribed under the CGST Act, 2017.

v. ***New Registration by Transferee/Successor :*** *Legal heir has to apply for the fresh registration to taken up that business as continuing business in his name. As per the provisions of Section 22(3) of the act "Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession". When the legal heir decided to continue with the business of the deceased then he needs to get himself registered. He is liable to be registered with effect from the date of such succession, where a business is transferred for any reasons including death of the proprietor. He need to file electronically FORM GST REG-01 stating the reasons to obtain registration as "death of the proprietor".*

vi. ***Transfer of ITC :*** *IF there is balance in either Electronic Cash ledger or Electronic Credit Ledger then legal heir can get that balance. As per Section 18(3) of CGST Act-*

"Where there is a change in the constitution of a registered person on account of the sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed."

Therefore, the transfer of ITC of the deceased can be done only when the legal heir is ready to accept the liabilities of the deceased i.e both the sundry creditors and sundry debtors and all other liabilities created by the deceased. Let's discuss over the manner of transfer of ITC:

- ***Manner of Transfer of ITC from Electronic Ledger :*** *Rule 41 of CGST Rules prescribed the manner of transfer of input tax credit*

from one electronic credit ledger to another electronic credit ledger which is described in simple language as follows:

a) A registered person shall, in the event of a sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of the business for any reason, file FORM GST ITC- 02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.

b) The transferor shall also submit a copy of a certificate issued by a practising chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

c) The transferee shall accept the details so furnished by the transferor at common portal in FORM GST ITC-02 and that unutilised credit shall be credited to his electronic credit ledger of transferee.

d) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

But it is also noteworthy that this procedure is to be followed if there is any unutilised credit is available in the electronic credit ledger of deceased person. If there is no ITC available in the electronic credit ledger then no need to file form GST ITC-02 by the transferor or transferee.

- ***Manner of Transfer of Cash from Electronic Cash Ledger**: At first, the un-utilized electronic cash balance of the deceased can be adjusted against Interest, Penalty, Fines, Late Fees or any other amount payable under this act and rules made therein. Thereafter if any cash remains as closing balance in the electronic cash ledger then it can be claimed as refund u/s 54, as "excess cash balance in electronic cash ledger ".*

***Receipt of Show Cause Notice :** There might be a case where legal heir gets notice in respect to the GST registration of deceased proprietor. The notice can be on the ground of payment of tax, interest or penalty. Below are the situations where a legal heir get show cause notice:*

- ***SCN in relation to short or non-payment, short or non-deduction of tax :*** *In case the legal heir received any SCN in relation to short or non-payment, short or non-deduction of tax, ITC claimed in excess over the limits or claimed wrongly both for reasons other than fraud (u/s 73) and reasons relating to fraud, wilful misrepresentation of facts or suppression of the facts (u/s 74) he would need to submit the necessary documents and informations against the SCN. If it is ascertained that tax is payable and he does not want to prefer appeal, then the same has to be paid by the legal heir as per the following provision.*

  Section 85(1) of CGST Act 2017 states that - Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined

- **SCN in relation to Demand for tax, interest or penalty for earlier business :** If the legal heir who is continuing the business of the deceased receives a Demand for tax, interest or penalty for earlier business then Section 93(1) of CGST Act, 2017 states that - Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

  Therefore in this case whether the liability is determined before or after his death the legal representative or any other person continuing the business will have to pay such liability.

*****

NO REPRESSIVE ACTION FOR ANY CLAIM BEYOND THE RESOLUTION PLAN APPROVED BY ADJUDICATING AUTHORITY UNDER IBC LAW

Adv. Mukul Gupta

The Hon'ble Supreme Court on 13th April 2021 has given a landmark judgement in the leading case of **M/s Ghanashyam Mishra and Sons Private Limited Vs Edelweiss Asset Reconstruction Company Limited** with the bunch of matters including the matter of **M/s Tata Steel BSL Ltd, Jharkhand** wherein Hon'ble Supreme Court has emphatically said that *'No Proceeding Can Be Initiated in respect of Claims which are Not Part of Resolution Plan'*

The following two relevant questions were addressed by the Supreme Court :-

1. As to whether any creditor including the Central Government, State Government or any local authority is bound by the Resolution Plan once it is approved by an Adjudicating Authority under sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 ?

2. As to whether after approval of resolution plan by the Adjudicating Authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate Debtor, which are not a part of the Resolution Plan approved by the adjudicating authority?

This landmark judgement of the Hon'ble Supreme Court shall certainly resolve the issue unexpected claims much smoothly in favour applicant whose resolution has been validly examined and accepted by the Adjudicating Authority after following due process of IBC law.

On detailed analysis of the relevant facts and the law laid down with respect to this particular issue, the Resolution Applicants would now be saved from the torture and harassment which they might be facing for quite some time due to lack of the approval of the Hon'ble Supreme Court of the otherwise clear IBC law on this aspect.

Further, after clearly answering the above referred two questions as framed by the Hon'ble Court in Para 95 (1) and (3) of the judgement, the Hon'ble Supreme Court have also decided in the specific matter of Ghaziabad petitioner that the four technically adverse contentions of the two Judges of the Hon'ble Allahabad High Court which could have been the possible hurdle, these adverse contentions have also been extensively dealt with by the Supreme Court and decided in favour of the Ghaziabad petitioner/assessee in the light of the principal/ratio of judgement adopted in para 95 (1) and (3). This has eliminated many of the possible doubts or technical impediments.

This landmark judgement of the Hon'ble Supreme Court have paved the way forward so that the new management could re-establish the business of the sick unit without any ambiguity or uncertainty for which Resolution Plan has been accepted by Adjudicating Authority under the IBC law. This judgement has clearly defined the importance of IBC over any other law having power to raise any demand. Now, the entrepreneurs shall be able to decide with much better certainty and clarity to take over any industry/business in trouble for its revival which will certainly help the economy of the country.

Now, this judgement of the Apex Court must be fully understood in the relevant circumstances and context of issues under which either demands had already been created or may likely to be created under any pending proceedings under any of the tax law out of the already adjudicated and finalised Resolution Plan, so that a suitable defence strategy is framed with a clear Notice to all the concerned Authorities.

*****

CAN INDIAN COMPANIES CHOOSE A FOREIGN SEAT OF ARBITRATION?

Ishaan Patkar, Advocate

One of the ever-green sources of controversy in arbitration law are the disputes relating to seat of arbitration and venue of arbitration. These are complicated concepts, but a crude summary can be given here - venue of arbitration means the country where the arbitration is actually carried out in accordance with the agreement of the parties. The seat of arbitration is the country whose courts have supervisory jurisdiction over the validity of the award.

In **PASL Wind Solutions v GE Power Conversion India [Judgment dated 20.04.2021 in Civil Appeal No.1647 of 2021]**, the Hon'ble Supreme Court of India has recently held that two Indian companies can decide that the seat of arbitration will be outside India and that the arbitration will be conducted as per the arbitral law of the other country and the Courts of that other country will have supervisory jurisdiction over the award. This article attempts an analysis of this judgment.

Facts of the case

PASL is a company incorporated under the Companies Act, 1956 with its registered office at Ahmedabad, Gujarat. GE PowerConversion India is a company incorporated under the Companies Act, 1956 with its registered office at Chennai, Tamil Nadu.

Disputes arose between PASL and GE Power Conversion India in relation to certain commercial transactions. In order to resolve these disputes, the parties entered into a settlement agreement dated 23.12.2014. Under clauses 5.1 and 5.2 of the settlement agreement, the respondent agreed to provide certain delta modules along with warranties on these modules for the working of the converter panel. Clause 6 of the settlement agreement contained the dispute resolution clause which reads as follows:

"*6. Governing Law and Settlement of Dispute*

6.1 Any dispute or difference arising out of or relating to this agreement shall be resolved by the Parties in an amicable way. (A minimum of 60 days

shall be used for resolving the dispute in amicable way before same can be referred to arbitration).

6.2 In case no settlement can be reached through negotiations, all disputes, controversies or differences shall be referred to and finally resolved by Arbitration in Zurich in the English language, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, which Rules are deemed to be incorporated by reference into this clause. The Arbitration Award shall be final and binding on both the parties.

6.3. The Agreement (together with any documents referred toherein) constitutes the whole agreement between the Parties and it is hereby expressly declared that no variation and / or amendments hereof be effective unless mutually agreed upon and made in writing."

Disputes again arose between the parties pursuant to the settlement agreement. On 03.07.2017, PASL issued a request for arbitration to the International Chamber of Commerce ["ICC"]. On 18.08.2017, the parties agreed to resolution of disputes by the sole arbitrator appointed by the ICC. It was agreed between the parties, as was reflected in the request for arbitration and in the terms of reference to arbitration, that the substantive law applicable to the dispute would be Indian law.

GE Power Conversion India filed a preliminary application challenging the jurisdiction of the arbitrator on the ground that two Indian parties could not have chosen a foreign seat of arbitration. Importantly, PASL opposed the said application and asserted that there was no bar in law from this being done. By Procedural Order No.3 dated 20.02.2018, the learned sole arbitrator, Mr. Ian Leonard Meakin, dismissed GE Power Conversion India's preliminary application relying on various judgments of the Supreme Court of India. The arbitrator held that Zurich is the seat of the arbitration and the arbitral law of Zurich will therefore govern the arbitral process. This procedural order of Mr. Ian Leonard Meakin was not challenged by either of the parties.

For the actual place of carrying out the arbitration, that is the venue of the arbitration, GE Power Conversion India suggested Mumbai, India as a convenient venue in which to hold arbitration proceedings as costs would be reduced thereby. PASL objected to this suggestion. At the Case Management Conference dated 28.06.2018, the learned arbitrator decided that though the seat is in Zurich, all hearings will be

held in Mumbai, acceding to the application made by GE Power Conversion India in the following terms:

"3. The venue of the hearing shall be Mumbai, India. The seat of the arbitration of course remains Zurich, Switzerland. I am grateful to the Respondent for offering to assist with the organisation of the hearing in India. The consequence of holding the hearing in Mumbai will of course be dealt with in the Award on costs, depending on the outcome. The Tribunal is of the view that it is cost efficient to hold the hearing in India where the parties are based, the Respondent's five witnesses are based, where Respondent's legal team are based and Claimant's co-counsel is based. This means that the Claimant's lead counsel, the Claimant's sole witness and the sole arbitrator."

The final award was issued on 18.04.2019 specifically holding that the seat of arbitration is in Zurich and therefore the Swiss Act will apply to the arbitral process. The award resulted in award of legal costs to GE Power Conversion India, while the claims of PASL against GE Power Conversion India were dismissed.

SincePASL failed to honor the award, GE Power Conversion India initiated enforcement proceedings under sections 47 and 49 of the Arbitration Act before the High Court of Gujarat, within whose jurisdiction the assets of PASL were located. An application was filed by PASL in Small Causes Court, Gujarat under Section 34 of the Arbitration Act for setting aside the award. This was transferred to the Commercial Court but was pending even as on date of the Supreme Court judgment.

The High Court held that the award is a foreign award to which Part II of the Arbitration Act applies and the award is not hit by Section 23 of the Indian Contract Act. It was held that since the seat of arbitration is in Zurich, Switzerland, any appeal against such an award could only be filed in Switzerland as per Swiss law. No such appeal having been filed in Switzerland, the award had attained finality and was ripe for enforcement in India under Part II of the Arbitration Act against Indian assets of PASL.

Findings of the Supreme Court

The dispute as to whether the seat of arbitration was in Zurich or in India was important from two angles:

(i) If the seat was in Zurich, the award had become final since no appeal was filed in Switzerland. However if the seat was in India, then the application filed under Section 34 of the Arbitration Act (similar to an appeal) in India meant that the award had not become final.

(ii) If the seat was in Zurich, Part II of the Arbitration Act applied since it was an "international commercial arbitration". If the seat was in India, Part I of the Arbitration Act applied as if the arbitration was a domestic one.

The Court held that the agreement when it stated that the arbitration is to be resolved "in Zurich", this meant that the seat of the arbitration is in Zurich. The venue of the arbitration was shifted to Mumbai solely for convenience of parties and this was agreed to by both parties. It was argued by PASL that the "closest connection test" should be applied and since India has the closest connection to the transactions at dispute, the seat of the arbitration can only be India. However, the Court held that this test is only to be applied when there is ambiguity as to the seat of arbitration. The "closest connection test" could not override clear language of the arbitration agreement indicating the seat of the arbitration in Zurich.

Since the seat of the arbitration was in Zurich, the Court held that Part I of the Arbitration and Conciliation Act dealing with purely domestic arbitrations cannot apply.It was held that Part II which applies to "International Commercial Arbitrations"applied in this case. GE Power Conversion India is entitled to maintain proceedings under Sections 47 and 49 of the Arbitration Act (which fall in Part II of the Act) on the basis that the award is a foreign award.

The sheet anchor of PASL's argument was that "international commercial arbitration" is defined in Section 2(1)(f) of Part I of the Arbitration Act to mean:

"2(1).

…

(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is-

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country;"

Therefore, according to PASL, an international commercial arbitration as contemplated by Part II of the Act will also mean an arbitration to which at least one of the parties is a foreign party.

The Court held that Part I and Part II are mutually exclusive. Because Part I deals with domestic arbitrations where the seat of the arbitration is in India and Courts of India have jurisdiction to set aside the award, Part I deals with the entire arbitral law relating to such arbitrations upto the stage of setting aside the award by the High Courts. However, Part II essentially deals with an arbitration whose seat is outside India and where foreign Courts have sole jurisdiction to set aside the award. The role of Indian Courts in such a case is limited to enforcing the foreign award qua Indian assets and therefore Part II is limited to enforcement of foreign awards.

It was held therefore that the definition of "international commercial arbitration" used in Part I cannot be used for Part II. The opening part of the definition clause in Section 2 of the Arbitration Act (which fall in Part I) specifically says that it is restricted to Part I. It was further held that the term "international commercial arbitration" is defined in Part I only for limited purpose of ensuring that certain interim reliefs can be applied for in Indian Courts relating to Indian assets while arbitration is going on outside India. This definition therefore could not be used to understand the scope of Part II.

On the question of whether two Indian parties can effectively defeat the Indian substantive law and Indian Arbitration Act by designating a foreign country as the seat of arbitration, it was held that the arbitration law is based on party autonomy and it was upto the parties to decide what should be the seat of arbitration. There is no prohibition, express or implied, in the Arbitration Act or the general law of India against Indian parties designating a foreign country as the seat of their arbitration. It was argued by PASL that this would lead to an infringement of Section 23 of the Indian Contract Act since the public policy of India would be defeated, this contention was negatived by the Court by holding that there was nothing within the public policy of India requiring two Indian parties to designate only India as the seat of arbitration.

It was also argued by PASL that if two Indian parties are allowed to designate a foreign country as the seat of arbitration, then prohibitions in Indian law would be overcome by Indian parties by essentially designating a foreign country as seat of arbitration. As an example, PASL gave the hypothetical of Benami Transactions Act being defeated by applying foreign law to Indian transactions. The Court however held that it is a well settled rule of private international law, recognized in India as well as outside India, that if there is a prohibition in the law of the country where the transaction has taken place, the foreign court will not recognize the transaction. Thus, if a transaction is prohibited by Benami Transactions Actand the transaction has taken place in India, the foreign court will not allow enforcement of such transaction only because the seat of arbitration is outside India. Therefore, there was no cause of worry on this front. It was therefore held that the award in question can be enforced under Part II without any question of Indian law being defeated.

The author submits that this judgment is an illuminating exposition of how a seat of arbitration is to be determined and the concept of party autonomy. It particularly narrows down the public policy concept to allow for more freedom of contract to the parties. Indeed, as the Court itself has stressed in this judgment: "Unnecessary interference with freedom of contract itself may constitute a public policy violation". The author hopes that the Courts keep following this mantra as arbitration law develops in India.

*****

CASE LAWS AND NOTIFICATIONS/ CIRCULARS ON REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

CA Sanjay Ghiya
CA Ashish Ghiya

COMMENTARY ON SECTION-4

Section 4: Application for registration of real estate project

(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;

(b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;

(d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;

(e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;

(f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;

(g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;

(h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any;

(i) the number and areas of garage for sale in the project;

(j) the names and addresses of his real estate agents, if any, for the proposed project;

(k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:—

(A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

(B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;

(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an

architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Explanation. — For the purpose of this clause, the term "schedule bank" means a bank included in the Second Scheduled to the Reserve Bank of India Act, 1934;

(E) that he shall take all the pending approvals on time, from the competent authorities;

(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

(m) such other information and documents as may be prescribed.

(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

COMMENTS

This section lays down the manner in which application for registration of project is to be made to the authority. Also, the list of documents along with information which are to be submitted along with application are listed in this section.The application for the registration will be made by the promoterin prescribed form and manner as the regulations made by Authority. The registration fees payable for the registration of the project will be enumerated in the rules framed by the respective State RERA Authority. All the application for registration of the project shall be submitted on web based online system established by the authority.

Moreover, as per clause (l) sub clause (D) of section 4(2) 70 % of the amount realised from the allottees is to be kept in separate bank account which is a significant provision safeguarding the interest of the allottees. The amount from such separate bank account can be withdrawn for the purpose of construction only after obtaining

certificate from an architect, an engineer and a chartered accountant in practice. Such withdrawal shall be in proportion to percentage of completion of the project. However, the Act is completely silent as to in which manner the percentage of the completion of the construction project is required to be calculated. The formats of the certificates to be obtained are prescribed in the Rajasthan Real Estate Regulatory Authority Regulations, 2017 dated 18.10.2017. These regulations also provide that the chartered accountant issuing the certificate shall not be the statutory auditor. As per these regulations, upon receipt of completion certificate from competent authority, entire balance lying in separate bank account can be withdrawn by promoter.

One important aspect for application of registration is the time period within which the promoter has to complete the project is to be mentioned. All responsibilities and liabilities of promoter will be calculated with respect to this date i.e. expected date of completion.

The promoter has to very carefully mention this date as only one year extension can be granted by the authority that to in force majeure conditions enumerated in the Act. But it will not absolve the promoter from the interest liability that may arise because of extension of the date of completion.

Rule 3 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017, provides for the additional information and documents which are to be furnished by the promoter for registration of project along with those specified in this section.

CASE LAWS

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

CHOURANGI BUILDERS AND DEVELOPERS PVT LTD AND NAGPUR INTEGRATED TOWNSHIP PVT LTD. VS KISHOR N. SHAH & ORS

Appeals are directed against impugned order dated passed by Adjudicating Officer MahaRERA, whereby appellants in both appeals are jointly and severally directed to pay Rs. 25,00,000/- and stamp duty of Rs. 1,83,360/- together with interest at the rate of 10.75% p.a. from the date of payment till the final realization.

Both appellants have filed separate captioned Misc. Applications in their respective appeal and prayed for exemption under Section 43 (5) of RERA from depositing the amount and also prayed for stay to the operation of the impugned order till decision of the appeals.

After considering the submissions of Appellants and on perusing documents on

record, the impugned order including copyof complaint along with other documents submitted by Appellants, point arised for determination is "Whether the appellants are entitled for exemption under Section 43 (5) of RERA? Answer of which came in negative with the Reasons given below:

It is mandate of statute that when the promoter prefers an appeal, it is mandatory to deposit the amount and comply the proviso of Section 43 (5) of RERA for entertaining and hearing the appeal. Deposit is pre-requisite. Section 43 (5) of RERA provides conditional right of appeal. No other option or alternative remedy to replace condition of depositing the amount is provided by statute. Mandatory condition is binding and must be followed. Both appellants being promoters are under obligations and statutory mandate to comply proviso of Section 43 (5) of RERA by depositing the amount as directed by the Tribunal. Appeal cannot be entertained and heard unless compliance of depositing the amount as per Section 43 (5) is made.

Considering the nature of impugned order and the quantum of the amount with interest as per impugned order, authority is of the opinion that each appellant shall deposit 35% of the amount as per impugned order within six weeks from the date of this order.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

SUO MOTO VS RAJASTHAN HOUSING BOARD

The instant case pertains to "Mukhya Mantri Rajya Sahayak Awasiya Karamchari Yojana", situated at Sector 26, Pratap Nagar, Sanganer, Jaipur, of Rajasthan Housing Board, for which a suo moto cognizance was taken by this Authority for issuing an advertisement in the newspapers without mentioning RERA registration number or its website address. A notice was issued to the respondent Board for contravention of section 11 (2) of theRERA, which was duly served on the respondent Board.

The representative on behalf of the Rajasthan Housing Board and has represented that the project is registered with the Rajasthan Real Estate Regulatory Authority and in the advertisement in question, the RERA registration number has been mentioned. However, by inadvertent mistake, the website of the RERA has not been mentioned, for which the respondent Board expresses its apology.

The matter was considered. This Authority accepts the apology expressed by the respondent Board and refrain from imposing any heavy penalty on the respondent. Since the registration number of the project with RERA has been mentioned in the

advertisement, it was concluded that the respondent did not have any deliberate intention of not mentioning the RERA website address and, therefore, a nominal penalty of Rs. 2,000/- is imposed on the respondent Authority.

PUNJAB REAL ESTATE APPELLATE TRIBUNAL

OMAXE CHANDIGARH EXTENSION DEVELOPERS PVT. LTD V/S SANJAY SHARMA &INDU SHARMA

The appeal has been filed against the order by RERA Authority, Punjab whereby the complaint filed by the respondents against the appellant was partly accepted and the appellant was directed to pay interest at highest rate of SBI MLCR plus 2% on the principal amount of Rs. 1, 36, 43,396/- w.e.f. 18.04.2016 till actual delivery of possession of villa to the complainants and further to pay compensation of Rs. 50,000/-.

Respondent/Complainants contended that they made a booking of one villa in project along with cheque of Rs.5, 00,000/-. Since, the complainants wanted to shift from Delhi, so they opted for payment plan i.e. 95% up front and the balance 5% at the time of handing over the possession of the unit and respondent paid an amount of Rs.1, 33, 68,162/- being 95% payment of the total cost, to the appellant against receipt, on the assurance of the promoter that they would hand over the possession of the same within six months i.e. by the end of March 2016. However, complainants were made to sign allotment letter dated 23.12.2015 containing one of the recital that possession of the villa was to be handed over within 18 months from the execution of the allotment letter whereas the promoter/appellant were verbally assured of the possession within the time period of six months and the appellant also obtained occupancy certificate of the villa in question on 02.11.2015. Despite those assurances and even after taking 95% of the total consideration the possession of the villa was not handed over to the complainants/respondents. Since the appellant has not only used the amount deposited by the respondents for their own benefits but also deprived the respondents from the enjoyment of the house in question for such a long period. So they have been rightly burdened with interest and compensation by the learned Adjudicating Officer.

It has been argued by the appellant that the allotment letter was executed between the parties on 23.12.2015 and clause 23(b) of the same provides that possession of the villa was to be handed over within 18+6 months from the execution of the allotment letter and the said period of 24 months expired on 22.12.2017. The

appellant hadalready obtained occupancy certificate of the villa in question on 02.11.2015 and after furnishing the villa, they offered its possession to the respondents on 29.03.2017 and at that time a sum of Rs.9,76,597/- was due towards them. The delay in handing over the possession occurred because complainants had not paid the remaining 5% of the sale amount, despite reminders.

Now, the short question for determination in this appeal is as to whether the appellant was required to hand over the possession of the villa in question within six months of the receipt of 95% of the sale consideration from the respondents, or within period of 18 months, which is extendable by six months more, as per the allotment letter. As stated above, the respondent's paid huge amount of Rs.1, 33, 68,162/- on 17.10.2015 for purchasing the villa in question and at that time no agreement of sale was executed. The allotment letter dated 23.12.2015 was executed after a period of more than two months of the payment of 95% of the sale consideration. It is not disputed that complainants wanted to buy sample villa shown to them but the same was already sold, so respondents agreed to purchase semi built villa, on the assurance of the appellant that they would hand over its possession within six months. Ultimately, the respondents took possession of the Villa in question on 12.05.2019 i.e during the pendency of this appeal. No prudent person would pay such a huge amount for any house, the possession of which would be handed over in 3 years.

So far as the other contention of the learned counsel for the appellant that the respondents have deposited 95% of the sale consideration for availing heavy discount only, is concerned, the same is without any merit as this contention of the learned counsel is not substantiated by any document. There is absolutely no document to show that the respondents have been given any rebate paying 95% amount upfront. So, it is evident that he paid 95% payment upfront on the assurance of the appellant that possession of the villa would be delivered by the end of March, 2016. Appellant despite obtaining occupancy certificate failed to deliver the villa to the respondent within the agreed period, so appellant is in default. Since the appellant not only used the money but also deprived the respondent from enjoyment of the house in question for such a long period. So they have been righty burdened with the interest and compensation by the learned Adjudicating Officer.

For the reasons mentioned above, no merit is found in the present appeal and accordingly the same stands dismissed and the respondents shall be at liberty to

withdraw the amount deposited by the appellant in this appeal subject to theirfurnishing indemnity bond and adequate verification of the same amount.

HARYANA REAL ESTATE APPELLEATE TRIBUNAL, PANCHKULA

ARUN KUMAR GOEL VS M/S. ALPHA CORP DEVELOPMENT PVT. LTD.

The respondent contended that the appellant has filed the complaint for grant of relief of refund along with interest @18% per annum. The appellant has also sought the loss of amount of housing opportunity which is in the shape of compensation. Thus, he contended that the Ld. Authority had no jurisdiction to deal with the complaint. He has also raised certain other objections regarding maintainability of the complaint alleging that the project was complete and even the possession was offered before the enforcement of the Real Estate (Regulation & Development) Act, 2016.

Faced with this situation, appellant contended that as he intends to withdraw from the project and wants refund of the amount deposited by him along with interest and compensation, so the present appeal may be allowed and the complaint may be transferred to the Ld. Adjudicating Officer, Panchkula for fresh decision of the case in accordance with law. Respondent has no objection to this proposal. However, he stated that the respondent should be allowed to raise all the issues raised by it, before the Ld. Adjudicating Officer which should be considered in a judicious manner.

Thus, keeping in view the aforesaid statements at bar, the present appeal is hereby allowed. The impugned order dated 11th April, 2019 passed by the Ld.Authority ishereby set aside and the complaint filed by the appellant stands transferred to the Ld. Adjudicating Officer, Panchkula for adjudication in accordance with law. It is made clear that the parties shall be at liberty to raise all the issues available to them before the Ld. Adjudicating Officer which shall be considered in a judicious manner. It isfurther made clear that the Ld. Adjudicating Officer will decide the matter afresh independently irrespective of the observations of the Ld. Authority in the impugned order.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

SUO MOTO VS THE URBAN IMPROVEMENT TRUST, CHITTORGARH

The instant case pertains to an advertisement issued in the newspaper 'Rajasthan Patrika', Jaipur edition dated 04.09.2019 for sale of farm houses by public auction on 03.10.2019 without obtaining prior registration of the said project, under the

RERA Act, 2016. A notice dated 27.12.2019 was issued to the Secretary, Urban Improvement Trust, Chittorgarh, for violation of section 3 read with section 59 and section 11 (2) read with section 61 of the Act. The Secretary, Urban Improvement Trust in its reply has indicated that the process of registration of the project could not be done because of shortage of staff and requested for time to get the project registered with RERA. The representative of Urban Improvement Trust, Chittorgarh, also pleaded for the same and stated that the registration process is on the way forcompletion.

In view of the fact that even though the Urban Improvement Trust, Chittorgarh has admitted its mistake and agreed to register the project in February, 2020, they have failed to do so in eight months, a nominal penalty ofRs. 10,000/- is imposed on the respondent and the said amount shall be deposited by the Trust with the RERA within 45 days from the date of issue of this order and submit a compliance report to the Authority. The Trust, Chittorgarh is further directed to get its project registered with the Authority within thirty days from the date of issue of this order.

NOTIFICATION

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

No F 1(198) RJ/RERAlGMl20211477 Dated 09.03.2021

Sub: New Online Service of "General Modification" forupdation/correction/ modification in Promoter Profileand Project Details of registered projects

In its effort to make Rajasthan RERA a "No Paper No Footfall"office, the Authority has introduced a 'Do It Yourself' online service forthe promoters to update/correct/ modify their Promoter Profile and the Project Details of their registered projects.

In the recent past, this Authority has commissioned online servicesfor extension of registration, Updation of revised approved maps, changeof the separate bank account, Updation of encumbrances. Andsubmission of Quarterly Progress Reports/ Annual Progress Reports. Lnthis series, the Authority has now launched another online service by the; 'name of 'General Modification' whereby the promoters canupdate/ correct/ modify most of the other project details and promoterdetails, from the comfort of their office, using their dashboard on RERAweb portal. This service has two sections:

(1) Profile Summary

(2) Project Summary

In this context, the following comprehensive directions are herebyissued for the

promoters of registered projects:

1. For seeking extension of estimated finish date of the project, useProject Extension module.
2. For Updation of revised building plans/layout plans of the project and corresponding change of attributes including land cost anddevelopment cost, use Map Revision module.
3. For changing details of the separate bank account maintainedunder section 4(2)(I)(D) of the Act, use RERA Account Changemodule.
4. For Updation of encumbrances on the project, use EncumbranceChange module.
5. For uploading CC, OC, Certificate of insurance and RegistrationCertificate of RWA, use the Documents Upload button provided for each registered project.
6. For submission of quarterly updates, use QPR module.
7. For submission of annual report on statement of accounts of theproject, use APR module.
8. For other Updation/corrections/modifications to be made inProject Details, use General Modification (Project Summary)module. Here, it may be noted that if there has been no revision ofbuilding plans/layout plans, any attributes of the project, includingits land cost and development cost, that are incorrectly shown inProject Details or that undergo some change without any revisionof building plans/ layout plans, those can beupdated/corrected/modified, using this module, without having to go to the Map Revision module.
9. For any Updation/corrections/modifications to be made inPromoter Profile, use General Modification (Profile Summary)module.
10. General Modification online application form is a replica of registration form. So, to make anyUpdation/corrections/modifications, open the relevant section(s)of this form and edit accordingly. As soon as it is submitted, theupdated/corrected/modified details will automatically reflect in theonline Promoter Profile/ Project Details, Needless to say, if anyfalse information is submitted, the promoter shall be liable forpenalty under section 60 of the Real Estate (Regulation andDevelopment) Act, 2016.
11. The item-wise chart annexed herewith shows the respective rightsof the Authority and the promoter to update/correct/modify differentitems of

Promoter Profile and Project Details.

12. As shown in the annexed item-wise chart, there are still someitems of Promoter Profile and Project Details which cannot bemodified or applied for modification online. Till such time theAuthority is able to launch an online service for modification ofthese items, offline applications will continue to be submitted for making any Updation/correction/modification in these items. But nooffline/paper applications will now be accepted forfacility has been provided.

13. A fee of Rs. 5000/- only is to be deposited for making any or all thechanges in Project Details at a time using General Modification(Project Summary) module. Similarly, a fee of Rs. 5000/- only isto be deposited for making any or all the changes in PromoterProfile at a time using General Modification (Profile Summary)module. Here, it may be noted that earlier the promoter had todeposit a fee of Rs. 5,000/- for updating each item (such as projectname, litigation details, plot/khasra no., land cost and development cost, project professional details, etc.). Now, in terms of item No.2 of Authority's order No.1197 dated 12.04.2018, a fee of Rs.5,000/- only will be applicable for each online request (transaction),not for each item updated. This, for example, will mean that if aspart of one online transaction, 10 items of Project Details areupdated at any one time, a total fee of Rs. 5,000/- will be applicable, instead of Rs, 50,000/-. Thus, we hope, this newGeneral Modification module, apart from its convenience and fasts delivery, will come as a big relief to the promoters in terms of feeas well.

14. Therefore, it is expected that the promoters will make good use ofthis new online service of 'General Modification' to ensure timelyUpdation of their Promoter Profile and the Project Details of theirregistered project(s) so that the allotted and the potential buyers get correct updated information at all times. lf there are anypractical difficulties in using this service, Shri Arpit Sancheti, DTPcum-Joint Registrar (Projects) may be contacted on his mobile9829872121, e-mail ID jointregistrar.rera@rajasthan.gov.in

This issues with the approval of Hon'ble Chairman.

*****

COMPUTATION OF INCOME FROM SALARY OF NON RESIDENTS

CA. Paresh Shah, CA. Mitali Gandhi

1. **Introduction**

This is the fourth article in the series of taxation of Non-Residents. In the current article we will cover the provisions of taxation of salary income of a non-resident, understanding the meaning, inclusions, exemptions and deductions from salary income along with taxability, TDS and filing of the tax return under the Income tax Act ,1961(ITA)

In the Presentenvironment it is common for individuals to move Abroad for employment. Thus it is important for the individual to understand his tax liabilities in India.

Article focusses mainly on Provisions of the Taxation of salaries under ITA having impact on special issues affecting the Non Residents

A Non-Resident is liable to tax in India on that income which is derived by him in India. Income is derived by him in India if–

i. It is received in India; or deemed to have been received in India
ii. It accrues or arises in India or is deemed to accrue or arise in India.
   a. The meaning of 'deemed to accrue or arise' of "Salaries"in India is when it is earned in India. (Sec 9(1) (ii)).
   The rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment, shall be regarded as income earned in India.
   Salary is said to be earned in India if it is payable for the services rendered inIndia, this will mean that employment is exercised in India irrespective that employee is Non Resident of India.
   b. In case of a Non Resident where salary is payable by the Government of India to a Citizen of India then it is deemed to accrue or arise in India for the Servicesrendered outside India. Sec 9(1)(iii).

2. **Taxation of Salary**

Section 15 deals with the basis of charge as under.

   a. Salary is chargeable to tax either on a 'due' basis whether paid or not
   b. Any salary, paid or allowed in advance,(though not due)
   c. Any arrears of salary paid or allowed ,not charged to tax in earlier year/s

2.1 Analysis of the Charging Provisions: Interestingly following will emerge from the above

i. Even if the salary is accrued it will be not be taxable until it is due but not received

ii. If salary is earned outside India by a Non Resident i.e.employment is exercised outside India, it may not be taxable in India even if the same is received in India.

iii. Any arrears of salary received for the past services rendered outside India has accrued outside India and hence may not be taxable again on due basis or on the basis of it being received in India even for the person who is Resident of India at the time of it's receipt.

iv. Support to the propositions as above may be found in the case of ***Ranjit Kumar Bose Vs. ITO [(1986) 18 ITD 230 (Calcutta)]*** it was held that as the assessee was a non-resident in service with a foreign employer, the salary income could not have been brought to tax on accrual basis for the simple reason that it accrued outside India. The provisions of section 5(2)(a) are subject to section 15, which, inter alia, says that salary is chargeable to income-tax on due basis irrespective of the fact whether it has been received or not. So, salary income is not liable to be taxed in India on receipt basis under section 15.

v. The Hon'ble Delhi High Court in the case of ***CIT Vs Anant Jain [(2012) 21 taxmann.com 19 (Delhi)*** dealt with a similar matter where the assessee, now 'not ordinarily resident', received retirement benefit / severance / vacation engagement from erstwhile employer in USA on termination of employment. It was held that as the erstwhile employer was based in USA and services were rendered to the erstwhile employer in USA, the said income did not accrue or arise in India and the said amount cannot be taxed in India when the income was received by him even though the status of the assessee during the year in question was that of 'not ordinary resident.

3. **Definition of Salary**

The term 'salary' for the purposes of Income-tax Act, 1961 will include both monetary payments (e.g. basic salary, bonus, commission, allowances etc.) as well as non-monetary facilities (e.g. housing accommodation, medical facility, interest free loans etc.).

i. Salary' under section 17(1), includes the following:

a. Wages
b. any annuity
c. any pension
d. any gratuity
e. any fees, commission, perquisite or profits in lieu of or in addition

to any salary or wages

f. any advance of salary

g. any payment received in respect of any period of leave not availed by him i.e. leave salary or leave encashment

h. Provident Fund: - the portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognized provident fund to the extent it is taxable and - transferred balance in recognized provident fund to the extent it is taxable

i. The contribution made by the Central Government or any other employer in the previous year to the account of an employee under a pension scheme referred to in section 80CCD.

ii. Perquisites

Perquisites are benefits received by a person as a result of his/her official position and are over and above the salary or wages. These fringe benefits or perquisites can be taxable or non-taxable depending upon their nature. Perquisite is defined in the section 17(2) of the Income tax Act as including:

a. Value of rent-free/concessional rent accommodation provided by the employer.

b. Any sum paid by employer in respect of an obligation which was actually payable by the assessee.

c. Value of any benefit/amenity granted free or at concessional rate to specified employees etc.

d. The value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assesssee.

e. The amount of any contribution to an approved superannuation fund, recognised provident fund, in the scheme referred to in sub-section (1) of section 80CCD by the employer in respect of the assessee, to the extent it exceeds seven lakh fifty thousand rupees. Any interest, dividend, or any other sum standing at the credit of the fund or scheme provided the contribution is included in the total income.

f. The value of any other fringe benefit or amenity as may be prescribed.

iii. Allowances

Allowance is defined as a fixed quantity of money or other benefits given regularly in addition to salary for meeting specific requirements of the employees.

As a general rule, all allowances are to be included in the total

income unless specifically exempted.

Allowances can be classified into three categories:-

a. Allowances that are fully taxable
b. Allowances which are exempted for a specific amount
c. Allowance which are fully exempt

The table below gives the illustrative example of such allowances.

Allowances

Fully Taxable	Partly Taxable	Fully Exempt
(i) Entertainment Allowance (ii) Dearness Allowance (iii) Overtime Allowance (iv) Fixed Medical Allowance (v)City Compensatory Allowance (to meet increased cost of living in cities) (vi) Interim Allowance (vii) Servant Allowance (viii) Project Allowance (ix)Tiffin/Lunch/Dinner Allowance (x) Any other cash allowance (xi) Warden Allowance (xii) Non-practicing Allowance	(i) House Rent Allowance [u/s 10(13A)] (ii) Special Allowances [u/s 10(14)(ii) in respect of Daily Allowance Tax equalisation payment U/S 10(10CC) Allowance for Cost of relocation from normal place of Residence 10(14)(ii)	(i) Allowance granted to Government employees outside India. (ii) Allowance granted to High Court Judges (iii) Sumptuary allowance granted to High Court or Supreme Court Judges (iv) Allowance paid by the United Nations Organization (v) Compensatory Allowance received by a j udge

4. **Cross Border Inbound Deputation:**

ITA provides an inclusive definition of the term salary and perquisites. The term 'salary' includes wages, any annuity or pension, gratuity, any fees, commission, perquisites or profits in lieu of or in addition to any salary or wages, advance salary, leave salary, etc. Thus, essentially salary includes all consideration in money or money's worth (cash or kind) for services rendered arising out of an employer-employee relationship. The definition is wide enough to cover all types of payments whether in cash or kind; whether immediate or lump sum and whether from or on behalf of current or past employer.

In addition to the normal components included in salary structure of any employee, some typical components of the remuneration package of an expatriate employee/inbound deputation will cover a complex remuneration arrangement described in following paragraphs

4.1. PF and ESOP :Foreign Company payroll continues with Remuneration, social Security, other statutory payments and also ESOP in the Foreign Country

i. Social Security Payments: In October 2008, the Government of India issued notifications extending the applicability of EPF Act to a new category of workers called 'International Workers' requiring them to mandatorily contribute into its schemes with effect from 1 November 2008.

ii. International Worker' has been defined to mean:

a. Indian employee having worked or going to work in a foreign country with which India has a Social Security Agreement (SSA);and being eligible to avail the benefits under the social security programme of that country, by virtue of eligibility gained or going to gain, under the said SSA.

b. An employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the EPF Act applies.

However, a Nepalese national and a Bhutanese national shall be deemed to be an Indian worker and not an International Worker under the EPF Act

The Employees' Provident Fund Organisation (EPFO) vide its Circulardated 23rd June 2017 has clarified that Indian expatriates who qualify as International Worker while on employment abroad would become domestic employees once they come back to India andany contribution made by the employer to Provident Fund up to 12% of 'salary' (as defined for the purpose of Provident Fund contribution is exempt from tax). However, any contribution in excess of 12% of the employee's contribution paid by the employer (on employees' behalf) is taxable in the hands of the employee.

4.2. Social Security: In case of inbound deputation most of the time Social Security contribution are paid by the employer abroad and they are exempt from taxes if same are covered under the Social Security Agreements between the Governments of India and the country of the resident of the concerned employee prior to his deputation in India.

i. Taxability of Employer's Contribution

There is no specific provision under ITA that governs the tax treatment for social security contributions made by an employer to the overseas social security scheme on behalf of its employees or by the inbound expatriate employees who continue to contribute to their home social security scheme.

Guidance can be drawn from past judicial rulings where it has been held that employer contribution may not be considered as a taxable perquisite provided the following conditions are satisfied:

a. The contribution made is an obligation of employer and is mandatory in nature;

b. The contribution made is not an obligation of the employee being met by employer;

The contribution is not actually paid to the employee or allowed to the employee or due/accrued to the employee from the employer;

c. The employee does not have vested right at the time when contribution is made;
d. The receipt of the contribution made to the fund is contingent in nature;
e. The employees do not have any right to claim the amount payable under the policy on the date on which the contribution is being made.

ii. Taxability of Employee's Contribution

Likewise, based on judicial precedents, in respect of inbound employee's contribution to home social security, a deduction may be available from the salary income if the contributions made by employee meet the following conditions:

a. The employer is authorized to deduct the social security contribution from the remuneration payable to the employee;
b. The provisions of the home country income tax laws allow full deduction of the social security contributions from the income and it is only on the net income that the tax is levied;
c. The scheme to which the contributions are made is not a 'company framed scheme' and are statutorily required by law;
d. The contributions are required to be made by employees compulsorily;
e. The contributions are deducted from the employee's salary as a prior charge by overriding title.

The Delhi HC in case of Yoshio Kubo &Ors. vs CIT (ITA No 441/2003/Del) has held that the amounts paid by employers to pensions or social security funds are not perquisite since no immediate vesting is derived to employee at the time of contribution to such funds. Hence, the same were held as non-taxable in the hands of employees.

A case specific evaluation shall need to be done on the basis of the above, to determine income-tax implications

4.3. ESOP:An Employee Stock Option (ESOP) is a common component of remuneration especially in multinational companies that provide the workforce with an ownership interest in the company. The taxability of ESOP has seen a lot of changes under the Act. Currently, ESOP is specifically included within the definition of perquisite.

Under section 17 of the Act, "perquisite" includes:–

(vi) the value of any specified security or sweat equity share allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee."

i. As such, ESOPs are taxable in the year/at the time of allotment of shares by employer.The following are the basic stages under a typical ESOP:

- Grant Date
- Vesting Date

- Exercise Date
- AllotmentDate
- Selling Date

The vesting period in an ESOP could generally be 2-3 (or more) years. Since thetaxability of salary depends upon the residential status as well as the place ofrendering of services, the taxability of ESOP can be a complex affair.

ii. ITA does not specifically provide for apportionment of stock-based income in relation to mobile employees. However, guidance may be drawn from the Delhi Income Tax Appellate Tribunal (ITAT) in the case of Robert Arthur Keltz (represented by United Technologies International Operation), according to which if an employee is based in India only for a part of vesting period (i.e. period beginning with the date of grant of the stock options and ending with the date of vesting of the stock options), then proportionate amount of the value of benefit will be liable to tax in India. The proportionate value shall be determined by applying to the value of benefit, the proportion which the length of the period of stay in India by the expatriate during the vesting period bears to the length of the total vesting period. This proposition is supported by CBDT circulars in the erstwhile Fringe Benefits Regime. Hence, in case of NRs and RNORs, only that benefit which is attributable to the period of services rendered in India during the vesting period shall be taxable in the financial year in which taxable event occurs.

    In case of Bharat Financial Inclusion Ltd (ITA No 237/Hyd/2017), dated 3 August 2018), the Hyderabad Tribunal held that allotment of shares by the employer is relevant for taxation of ESOP perquisite and not on exercise of option by employee. Accordingly, tax withholding obligation arises on allotment of shares.

iii. Daily Allowance:Indian Company pays the reimbursements of the cost to the Foreign Company along with various incidental payments to the deputed employee in India like daily allowance for stay in India, daily allowance/ per diem is generally paid to employees in addition to their regular salary in order to meet their daily living expenses. Such daily allowance/ per diem is includible in the taxable salary income of employee.

    However, exemption from tax in some cases, particularly in case of short-term business travelers who are on tour, may be claimed in respect of the actual expenses incurred by the expatriate towards ordinary daily charges on account of absence from the normal place of duty and in the present time this is normal to pay such expenses in

India as Tax free allowance.Sec 10 (14)(ii)

iv. Hypo Tax: Certain payments towards Tax (Hypothetical Tax) to bring the foreign employee at par with the tax percentage he was paying in his country of Residence prior to deputation etc.(Sec 10(10CC))

Hypothetical tax is a part of the tax equalization policy under which the expatriate employee is responsible during the assignment for "hypothetical" or "stay-at-home" tax, which would be calculated on the remuneration the expatriate employee would have earned if he/ she continued to live and work in the home location.

Hypothetical tax is withheld from the expatriate's normal pay and is retained by the employer as a "tax reserve". The company would then pay all applicable home and host country taxes on employment income (including taxes on expatriate benefits) during the assignment.

There are judicial precedents to support the position that the hypothetical tax reduced from the salary does not constitute income in the hands of the expatriate and therefore cannot be treated as part of the employee's taxable salary. This has also been re-affirmed by the Bombay High Court in the case of Jaydev H. Raja (ITA No 87/2000)

4.4. Transfer cost: The employees may be paid an allowance to meet relocation/ transfer expenses, shipment cost, excess baggage cost, etc. In case such allowance is actually used by the employees for travel and shipment purposes and the same can be substantiated by adequate documentation, the amount of allowance which is actually used to meet such expenses can arguably be claimed as exempt. Any cash relocation allowance which cannot be substantiated with actual proof of expenditure (limited to travel and shipment of goods) is fully taxable. Sec 10(14)(i)

4.5. Perquisites

The term perquisite is defined widely to include all the benefits/ concessions received by an employee from an employer. It includes both, monetary as well as non-monetary perquisites. Rules have been prescribed for valuing the perquisites

Free or concessional accommodation provided by the employer constitutes a taxable perquisite under ITA. In terms of **House Rent Allowance ('HRA')** In case the employee has taken accommodation on rent in India, the employee shall be eligible for exemption on account of the rent paid by the him to the extent of lower of the following: Sec 10(13A)

i. Actual HRA received for the period during which the rented accommodation was occupied; or
ii. Excess of rent paid over 10% of salary for the period; or
iii. 50% of the salary, in case accommodation is situated in Mumbai, Delhi, Kolkata or Chennai, or 40% in all other cases

Salary for the purpose of computing the aforesaid exemption means basic salary, dearness allowance if terms of employment so provide and commission earned by the employee based on a fixed percentage of turnover achieved.

An employee is required to submit Form No. 12BB providing relevant details viz. name, address and PAN of landlord (where rental payments exceed ' 100,000 per annum) along with proof of making rental payments for claiming exemption of HRA.

Likewise other Perquisite in any form will be valued as per the Rule 3 of the ITA as amended from time to time and will be added to the salary Income .

Thus computation of the Income from salary for the services rendered in India will comprise of collecting information about all the payments and the benefits enumerated above for its analysis as to ,which component will form part of the Taxable Income, Salaries, perquisites(as per the valuation rules)minus the tax free perquisite, allowances minus exempt allowances , Social Security payments, Tax Equalization payments etc.

5. **Treaty Provisions Pertaining to Income from Salary**

The Sec 90(2) of ITA allows for adoption of provisions of the act or of the treaty, whichever is beneficial to the assessee.

This position has been upheld by the Apex Court in the case of UOI vs. Azadi BachaoAndolan (263 ITR 706).

Treaty provisions can provide relief to a resident of other country for claiming benefitsunder Article 15 or Article 16 of the treaty as the case may be in the respective tax treaty...Article 15 of OECD Model on dependent personnel Convention states the following:

i. *Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.*

ii. *Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:*

a) the recipient is present in the other State for a period or periods

not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

iii. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State.

5.1. Analysis of Article 15 of the tax Treaty:It can be inferred that the Tax Payer can offer his /her Salary income in respective Place of Residence even if the salary is earned in India provided he/she fulfils all the above three conditions namely:

i. a condition of less than 183 days stay in India,

ii. condition that his/her employer is not a Resident in India

iii. that the employer does not have a Permanent Establishment in India.

Taking the situation of the lockdown during the covid related travel restriction

If a resident of a country with whom India has signed a treaty with above provision in the treaty, has exercised his employment from India during the lockdown, but did not stay more than 183 days in India during the relevant period, then remuneration received for sucha period will not be taxed in India.

In a case where a Person is also a Resident of India under the ITA then in such a case also Remuneration will not be taxable if the conditions of Article 15 are observed by such a Resident of India as he is entitled to the benefits of the tax treaty owing to him being also a Resident of other Country and under tie breaker test he is Resident of that other country.

In this case in accordance with Sec 5 of ITA his income will be taxable in India as it is accrued in India however under the Tax Treaty he will be entitled to offer his Income to Tax in his country of Residence and exclude it from Indian Tax base.

Although he has stayed for a period less than 183 days in India during the period as referred in Art 15, he could have been Resident in India either under 120 days visit test or under more than 181 days test under ITA which could trigger a tie Breaker test for him to apply.

5.2. Resident of a Non Treaty Country: Remuneration for service rendered in India will be taxed in India for a Resident of a country (A Non Resident of India) which has no treaty with India for e.g. A Resident of Hong Kong. However, section 10(6)(vi) of the I. T. Act has provided a short stay exemption (up to 90 days in the previous year) to the non-resident employees from taxation in India under the head "Income from salaries" subject to the fulfilment of certain prescribed conditions even though Services are rendered in India, employment is exercised in India.

The above cross border deputation may be explained in a tabular form as under

Nature of assignments		India Tax implications	
	Characteristics	Inbound expatriate	Outbound expatriate
Business Visits	• Employee visiting foreign country for short business visits of 20-30 days spread over the year. • Purely for the limited purpose of attending meetings/ conferences in the capacity of employee of Home country.	• No tax implications for foreign entity as well as for the expatriate	• Employee would remain a resident in India and hence salary in respect of period of foreign visits would continue to be taxable in India. • No distinct tax implication for the Indian employer as well as for the employee.
Short term	• Employee would be sent to foreigncountry for short periods of 6-8 months. • He/ she would be working inforeign country but as an employee of the Home Country andwould continue to be on its Payroll.	• There could be Service Permanent Establishment exposure for the foreign entity depending upon the relevant clause of the tax treaty entered into between India and the respective country. • Consequently, the	• There could be Service Permanent Establishment exposure for the Indian entity in the foreign country depending upon the relevant clause of the tax treaty entered into between India and the respective country. • ▪ Outbound expatriate

	• Normally entity in foreign country would compensate the Home country counterpart for the services rendered by the expatriate. • Generally, such arrangement is made for performing training or supervisory functions.	Foreign entity would be taxable in India & will have to comply with the local tax laws including withholding tax Formalities. • Employees will be taxable on the salary income earned. They may be eligible for short stay exemption subject to fulfilment of certain conditions under the Treaty or under the domestic law.	may qualify as non- resident in India under the domestic law in which case tax credit can be claimed. • However, if salary is received in India, the same may be taxable and accordingly subjected to withholding tax in India. • In case the employee continues to be resident in India, short stay exemption can be claimed in the foreign country.
Medium-term & Long-term assignments — Secondment	• Employee would be deputed to foreign country for rendering services to the entity in foreigncountry for a period of 2 – 3 years or more. • He/ she would be working in foreign country in the capacity of Employee of Company of that country. • He/ she would be on the payroll of the entity in home country and the remuneration would be solely borne by that entity, known as lien of the Employee over the Home country Employment	• Indian entity will have to comply with all the regular legal formalities in respect of the expatriate. • By and large the foreign entity will not have any Permanent Establishment exposure in India. • Since economic employment lies with Indian entity the expatriate would be taxable on the salary income earned.	• Foreign Country will have to comply with all the local formalities in respect of the employee. • Generally such outbound expatriate would qualify as non-resident in India under the domestic law during such term. • Possibility of dual residency in the year of transfer depending upon their stay pattern in the year of leaving or returning back. • Salary for the period services are rendered abroad would not be taxable in India.

In a case where the payment is not considered as Salaries due to non-fulfilment of the conditions of the Treaty Provisions or the employer- employee relationship of the Foreign deputee with Indian Company, then such a remuneration may be characterised as the payment for the services rendered by the Foreign Company to the Indian Company either with Permanent

Establishment or not.

The issue of inbound deputation is a conroversial and litigious one due to determination of the employee services treated as the services of the Foreign Company with or without the presence of a PE. The landmark decision covering the entire controversy may be found inthe decisions of Bangalore ITAT in case of Food World Supermarket Ltd. (63 taxmann.com 43) and Delhi High Court in the case of Centrica India Offshore (P.) Ltd. (44 taxmann.300).

5.3. In cases of outbound deputation since the services are rendered outside India depending upon the Residential Status of the employee such remuneration will be taxable in India. If he is non Resident due to Residential Status test under Sec 6 of the ITA , salary earned outside India will not be taxable in India, else same will be taxable in India.

6. **Taxation of Salary Income received in India**

To understand the salary income of non-resident in India let's take an example. Mr Bob, an NRI is working outside India for company XYZ, incorporated in India. Mr Bob receives the salary in his NRE account located in India. Mr Bob being a resident outside India is taxed in that jurisdiction on his total income. Will Mr Bob be taxed in India as well since the salary is received in India from a company incorporated in India?

i. As mentioned in clause 5(2) income of a non-resident will be taxed in India if the salary is received in India and Section 9(1)(ii) states income will be deemed to accrue or arise in India if the service is rendered in India.

ii. Explanation 1 to Section 5 states that Income which accrues or arises outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

iii. Explanation 2 to Section 5 clarifies that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

iv. Section 5 is subject to other provisions of the act since it starts with an expression 'subject to the provisions of the act.

v. Thus Section 5(2),read with Section 9(1) (ii) infers that the salary cannot be taxed in India only for the reason that it was received in India but it is taxed at the place of its accrual and so in India if, and only if, the services are rendered in India otherwise will be taxed at a place where such services were rendered.

vi. In case of Bholanath Pal vs ITO (ITA No 10/Bang/2011, order dated

30th May, 2012), the Bangalore bench of Income-Tax Appellate Tribunal held that under the Income Tax Act, 1961 salary of individual for services rendered overseas cannot be taxed in India merely because the salary is received in India

vii. In case of Smt. Maya. C. Nair vs ITO (ITA No. 2407/Bang/2018 dated 31 October 2018) the Bangalore bench of Income-Tax Appellate Tribunal held that under the Income Tax Act, 1961 salary of individual for services rendered overseas cannot be taxed in India merely because the salary is received in India, despite the taxpayer's failure to furnish Tax Residency Certificate(TRC) as all evidence relating to stay and taxation Abroad (USA) was submitted in the course of assessment

viii. In case of Arvind Singh Chauhan vs ITO, the Agra bench of Income Tax Appellate Tribunal held that Salary income accrues at the place where the services are rendered and not where the appointment letter is received, even if the salary is brought to India.

ix. Circular No. 13/2017 issued by CBDT holds that "salary accrued to a Non-Resident seafarer for services rendered outside India on a foreign going ship shall not be taxed in India merely because the amount was credited to NRE Account maintained with an Indian Bank by the sea-farer

x. Taking into consideration all the above case laws and provisions one may safely conclude that place of accrual depends on where the services are rendered which gives rise to payment of salary. The income accrued outside India should be taxed in such country and be exempted in India.

7. **Tax Deducted at Source (TDS) on Salary Income in India for non-residents**

i. As per Section 192 of the IT Act, any person responsible for paying any amount under the head salaries is required to deduct tax at source at the time of payment.

ii. This section unlike some other provisions, does not distinguish between payment of salary, to a resident or to a non-resident or expatriate. Thus all payments which are taxable under the head salaries, are also covered by the provisions of TDS, irrespective of the residential status of the recipient. However, the residential status of an individual is pertinent in determining whether the receipt itself is taxable in India or not.

iii. Where salary is payable in foreign currency, the amount of tax deducted is to be calculated after converting the salary payable into Indian currency at the telegraphic transfer buying rate as adopted by State Bank of India on the date of deduction of tax(Rule 26) read with Section 192(6). It may be noted that this rule is applicable only for determination of TDS. However, in computing the salary income, the rate of conversion to be applied is the

telegraphic transfer buying rate on the last day of month immediately preceding the month in which the salary is due or is paid in advance or arrears (Rule 115).

iv. It may be noted that Tax is required to be deducted only on payment and hence certain non-monetary perquisite may not attract provisions of Sec 192 of the ITA

v. In order to consider the benefit of the Tax Treaty it is essential to observe the conditions of Sec 90 as regards Tax Residency Certificate from the country of the Non Resident or the Resident who can be a Resident of the other country under the Tie breaker Test.

vi. In case of overseas assignments where the employee remains on Indian company'spayroll and continues to be a ROR in India, the Indian company is required todeduct tax under section 192 of the Act on the assignment remuneration (i.e. salary,assignment related allowances benefits) provided to the employees A prescribed form is required to be filed in case of foreign credit is to be claimed.

vii. In this regard, it is pertinent to note that the Supreme Court of India in the case of Eli Lily has ruled that in case salary paid to the expatriate is for rendition of services in India, with no part of such services being performed for the foreign entity, tax has to be deducted at source from salaries of expatriate employees working in India even in cases where such salaries were paid abroad. In other words, salary payable for services rendered in India should be subject to tax deducted at source/ withholding tax provisions, even on that part of the salary which is paid in the home country to the expatriate employee.

The sum of all the salary components, after considering the exemptions and including the value of monetary as well as non- monetary perquisites, would constitute the total salary income chargeable to tax in India.

Further, there may be situations where salary is paid in India (though taxable

on receipt basis as per ITA) is not taxable under the applicable DTAA (due to the employee qualifying as tax treaty resident of the overseas country and also rendering services overseas).

Conversely, where an employee qualifies as tax treaty resident of India and liable to tax in India may also be taxable in the overseas country (say due to part of services being rendered overseas and not eligible to short stay exemption) and eligible to foreign tax credit in India in respect of such foreign taxes.

As regards tax withholding in India by the employer, though there is no explicit provision in section 192, the employer can arguably consider the above mentioned tax treaty benefits (i.e. non-taxability of salary / foreign tax credit)

at the stage of Indian tax withholding. This approach has been upheld in recent AAR rulings in the case of Texas Instruments as well as Hewlett Packard.

8. **Return of Income in India**

In various judicial precedents,5 it has been held that if the income received by theassessee before claiming exemptions and deductions (including treaty benefit) exceedsthe maximum amount which is not chargeable to income tax, a return of income hasto be filed. The assessing officer will then decide whether the deductions/ exemptionsclaimed are allowable or not.

9. **Conclusion**

In light of above quoted assertions and judicial precedents involving settled principles of law, it is just and proper to hold that salary income of an NR

i. Received in India for the work done abroad be taxed in the contracting state where he rendered such work and such income will not be taxed in India irrespective of the status of the Non Resident in India at the time of receipt of the salary.

ii. For services rendered in India, he may be entitle to exemption under Section 10(6) or under the Tax treaty if stay in India does not exceed period specified in the tax treaty, generally 183 days.

iii. Income from Salary involves various stages such as Source of Income, accrual of Income, Salary due, receipt of the Income, receipt irrespective of it's accrual or due.

It is generally taxed on an accrual basis and hence subsequent receipt will not give rise to taxable event. Under Sec 15(a) it is taxable only when it is due and hence under certain circumstances ESOP vesting period partly exercised in India may not give rise to taxable event as ESOP vesting due date falls at a time when employment is exercised outside Indiawhen such ESOP is **due** to the employee for its exercise.

In most cases of Non-Resident's Salaries,it will be taxableonly on a receipt basis under Sec 15(b) and Sec 15(c) of the ITA when it is paid in advance or in arrears for the services to be rendered in India,and already rendered respectively.

In case of advance it will be covered by Sec 5(2) (a) read with Sec 9(1)(ii), received in India for the services to be rendered in India.

In case of arrears it will be covered by Sec 5(2)(b) read with 9 (1) (ii) accrued in India for the services already rendered in India but received later.There is no need to file tax return in India if Income from salaries are not chargeable to Tax in India.

*****

END OF THE LIFE PLANNING : BEFORE & AFTER

CA Deepak Khandelwal

CA Shilvi Khandelwal

1. **Tomorrow is not promised** :None of us know how long we are going to live for?Discussing death can feel scary. But if you are to die or were otherwise incapacitated, would your loved ones be able to quickly locate your important information or know how to handle your affairs. We get so busy with the day-to-day life that we fail to make End of the life planning as a priority. One may think they're too young to be hit with a serious illness or they forget thatdeath has no age criteria. Any of these scenarios can leave a person's and family member's life uniquely vulnerable.

   This pandemic (COVID-19)is also leaving a devastating effect on people to the extent that many are collapsing or becoming incapacitated.We are having lots of example like where head of the family or the only earning member of the family has passed away or became incapacitated due to unforeseen illness or natural disaster and there is no other person to handle his affairs quickly.This situation can create mess in your family after your demise or family have to face greater challenges.

   Every person questions himself about what will happen with his dependents and family members after his death and can plan in advance. Addressing legal and financial issues associated with dying is important for several reasons.Proper planning helps avoid many of the problems associated with End of the Lifeand future planning for them and their dependents.

2. **Need of End of the Life Planning :**No one can truly plan for the disaster whether it's an unforeseen illness, a natural disaster, but can put into place a series of contingencies and plan accordingly. When the person becomes incapacitated or passes away, it is necessary to plan for theemergency to save time, money and stress for the loved ones. It depends on the person's wealth and what he do to make planning. The reasons for having the End of the Life planning in place before it is needed are endless.

End of the Life planning can helps in avoid many problems associated with succession and transfer of ownership. It protects your assets from going into the hands of unintended beneficiaries & determine who will manage your estate and also protects young family members who are not ready to take the ownership. This planning eliminates the family mess after your demise and avoid greater legal challenges.If you take the steps now to get your estate in order and plan for the future, it can make a stressful time potentially a little easier.People take life end planning as making the Will and by making a will they think that they have planned for their end. But scope of this planning is not limited to only making a will or note. This planning will includes:

- ✓ Instructions for your care if you become disabled before you die.
- ✓ Name of the guardian and inheritance manager for your minor children.
- ✓ Protection of the family members and dependents during unexpected and unfortunate events of their lives.
- ✓ Decide who gets your estate & property and who does not.
- ✓ Make gifts and donations.
- ✓ Leave instructions for your digital assets.
- ✓ Provide funeral instructions.

3. The End of the Life Planning Process : A person can plan the Legal as well as financial affairs in case of any sudden disability or death happens. The process would be depended on many factors such as Number of family members, Occupation of the person, Legal heirs, Wealth of the person, Assets and liabilities of the person. Though the planning will always be differ in every cases. However, we are discussing the End of the life planning related to legal and financial affairs to be done by a person :

i. Health and Life Insurance : First step to planning for contingencies is having insurance plan which provides financial protection.There are many type of insurance plan available related to insurance which vary on case to case basis as per need having its own relevance. Following options could be choose by a person while planning for contingenciesrelated to health and life for himself and family members:

- **Health Insurance or Mediclaim:** Mediclaim/Health Insurance is a type of insurance that offers specified financial protection against health- related expenses. It is a pocket friendly way to mitigate any health- related emergency for himself and his family members. However, the coverage of Mediclaim is limited to hospitalization expenses, treatment expenses due to an accident & specific diseases and other expenses are to be borne by the insurer himself. While the health insurance plan offers coverage against hospitalization charges, pre-hospitalization charges, post hospitalization charges, ambulance charges etc. and it also compensate in case of loss of income as a result of accident.
- **Term Insurance** : A term plan offers a lump sum paid as Death Benefit (Sum Assured). The coverage is available for the limited term of premium payment years. With a low premium, it covers substantial amount.This policy is a must-have for earning member of a family and providefinancial protection for the family.
- **Whole Life Insurance :** A whole life insurance offers both, a death benefit as well as savings benefits. These long tenure policy helps in building a corpus for future needs.

ii. **Estate Planning:** Estate planning involves making plans for the transfer of your estate after death. Estate is the combination of everything that you own — your home and other real estate, current and savings accounts, deposits, investments, insurance, jewellery, vehicles, furniture, personal possessions and so on. An estate planning is making a detailed plan of the division of the estate in advance (who, what, when, how and how much), amongst the ones you want to give after his demise. This planning includes:

- **Listing of pool of assets & liabilities :** A person should list out all the assets and liabilities with relevant details which he owns. The list must be updated regularly and must mentioned date on which it was last updated. Details should include identity, location, value etc.Make sure your spouse or children

have access to these documents, which they will need to handle any legal& financial affairs after you die.

- **Nomination:** A person must do nomination for his bank accounts, lockers and all the investments**.** According to law, a nominee is only a custodian & not the owner and nominated funds or investments including insurance amount will be passed on to the Nominee whom you trust, who can further help, in process of passing it to your legal heirs.

  A proper nomination not only enables fast processing of receiving funds but also helps your loved ones to get the benefits of your policy when they need it the most and without any hassle. Otherwise, without nomination, the legal heirs will have to go through cumbersome process of producing all kind of certificates like death certificate, proof of relation etc to get those funds and investments.

- **Draft a Willor Testament :** When a person die after making a will/testament, his beneficiaries/heirs inherit hisestate/ wealth.If a will is not made, then the legal heirs are decided according to the succession laws, where the structure is predefined on who gets how much. The succession laws are quite complicated and no one would want their families to go through lawyers and courts for the assets of their beloved deceased family members. Therefore, a person should make his will and update it regularly if he feels to distribute his estate as per his wish.Life changes, such as births, deaths, and divorce, can create situations where changing your will are necessary. A last will and testament is a legal document that lets you decide what happens with your estate after you die.

iii. Health Care Directive/Living Will: A health caredirectiveor living will is a written documentthat informs other of your wishes about your health care measures should be taken to prolong your life in case you become incapacitated and unable to speak on your own behalf. The person creating the health care directive must be of sound mind at the time the document

is signed. This document will only take effect if you become incapacitated and will be useful if you wish to have someone else make your health care decisions. Accidents that result in incapacitation may occur at any time, and without such a document in place, it is possible that your life might be artificially extended against your will. In such circumstances, your directive may state that you want someone other than an attending physician to decide when you cannot make your own decisions. It will also include- Donation of organs, tissues and eyes, Funeral arrangements etc.

iv. **Conservatorship/Guardianship :** A conservatorship (or guardianship)is a complicated court arrangement that gives an individual legal power over the financial affairs of another person. Conservatorship arrangements are pursued only when an individual is judged (by a court) to be longer capable of managing his or her own affairs (e.g., someone in a coma or in the advanced stage of Alzheimer's disease). Conservators can be friends, family members, or court-appointed individuals from state agencies. Conservatorship works to safeguard the affected person's financial assets by making sure that bills are paid on time, that money is allocated for savings, etc. Conservators can also help when the person they are watching out for is unable to weigh the risks and benefits of important financial decisions. The court-appointed conservator is required to make regular reports to the court regarding expenditures. Special permission may be required before any major financial decisions are made on behalf of the incapacitated individual, including the purchase or sale of major assets such as a house.

v. **Power of Attorney:**A power of attorney is a legal instrument that allows the person creating it to appoint a trusted individual to act on their behalf.A valid power of attorney expires once the principal dies. However, it will allow your trusted person to continue acting on your behalf even if you become mentally incompetent and unable to communicate. For example- If you appoint one of your family member as agent when you are alive, then that member will be legally permitted to pay your bills, manage your investments, file your taxes, sell your real estate properties, and more. However, those powers are no longer legally valid after you passes away.

vi. End of the Life Folder : We all do some planning about life end but fails to keep them systematic and make them available to the loved ones or family when they need it. No planning is complete without documentation therefore after doing this much planning, now it's must to document all these planned details & informationin one place. We call it as"End of the Life Folder". The purpose of this folder is to have another layer of preparation for your loved ones in the event of your death, especially if it's unexpected.AnEnd of the Life folder is a tool to help you organize and keep all of your most important financial details and documents at one place. First, you have to determine how you're going to organize your folder. It can be kept as physical folder or digital folder or both. Then a checklist to be prepared that include important documents and information to be included in this folder. This checklist will be prepared keeping in mind to include everything including financial and legal affairs & documents, which the person wants the family or loved ones to know about. Make sure you leave detailed instructions for your loved ones so they know how to access your files, especially if you're storing it electronically. Hereunder are some examples of documentation that could be included in your in case of death file:

- ✓ Basic Personal Information
- ✓ Copies of all KYC documents.
- ✓ Birth certificate
- ✓ Marriage certificate
- ✓ Living Will/ Health Care Directive
- ✓ Listing of pool of assets & liabilities
- ✓ Power of attorney
- ✓ Life insurance policy, Pension policies etc.
- ✓ Investments such as Mutual Funds, Shares etc
- ✓ Bank accounts, lockers and credit card details
- ✓ Loan documents
- ✓ Automobile titles

- ✓ Contact details of relevant persons
- ✓ Property deeds or any other important documents
- ✓ Copies of keys to automobiles, safe deposit boxes
- ✓ Account and device User ID & Password Credentials

Now after preparing folder, let your loved ones or family know that it exists. Tell them as part of your estate planning process, you've taken the steps to ensure everything is ready for them when the time comes.It is really important to keep it up-to-date (record the most recent date of any changes).It's also common for people to make a copy and give it to their consultant or financial planner.

4. **Conclusion:**Thinking about your death or that of a loved one can bring up plenty of unpleasant emotions, but having a plan to take care of the details can ease some of the stress in a time of grief.Making decisions and setting anEnd of the Lifeplan in place now will ease some of the stress for your family and prevent them from making poor or rushed choices when they are in a time of shock or grief.

*****

HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

S.B. Civil Writ Petition No. 14990/2020

M/s Kamlesh Trading Company Through Its Authorized Seller Shri Babu Singh Aged About 30 Years S/o Lakshman Singh Rajput Resident Of Rajput Colony, Lakshmangarh, Alwar, Authorized Seller And Proprietor.

Petitioner

Versus

1. Aasu Khan S/o Moomra, Aged About 45 Years, Zuber Cold Drinks, Kathumar Road, Lakshmangarh District Alwar.

2. Jaikam Khan S/o Moomra, Aged About 45 Years, R/o Of Lakshmangarh Tehsil Lakshmangarh, District Alwar

Respondents

For Petitioner(s) :	Dr. Abhinav Sharma, Advocate
For Respondent(s) :	Mr. Pankaj Ghiya, Advocate

HON'BLE MR. JUSTICE PRAKASH GUPTA

Order

Date of Order **11th May, 2021**

This writ petition under Article 227 of the Constitution of India has been filed by the petitioner-plaintiff (for short, 'the plaintiff') against the order dated 10.12.2020 passed by Addl. District Judge, Laxmangarh, Distt. Alwar (for short, 'the Appellate Court') in Civil Misc. Appeal No. 06/2020, whereby the appeal filed by the respondents-defendants (for short, 'the defendants') has been allowed and the order dated 29.10.2020 passed by Civil Judge, Laxmangarh, Distt. Alwar (for short, 'the Trial Court') in Civil Misc. Case No. 22/2020 granting temporary injunction in favour of the plaintiff, has been set-aside.

Facts of the case are that the plaintiff filed a suit for permanent injunction against the defendants. Alongwith the suit, an application under Order 39 Rule 1 and 2 CPC seeking temporary injunction was also filed. The Trial Court vide its

order dated 29.10.2020 granted temporary injunction in favour of the plaintiff. The defendants filed a Civil Misc. Appeal. The Appellate Court vide its order dated 10.12.2020 allowed the appeal and set-aside the order dated 29.10.2020 passed by the Trial Court. Hence, this writ petition.

Learned counsel for the plaintiff submits that the plaintiff was appointed as authorized and exclusive Distributor of Varun Beverage Ltd. (for short, 'the Company') for buying and selling / promoting the products of Pepsi Brand in Laxmangarh, Distt. Alwar and distribution rights of M/s. Zuber Cold Drinks, Proprietor of which was Ashu Khan were terminated w.e.f. September, 2018. Accordingly, on 4th November, 2019, a Distributorship Agreement was entered into between the Company and the plaintiff and areas in Laxmangarh, Distt. Alwar were prescribed, where only the plaintiff could sell the products of the Company. He further submits that the trial court granted injunction in favour of the plaintiff, but the appellate court set-aside the same in an arbitrary and illegal manner. He further submits that the scope to interfere in the discretionary order passed by the Trial Court is very limited. The appellate court cannot interfere with the discretionary order passed by the trial court, unless the order passed by the trial court is arbitrary, perverse or is not based on sound legal principles. In support of his contentions, he has placed reliance on the following judgments:

i) U.P. Cooperative Federation Ltd. Versus Sunder Bros.. Delhi reported in AIR 1967 Supreme Court 249

ii) Lakshminarasimhiah and others Versus Yalakki Gowd reported in AIR 1965 Mysore 310

iii) Smt. Vimla Devi Versus Jang Bahadur reported in AIR 1977 Rajasthan 196

On the other hand, learned counsel for the defendants has defended the impugned order and submits that the defendants have a right to trade, which cannot be restricted by the plaintiff. He further submits that the defendants were not party to the distribution agreement and therefore, they are not bound by the terms of the said agreement. If restrictions are imposed on the right to trade of the defendants, it would tantamount to 'restrictive trade practice'. He further submits that since the Trial Court's order was arbitrary, capricious and perverse and not legally sustainable, the appellate court was right in allowing the appeal and quashing and settingaside the same. He further submits that if there is sufficient material

available on record, then the appellate court can interfere with the discretionary order passed by the trial court.

Heard. Considered.

The trial court vide its order dated 29.10.2020 found prima-facie case in favour of the plaintiff on the ground that there was no document on record which could show that the defendants no. 1 and 2 were the authorized distributor of the company. The Appellate Court while allowing the appeal and setting aside the order passed by the Trial Court, vide its order dated 10.12.2020 observed that from GST Certificate and Food Safety License, it was clear that the defendants no. 1 and 2 (appellants therein) purchased the goods from different firms through E-Bill and paid the GST through Tax Invoice and thus the plaintiff had utterly failed to establish prima-facie case in his favour.

In the case of **Raymond Woollen Mills Ltd. and Ors. Versus Director General (Investigation and Registration) and others** reported in AIR 2009 SC 399, Hon'ble Apex Court held as under:

> "The Court would be justified in passing the order on alleged restrictive trade practice only when it is "prejudicial to public interest" under Clause (h) of Section 38 (1) of the MRTP Act. The pre-condition for passing such an order is that the restriction as imposed directly or indirectly when restricts or discourages competition to any "material degree" in any trade or industry, then only it would be considered as "prejudicial to public interest".

In view of the fact that the defendants were not party to the Dealership Agreement, they were not bound by the terms of the said agreement agreed to between the plaintiff and the Company, and therefore, their right of trade and business cannot be curtailed.

Since the material documents viz. GST Certificate and Food Safety License available on record were not considered by the trial court, the appellate court rightly set-aside the trial court's order being arbitrary, capricious and perverse and correctly allowed the appeal filed by the defendants. I am in agreement with the finding arrived at by the appellate court in its order dated 10.12.2020.

So far as the judgments relied upon by learned counsel for the plaintiffs in the case of U.P. Cooperative Federation Ltd. (supra), Lakshminarasimhiah and

others (supra) and Smt. Vimla Devi (supra), referred to above are concerned, the same do not apply to the facts of the instant case. It is trite law that the appellate court should not interfere with the discretionary order passed by the trial court but it is also true that the appellate court can interfere with the discretionary order passed by the trial court, if the trial court acts arbitrarily or perversely, capriciously or in disregard of sound legal principles.

This writ petition has been filed under Article 227 of the Constitution of India. The power under Article 227 of the Constitution is to be exercised in cases of jurisdictional error, apparent perversity, patent illegality or manifest injustice, which is not the situation here in this case.

I find no force in this writ petition and the same being bereft of any merit, is liable to be dismissed, which stands dismissed.

Consequent upon the dismissal of the writ petition, exparte interim order dated 18.12.2020 is vacated and the stay application and all pending applications, if any, stand dismissed accordingly.

*****

HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

CORAM

THE HONOURABLEDR. **JUSTICE ANITA SUMANTH**

W.P. Nos.10969.10972 and 10978 of 2020

and

WMP. Nos.13335.13339 and 13343 of 2020

M/s.Chaizup Beverages LLP,
Represented by its Authorized Representative,
Mr. Shiv Kumar Agarwal,
No.2/280, Pannimadai Thudiyalur, Coimbatore - 641 017.

...Petitioner in the above W.Ps

Vs

1 .The Assistant Commissioner,
Coimbatore I Division, O/o.The Assistant Commissioner of GST
& Central Excise, 1441, Elgi Equipments building, Ground Floor,
Trichy Road, Coimbatore 641 018.
2. Additional Commissioner of GST & Central Excise
Appeals, No.6/7, A.T.D. Street, Race Course Road,
Coimbatore-641 018.

...Respondents in the above W.Ps

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of **Certiorari** to call for the records pertaining to impugned order-in-appeal Nos.05/2020, 06/2020 and 07/2020 dated 12.05.2020 passed by the 2 nd responent and quash the same.

For Petitioner :Mr.Hari Radhakrishnan
For Respondents : Mr.M.Santhanaraman,
Senior Standing Counsel

Circular cannot stand in the way of a benefit offered under statutory provisions.

ORDER

These Writ Petitions challenge appellate orders dated 12.05.2020 passed by R2 confirming the rejection of the refunds claimed by the petitioner. The rejection is confirmed taking note of paragraph 2.5 of Board's Circular No.37/18-Customs dated 09.10.2018, on the ground that there has been an excess claim of duty draw back by the petitioner, as per which, they have renounced their claim for Input Tax Credit (ITC).

2. Though the Writ Petitions challenge orders for the months of July, August and September, 2017, the petitioner does not pursue its claim for the month of July, 2017 and files a memo dated 26.03.2021 requesting that the Writ Petition be closed as withdrawn. Accordingly, W.P.No. 10969 of 2020 pertaining to appellate order dated 12.05.2020 in Appeal No.05/2020 for the month of July, 2017 is dismissed as withdrawn.

3. As regards the Writ Petitions for the months of August and September, 2017, the petitioner had admittedly claimed excess draw back. The petitioner is an exporter of tea and had engaged in export transactions without payment of Integrated Goods and Service Tax (IGST). According to the petitioner, export of goods and services are to be treated as zero rated supplies in terms of Section 16 of the Goods and Service Tax Act, 2017 (in short 'Act'). A claim for draw back in terms of the provisions of the Customs Act, 1962 had been made. The claim was sanctioned and the petitioner has received the draw back.

4. Despite the transactions being categorised as zero rated supplies, the petitioner remitted IGST, Central Goods and Service Tax (CGST) and State Goods and Service Tax (SGST) on the purchase of tea and such tax was credited in its electronic credit ledger. The petitioner thereafter filed an application for refund of the amounts taking advantage of Section 54 of the Act.

5. 90% of the claim was sanctioned on a provisional basis, but was followed by a show cause notice dated 02.04.2018, since Rl, the Assessing Authority, was of the view that the refund was liable to be rejected in entirety invoking the third proviso to Section 54(3) of the Act and on the basis that the petitioner had availed draw back at a higher rate than applicable. Thus the claim was proposed to be rejected in full and the amount provisionally sanctioned was proposed to be recovered as well.

6. Despite replies of the petitioner contending otherwise, orders of rejection came to be passed, that have been confirmed vide the impugned appellate orders. In the course of the appeal hearing, the petitioner took an alternate plea before R2

for sanction of refund after setting off of the draw back already claimed. This was also rejected. Though second appeal is provided before the Goods and Services Tax Appellate Tribunal, these Writ Petitions are maintainable for the reason that the Tribunal is yet to be constituted.

7. Heard Mr.Hari Radhakrishnan, learned counsel for the petitioner and Mr.Santhanaraman, learned counsel for the respondent.

8. The respondent places reliance on Circular No.37/18-Customs dated 09.10.2018, particularly paragraph 2.5 thereof, which reads as follows:

2.5 By declaring drawback serial number suffixed with A or C and by making above stated declarations, the exporters consciously relinquished their IGST/ITC claims.'

9. According to R2, since the claim of draw back was inflated, the petitioner automatically renounced any claim towards refund of ITC. A Division Bench of the Gujarat High Court in ***R\al Prince Spintex Pvt. Ltd. V. Union of India*** (2020 (35) GSTL 369) and a learned single Judge of this Court in ***Precot Meridian Ltd. V. Commissioner of Customs, Tuticorin*** (2020 (34) GSTL 34) have held otherwise.

10. The provisions of Section 54 of the Act read as follows:

54. Refund of tax.

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies ofgoods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person

may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

11. It is clear from a reading of Section 54(3) that the petitioner is entitled to one or the other of two benefits, i) duty draw back or ii) Input Tax Credit. Thus, an option has been extended to an assessee engaged in zero rated sale to either claim the benefit of duty drawback or the benefit of refund of ITC. That is why, in the present case, the petitioner, for the month of July, 2017 has opted to stick with the claim of duty draw back seeing as the amount of drawback is higher than the ITC for the months of August and September, 2017.

12. On a plain reading of Section 54 (3) I find the claim of refund to be in order. The orders of the appellate authority are set aside and the authority is directed to refund the sanctioned amounts within a period of six (6) weeks from today. In doing so, the contents of paragraph 2.5 of the Circular will not stand in the way since a circular cannot stand in the way of a benefit offered under a statutory scheme. Paragraph 2.5 of the circular, insofar as it is contrary to the statutory provisions of Section 54(3) is bad in law.

13. The aforesaid view finds support from the decision of the Gujarat High Court in ***R\al Prince Spintex Pvt. Ltd.*** (supra) and a learned single Judge of this Court sitting in Madurai Bench in ***Precot Meridian Ltd.*** (supra). W.P.Nos. 10978 and 10972 of 2020 are allowed. No costs. Connected Miscellaneous Petitions are closed.

*****

HIGH COURT OF TRIPURA

Central Excise Appeal No. 01/2018

M/S DHARAMPAL SATYAPAL LTD (Unit-2), Plot No.3450-3453, Arundhutinagar, Industrial Estate, Agartala, Tripura - 799003, A company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 98, Okhla Industrial Estate, Phase - III, New Delhi -110020 and in the present appeal represented by Mr. Pramod Sharma, the Deputy General Manager of the Appellant Company.

..... *Appellant(s).*

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, AGARTALA, Kiran Medical Halls Building, Old RMS Choumohani, Agartala Tripura, 799 001.

..... *Respondent(s).*

Central Excise Appeal No.02/2018

M/S DHARAMPAL SATYAPAL LTD (Unit-2), Plot No.3450-3453, Arundhutinagar, Industrial Estate, Agartala, Tripura - 799 003. A company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 98, Okhla Industrial Estate, Phase - III, New Delhi -110020 and in the present appeal represented by Mr. Pramod Sharma, the Deputy General Manager of the Appellant Company.

..... *Appellant(s).*

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, AGARTALA, Kiran Medical Halls Building, Old RMS Choumohani, Agartala Tripura, 799001

..... *Respondent(s).*

_B_E_ F_O_R_E_

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI HON'BLE JUSTICE MR. S G CHATTOPADHYAY

For Appellant(s)	: Mr. A K Sharaf, Sr. Advocate, Mr. K Roy, Advocate.
For Respondent(s)	: Mr. Paramartha Datta, Advocate.
Date of hearing	: 4th May, 2021.
Date of Judgment	: 17th May, 2021.
Whether fit for reporting	: Yes.

That apart, review petition can be entertained only if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not produced by it at the time when the judgment was passed, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

J U D G M E N T

(Akil Kureshi, CJ).

These appeals are filed by the assessee to challenge a common judgment dated 14th September, 2017 passed by the Central Excise & Service Tax Appellate Tribunal, Kolkata *(hereinafter to be referred to as "the Tribunal").*

[2] The appeals were admitted on the following substantial question of law:

"Whether in the facts and circumstances of the case, the respondent was justified in denying claim of the appellant under *Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010* merely for the reason that the officer of the department has failed to mention about the machine which was made un-operational why could not be removed for certain reasons, although the same machine was made un-operational, at a later stage with a report of the officer of the department that 'looking to the heaviness of the machine, not possible to remove', could be considered to be a substantial compliance of sub-rule (5) of R.6 of Rules, 2010"

[3] This question arises in following background facts which are recorded from Central Excise Appeal No.1/2018. Since facts are similar in both the appeals, they are not separately recorded as arising in Ce. Excise Appeal No 2/2018 :

The appellant assessee is a manufacturer of Jarda Scented Tobacco falling under Chapter 24 of the Central Excise Tariff Act, 1985. In terms of Section 3A of the Central Excise Act, 1944 read with Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 *(hereinafter to be referred to as "the Rules of 2010")* the assessee was liable to pay excise duty on the installed capacity of manufacture instead of actual manufacture and clearance of goods.

[4 The appellant had installed one machine in its factory which was sealed and de-sealed at its request by the Excise authorities during the period between 31st August 2015 to 6th November 2015. According to the appellant, such machine was operated/not-operated during the said period as under :

Period	Status	No of days the machine operated
31/08/2015 to 07/10/2015	Not operated	Nil
08/10/2015 to 19/10/2015	Operated	12
20/10/2015 to 06/11/2015	Not operated	Nil

Since there was closure of production at the unit for continuous period on more occasions than one, the appellant filed a single abatement claim for the periods between 1st October 2015 to 7th October 2015 and 20th October 2015 to 31st October, 2015 under Rule 10 of the said Rules of 2010 and claimed that a total of Rs.50,32,548/- was admissible. The Assistant Commissioner of Central Excise rejected the application by an order dated 1st January 2016 on two grounds namely, the closure of the production activity at the unit was not for a continuous period exceeding 15 days and that provisions of Rule 6(5) of the said Rules of 2010 were also not satisfied since the machine was not removed from the factory.

[5] The appellant filed appeal against the said order. The Commissioner(Appeals) allowed the appeal in part by an order dated 2nd September, 2016 to the following extent :

> "6.3 On going through the observation the ld. adjudicating authority and the contention of the appellant I find that the FFS packing machine under question was sealed and un-installed for the period from 01/09/2015 to 07/10/2015 and 20/10/2015 to 06/11/2015. Accordingly, I am of the view that in both occasions/spells machine was not in operation or did not produce any notified goods for a period of 15 days or more though it was in fragmented period falls in two month."

However, with respect to the assessee's claim for abatement for the period between 1st October 2015 to 7th October 2015, he rejected the claim on the ground that *"the machine was not un-installed and sealed in such a manner that it cannot be operated as evident from the sealing order dated 31st August, 2015."*

[6] To the extent the appeal of the assessee was rejected by the Commissioner of Appeals, the assessee approached the Tribunal. Tribunal by the impugned judgment dismissed the appeal making following observations :

" On perusal of the above reports, it is clear that Superintendent while sealing

the packing machines in one case, categorically mentioned that the machine is sealed in such a manner that it cannot be operated. But in the other report, it has not been mentioned categorically. Thus, there is a distinction between the two reports mentioned above. The ld. Counsel on behalf of the appellant argued that the sealing of the machines would show that it cannot be operated. Further, it is contended that there is no material on record that the sealed machine was operated. I am unable to accept the contention of the ld. Counsel for the appellant. I find that the report dated 19.10.2015 is inconsonance with the provisions of proviso to Rule 6(5) of the Rules, 2010. In the other report, there is no indication that it cannot be operated. Hence, I agree with the findings of the Commissioner(Appeals). The ld. Counsel referred to various case laws. None of the case laws are relevant in the facts and circumstances of the present case."

[7] Appearing for the appellant, learned senior counsel Mr. A K Sharaf took us to the provisions of the said Rules of 2010 and in particular, sub-rule (5) of Rule 6 thereof. He also drew our attention to the proceedings drawn by the Inspector of Central Excise on 19th October, 2015 while sealing the machine of the assessee which reads as under :

"In pursuance of Order C.No.V(30)02/CL/CE/ACA/2015/4396 dated 14/10/15 of the Assistant Commissioner CE & ST Division, Agartala, the Sanko Rotary Type Single Track FFS Machine having identification No.120323479 has been Uninstalled and Sealed on 19.10.2015 at 23-50 hrs. under my supervision and assisted by Sri Gautam Das Choudhury, Inspector. **As the machine is heavy weight and removal of machine requires quite a large number of skilled labour and other tools which is not available at this dead hours of night, the machine is sealed in such as manner that it cannot be operated.** The entire uninstallation and sealing has been in presence of Sri Pramod Sharma, authorized signatory of Dharampal Satyapal Ltd.(Unit-2) after observing all necessary formalities."

However, for the period between 1st October, 2015 to 7th October, 2015 the sealing order did not specify that the machine was sealed in such a manner that it cannot be operated and that it was too heavy to be moved out. On these grounds, the claim of the assessee was rejected.

[8] Counsel contented that the Commissioner(Appeals) and the Tribunal had given the benefit to the assessee of abatement of duty for the period covered under the

sealing order dated 19th October, 2015 whereas under substantially similar circumstances, for the sealing order dated 31st August 2015, such benefit was not granted. He submitted that the machinery remained the same. In what manner the Inspector of Central Excise should pass the order of sealing a machine was not within the control of the assessee. The authority had mentioned that the machine was uninstalled and sealed in terms of Rule 6(5) which was a substantial compliance of the statutory requirements. Subsequently, at the request of the assessee, the machine was de-sealed and there was no allegation by the department that the assessee had carried out the manufacturing activity despite sealing of the machine.

[9] On the other hand, learned counsel for the department opposed the appeal contending that the revenue authorities and the Tribunal have considered the question in light of relevant facts. There is no error in the view of the Tribunal. No question of law arises. Appeal may, therefore, be dismissed.

[10] Section 3A of the Central Excise Act, 1944 pertains to power of Central Government to charge excise duty on the basis of capacity of production in respect of notified goods. Sub-section (1) of Section 3A provides that notwithstanding anything contained in Section 3 where the Central Government having regard to the nature of the process of manufacture or production on excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant, he is of the opinion that it is necessary to safeguard the interest of revenue, specify, by notification in the Official Gazette such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of the said Section, which essentially envisages collection of excise duty on annual capacity of production.

[11] To operationalize this scheme, the Central Government has framed the said Rules of 2010. Rule 10 of the said Rule pertains to abatement in case of non-production of goods. Relevant portion of Rule 10 reads as under:

> "In case a factory did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period provided the manufacturer of such goods files an intimation to this effect with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise, at least three working days prior to the commencement of said period, who on receipt of such intimation shall direct for sealing of all the packing machines available

in the factory for the said period under the physical supervision of Superintendent of Central Excise, in the manner that the packing machines so sealed cannot be operated during the said period."

[12] Rule 6 of the said Rules pertains to a declaration to be filed by the manufacturer. Sub-rule (5) of Rule 6 reads as under :

"The machines which the manufacturer does not intend to operate shall be uninstalled and sealed by the Superintendent of Central Excise and removed from the factory premises under his physical supervision.

Provided that in case it is not feasible to remove such packing machine out of the factory premises, it shall be uninstalled and sealed by the Superintendent of Central Excise in such a manner that it cannot be operated."

[13] In terms of sub-rule (5) of Rule 6 of the said Rules, the machines which the manufacturer does not intend to operate would be uninstalled and sealed by the Superintendent of Central Excise and removed from the factory premises under his physical supervision. For the period during which the machine is thus rendered incapacitated, the concerned manufacturer would be spared the burden of excise duty since the entire levy is based on installed production capacity and not on actual manufacture or clearance of goods. The provisio to the said sub-rule provides that in case it is not feasible to remove the machine, it shall be uninstalled and sealed in such a manner that it cannot be operated. In case of the present assessee, as noted, under an order dated 19th October 2015, the Inspector of Central Excise recorded that the machine was uninstalled and sealed on the said date under his supervision. However, since the machine was heavy and removal would require large number of skilled labourers and the tools which were not available, the machine was sealed in such a manner that it cannot be operated. As noted, this order was found sufficient by the Commissioner(Appeals) to enable the assessee to claim abatement of duty. It appears that the department has also accepted this order of the Commissioner(Appeals).

[14] However, for the remaining period, the claim of the assessee is rejected on the ground that the sealing order did not specify that it was sealed in such a manner that the machinery cannot be operated. We may recall, sub-rule (5) of Rule 6 provides that the machine which the manufacturer does not intend to operate shall be uninstalled and sealed by the Superintendent of Central Excise and removed from the factory premises under his supervision. However, the proviso to sub-rule

(5) envisages that in case it is not feasible to remove such machine out of the factory premises, it shall be uninstalled and sealed by the Superintendent of Central Excise in such a manner that it cannot be operated. The fact that the machine is too heavy to be removed was recorded by the Superintendent of Central Excise in his order dated 19th October, 2015. Being the same machine, the situation for a different period, would not change.

[15] It is true that the proviso in such a case requires that the machine should be uninstalled and sealed by the Superintendent in such a manner that it cannot be operated. In the sealing order dated 31st August, 2015 that the Superintendent passed, he may not have used this expression that he had sealed the machine in such a manner that it cannot be operated. However, this would not be sufficient for the department to deny the benefit of abatement to the assessee in terms of Rule 10 of the said Rules. Firstly, it was the duty of the Excise Superintendent to seal the machine and record it in the order that it was so sealed that it cannot be operated. In what manner the Superintendent passing an order after sealing the machine was not within the control of the assessee. Further, this machine was subsequently de-sealed at the request of the assessee, at which point there was no allegation that the seal was broken or that despite the seal the manufacturing activity was continued. The very purpose of sealing a machine is to keep it out of use and to render it inoperative. When the Superintendent of Central Excise thus sealed the machine and also passed an order to this effect, the presumption would arise that such sealing was in such a manner as that the same cannot be operated. In absence of any allegations by the department and any material on record suggesting that despite sealing the assessee operated the machine, it would not be permissible to withhold the abatement of duty only on the ground that the Superintendent of Central Excise did not draw proper proceedings and did not elaborately record that the sealing was done in such a manner that the machine could not be operated.

[16] In the result, the question of law is answered in favour of the assessee. Appeals are allowed by directing the department to give the benefit of abatement for the periods in question.

The judgment of the Tribunal is reversed. Both the appeals are disposed of accordingly. Pending application(s), if any, also stands disposed of.

(S G CHATTOPADHYAY, J) **(AKIL KURESHI, CJ)**

*****

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.2127, 2117, 2121, 2152, 2159, 2160, 2168, 2177, 2500, 2530, 2532, 2534, 2538, 2539, 2540, 2503 & 2504 of 2021

and

W.M.P(MD)Nos.1791, 1781, 1784, 1805, 1807, 2160, 1814, 1816, 2076, 2078, 2080, 2092, 2093, 2094, 2096, 2098 & 2099 of 2021

W.P.(MD)No.2127 of 2021
M/s.D.Y.Beathel Enterprises,
rep. by its Proprietor Y.Godwin Prasad,
11/1/21, Mancode, Vellachiparai,
Kanyakumari District - 629 121 ... Petitioner

Vs.

The State Tax Officer (Data Cell),
(Investigation Wing)
Commercial Tax Buildings,
Tirunelveli. ... Respondents

Prayer in **W.P.(MD)No.2127 of 2021:** Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in GSTIN 33AUMPG3862A1ZZ/2017-18, dated 29.10.2020 and to quash the same as illegal, arbitrary, wholly without jurisdiction and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh after affording an opportunity of cross examination of the sellers to the petitioner by considering the replies dated 01.07.2020 and 21.09.2020 filed by the petitioner.

In all writ petitions

For Petitioner : Mr.N.Sudalaimuthu
for Mr.S.Karunakar

For Respondent : Mr.S.Dayalan
Government Advocate

The omission on the part of the Seller to remit the tax should have been viewed very seriously and strict action ought to have been initiated against the seller. Buyer cannot be punished first for the default of seller under GST.

COMMON ORDER

Heard, the learned counsel on either side.

2.The petitioners' herein are dealers, registered with Nagercoil Assessment Circle. Though the petitions are 17 in number, the issue raised in all these writ petitions is virtually one and the same.

3.The petitioners are traders in Raw Rubber Sheets. According to them, they had purchased goods from one Charles and his wife Shanthi.

4.The specific case of the petitioners is that a substantial portion of the sale consideration was paid only through banking channels. The payments made by the petitioners to the said Charles and his wife, included the tax component also. Charles and his wife are also said to be dealers registered with the very same assessment circle.

5.Based on the returns filed by the sellers, the petitioners herein availed input tax credit. Later, during inspection by the respondent herein, it came to light that Charles and his wife, did not pay any tax to the Government. That necessitated initiation of the impugned proceedings. There is no doubt that the respondent had issued shows cause notices to the petitioners herein. The petitioners submitted their replies specifically taking the stand that all the amounts payable by them had been paid to the said Charles and his wife Shanthi and that therefore, those two sellers will have to be necessarily confronted during enquiry. Unfortunately, without involving the said Charles and his wife Shanthi, the impugned orders came to be passed levying the entire liability on the petitioners herein. The said orders are under challenge in these writ petitions.

6. The respondent has filed a detailed counter affidavit and contended that the impugned orders, do not warrant any interference.

7. The learned Government Advocate would point out that the petitioners had availed input tax credit on the premise that tax had already been remitted to the Government, by their sellers. When it turned out that the sellers have not paid any tax and the petitioners could not furnish any proof for the same, the department was entirely justified in proceeding to recover the same from the petitioners herein.

The respondent cannot be faulted for having reversed whatever ITC that was already availed by the petitioners herein.

8. The learned counsel for the petitioners would draw my attention to the decision of the Madras High Court made in **Sri Vinayaga Agencies Vs. The Assistant Commissioner, CT Vadapalani,** reported in **2013 60 VST page 283.** It was held therein that the authority does not have the jurisdiction to reverse the input tax credit already availed by the assesses on the ground that the selling dealer has not paid the tax. I am afraid that this proposition laid down in the context of the previous tax regime may not be straight-away applicable to the current tax regime.

9.At this stage, the learned counsel brought to my notice that the press release issued by the Central Board of GST council on 4.5.2018. In the said press release, it has been mentioned that there shall not be any automatic reversal of input tax credit from the buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc.

10. On section 16(1) & (2) of Tamil Nadu Goods and Services Tax Act, 2017, also makes the position clear. It is extracted hereunder :

> 16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.
>
> (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—
>
> (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
>
> (b) he has received the goods or services or both.
>
> **Explanation.**—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered

by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon."

11. lt can be seen therefrom that the assessee must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government either in cash or through utilization of input tax credit, admissible in respect of the said supply.

12.Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the case on hand, the respondent does not appear to have taken any recovery action against the seller / Charles and his wife Shanthi, on the present transactions.

13.The learned counsel for the petitioners draws my attention to the order, dated 27.10.2020, finalising the assessment of the seller by excluding the subject transactions alone. I am unable to appreciate the approach of the authorities. When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been

viewed very seriously and strict action ought to have been initiated against him.

14. That apart in the enquiry in question, the Charles and his Wife ought to have been examined. They should have been confronted. This is all the more necessary, because the respondent has taken a stand that the petitioners have not even received the goods and had availed input tax credits on the strength of generated invoices.

15. According to the respondent, there was no movement of the goods. Hence, examination of Charles and his wife has become all the more necessary and imperative. When the petitioners have insisted on this, I do not understand as to why the respondent did not ensure the presence of Charles and his wife Shanthi, in the enquiry. Thus, the impugned orders suffers from certain fundamental flaws. It has to be quashed for more reasons than one.

a) Non-examination of Charles in the enquiry

b) Non-initiation of recovery action against Charles in the first place

16.Therefore, the impugned orders are quashed and the matters are remitted back to the file of the respondent. The stage upto the reception of reply from the petitioners herein will hold good. Enquiry alone will have to be held afresh. In the said enquiry, Charles and his wife Shanthi will have to be examined as witnesses. Parallely, the respondent will also initiate recovery action against Charles and his wife Shanthi.

17. With these directions, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

*****

COMMERCIAL NEWS

CA Ribhav Ghiya

GST Revenue for April 2021

PIB Press release dated 1 st May 2021.

- The gross GST revenue collected in April' 2021 is at a record high of Rs. 1,41,384 crore of which CGST is Rs. 27,837 crore, SGST is Rs. 35,621, IGST is Rs 68,481 crore (including Rs. 29,599 crore collected on import of goods) and Cess is Rs. 9,445 crore (including Rs. 981 crore collected on import of goods).
- The GST revenues during April 2021 are the highest since the introduction of GST. In line with the trend of recovery in the GST revenues over past six months, the revenues for the month of April 2021 are 14% higher than the GST revenues in the last month of March'2021. During the month, the revenues from domestic transaction (including import of services) are 21% higher than the revenues from these sources during the last month.
- Closer monitoring against fake-billing, deep data analytics using data from multiple sources including GST, Income-tax and Customs IT systems and effective tax administration have also contributed to the steady increase in tax revenue.
- Quarterly return and monthly payment scheme has been successfully implemented bringing relief to the small taxpayers as they now file only one return every three months.
- Providing IT support to taxpayers in the form of pre-filled GSTR 2A and 3B returns and ramped up System capacity have also eased the return filing process.

43rd GST Council Meeting on 28th May 2021

43rd GST Council Meeting 28th May 2021, 11 am via Video Conference Finance Minister Mrs Nirmala Sitaraman will chair the council along with the presence of Finance Ministers of States & UTs and Senior officers from Union Government & States.

Form GSTR-2B to be Generated on 29th May 2021

As the last date of filing GSTR-1 for April, 2021 has been extended up to 26th May, 2021 and IFF up to 28th May, 2021, the GSTR-2B for April, 2021 shall be generated on 29th May, 2021.

Source- https://www.gst.gov.in/

Extension of due date of filing Revocation application of Cancellation

In view of **Notification No. 14/2021 dt. 01.05.2021**, the timeline for filing the 'Application for Revocation of Cancellation' has been extended to 180 days from 90 days which will be valid up to 15th June 2021

ESIC extends date for filing of ESI contribution for April, 2021

The country is dealing with a very challenging situation due to second wave of COVID-19 Pandemic. Many establishments are temporarily closed and workers are unable to work. In line with the relief measures being extended by Government to business entities and workers, Employees' State Insurance Corporation (ESIC) has relaxed the provision as entered in Regulation 31 of ESI (General) Regulations, 1950 and allowed filing of ESI contribution for the month of April, 2021 upto 15th June, 2021 instead of 15th May, 2021.

The employers covered under ESI Scheme can now file and pay ESI Contribution for the month of April,2021 upto 15th June, 2021 instead of 15th May, 2021.This will provide an extended window to 12.36 lakh Employers to pay the contribution under ESI scheme.

Government extends certain timelines in light of severe pandemic

New Delhi,
20th May, 2021

PRESS RELEASE

Government extends certain timelines in light of severe pandemic

The Central Government, in continuation of its commitment to address the hardship being faced by various stakeholders on account of the severe Covid-19 pandemic, has, on consideration of representations received from various stakeholders, decided to extend timelines for compliances under the Income-tax Act, 1961 (hereinafter referred to as "the Act") in the following cases, as under:

(i) The Statement of Financial Transactions(SFT) for the Financial Year 2020-21, required to be furnished on or before 31st May, 2021 under Rule 114E of the Income-tax Rules, 1962 (hereinafter referred to as "the Rules") and various notifications issued thereunder, may be furnished on or before 30th June, 2021;

(ii) The Statement of Reportable Account for the calendar year 2020, required to be furnished on or before 31st May, 2021 under Rule 114G of the Rules, may be furnished on or before 30th June, 2021;

(iii) The Statement of Deduction of Tax for the last quarter of the Financial Year 2020-21, required to be furnished on or before 31st May, 2021 under Rule 31A of the Rules, may be furnished on or before 30th June, 2021;

(iv) The Certificate of Tax Deducted at Source in Form No 16, required to be furnished to the employee by 15th June, 2021 under Rule 31 of the Rules, may be furnished on or before 15th July, 2021;

(v) The TDS/TCS Book Adjustment Statement in Form No 24Gfor the month of May 2021, required to be furnished on or before 15th June, 2021 under Rule 30 and Rule 37CA of the Rules, may be furnished on or before 30th June, 2021;

(vi) The Statement of Deduction of Tax from contributions paid by the trustees of an approved superannuation fund for the Financial Year 2020-21, required to be sent on or before 31st May, 2021 under Rule 33 of the Rules, may be sent on or before 30th June, 2021;

(vii) The Statement of Income paid or credited by an investment fund to its unit holder in Form No 64D for the Previous Year 2020-21, required to be furnished

on or before 15th June, 2021 under Rule 12CB of the Rules, may be furnished on or before 30th June, 2021;

(viii) The Statement of Income paid or credited by an investment fund to its unit holder in Form No 64C for the Previous Year 2020-21, required to be furnished on or before 30th June, 2021 under Rule 12CB of the Rules, may be furnished on or before 15th July, 2021;

(ix) The due date of furnishing of Return of Income for the Assessment Year 2021-22, which is 31st July, 2021 under sub-section (1) of section 139 of the Act, is extended to 30th September, 2021;

(x) The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which is 30th September, 2021, is extended to 31st October, 2021;

(xi) The due date of furnishing Report from an Accountant by persons entering into international transaction or specified domestic transaction under section 92E of the Act for the Previous Year 2020-21,which is 31st October, 2021, is extended to 30th November, 2021;

(xii) The due date of furnishing of Return of Income for the Assessment Year 2021-22, which is 31st October, 2021 under sub-section (1) of section 139 of the Act, is extended to 30th November, 2021;

(xiii) The due date of furnishing of Return of Income for the Assessment Year 2021-22, which is 30th November, 2021 under sub-section (1) of section 139 of the Act, is extended to 31st December, 2021;

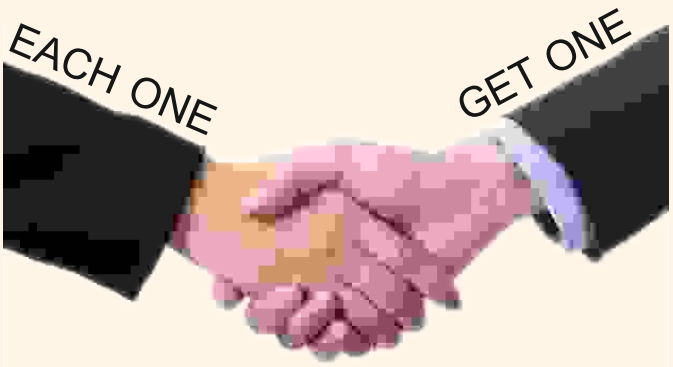
(xiv) The due date of furnishing of belated/revised Return of Income for the Assessment Year 2021-22, which is 31st December, 2021 under sub-section (4)/sub-section (5) of section 139 of the Act, is extended to 31st January, 2022.

It is clarified that the extension of the dates as referred to in clauses (ix), (xii) and (xiii) above shall not apply to Explanation 1 to section 234A of the Act, in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of sub-section (1) of that section exceeds rupees one lakh. Further, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Act, the tax paid by him under section 140A of the Act within the due date (without extension) provided in that Act, shall be deemed to be the advance tax.

Membership Development

ETHICS EDUCATION EXCELLENCE

Membership Fees ₹ 2500 + 100 (ID card) + GST upto 30th June 2021



Join AIFTP Family Today Fees Increase From 1st July 2021 onwards

NATIONAL PRESIDENT HAS SET THE TARGET FOR 2000 NEW MEMBERS UPTO 30TH JUNE 2021

APPRECIATION AWARDS

Highest New Member Contribution
1st, 2nd & 3rd for Individual
1st, 2nd & 3rd for Office Bearer / Zonal Chairman
1st, 2nd & 3rd for Zone

CATEGORIES (APPLICABLE FOR NEW MEMBERS ADDED BETWEEN 1-1-2021 TO 30-6-2021)

Zone : 400 or more | Office Bearer / Zonal Chairman : 20 Members or more | Individual Member : 1 Member or more

MEMBERS ARE REQUESTED TO PUT THEIR MAXIMUM EFFORT TO ACHIEVE THE TARGETS

For further information, contact

CHAIRMAN
Mr. Samir S. Jani, Junagadh
9825037365

CO-CHAIRMAN
Mr. C. Radhakrishnan, Vellore
9443217802

CONVENOR
Mr. Sreedhara Parthasarthy, Bellary
9449569084

MEMBERS

Mr. Ajit Tiwari, Vadodara, Mr. Bharat Swami, Vadodara, Mr. Brij Gopal Das, Varanasi, Mr. D. K. Agarwal, Siliguri, Mr. Nitin Gautam, Nagpur, Mr. P. V. Ravi Kumar, Chennai, Mr. Tayyab M. Khan, Azamgarh, Mr. Vinod Kumar Singhania, Kolkata

OFFICE BEARERS

Mr. M. Srinivasa Rao, Eluru, National President • Mr. D. K. Gandhi, New Delhi, Dy. President
Mr. S. S. Satyanarayana, Hyderabad, Secretary General • Mr. Vijay Narayan Kewalramani, Thane, Treasurer

VICE-PRESIDENTS
Mr. S. B. Kabra, Hyderabad (SZ)
Mr. O. P. Shukla, Varanasi (NZ)
Mr. Rajesh Mehta, Indore (CZ)
Mr. Anand Kumar Pasari, Ranchi (EZ)
Mr. Janak K. Vaghani, Mumbai (WZ)

JOINT SECRETARIES
Mr. Siddeshwar Yelamali, Bengaluru (SZ)
Mr. Arvind Kumar Mishra, Prayagraj (NZ)
Mr. Deep Chand Mali, Jodhpur (CZ)
Mr. Amit Goyal, Guwahati (EZ)
Ms. Anagha Kulkarni, Pune (WZ)

ZONAL CHAIRMEN
Mr. M. Ganesan, Malappuram (SZ)
Dr. Naveen Rattan, Amritsar (NZ)
Mr. Vinay Kumar Jolly, Jaipur (CZ)
Mr. Bibekanand Mohanti, Cuttack (EZ)
Mr. Pravin R. Shah, Mumbai (WZ)

Note: For physical Form kindly click the link https://aiftponline.org/wp-content/uploads/2021/pdf/Membership-Form-2021.pdf?v=1!

For applying online kindly click the link https://aiftponline.org/subscription-form/?type=membership

All India Federation of Tax Practitioners

215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020.
Tel.: 22006342/43/49706343 • E-mail: aiftpho@gmail.com • Website: www.aiftponline.org

"We Can't Help Everyone, But Everyone Can Help Someone."
Dr. Loretta Scott

APPEAL TO MEMBER TO CONTRIBUTE FOR FINANCIAL SUPPORT TO MEMBERS (COVID-19) SCHEME, 2021

Dear Members,

Audrey Hepburn said that ***"As You Grow Older You Will Discover That You Have Two Hands. One For Helping Yourself, The Other For Helping Others."***

In line of this action, it is to bring to your notice that the AIFTP has decided to help our fellow members affected due to the present Covid-19 pandemic, by way of financial assistance. For this purpose we have convened an urgent virtual meeting of NEC Members, Past Presidents, Zonal Chairmen and members of all the committees on 15th May, 2021. In the meeting, guidelines of the "AIFTP Financial Support to Members (COVID-19) Scheme, 2021" have been approved by the members present..

On the appeal made by the **Shri M. Srinivasa Rao,** National President and **Dr. Ashok Saraf,** Past President and Chairman of the "AIFTP Financial Support to Members (COVID-19) Scheme, 2021" Committee, to contribute generously to the scheme, the members present have spontaneously announced more than Rs. 25,00,000 worth of contributions for the noble cause. We request you all to come forward and contribute generously to the scheme designed to extend helping hand to our fellow members of the AIFTP who required the financial assistance in the present situation. You are requested to kindly transfer your contributions directly to our HO Bank Account. The Bank Details are as under:

ALL INDIA FEDERATION OF TAX PRACTITIONERS
BANK NAME : ICICI BANK LTD
MUMBAI FORT BRANCH
ACC. NO. : 623501161215
SAVING ACCOUNT
RTGS/NEFT CODE : ICIC0006235

We also request you to kindly communicate the details of your contributions to Mr. Ravindra Patade, CEO, AIFTP through Whatsapp on 9869722522 or through mail to aiftpho@gmail.com for updating our records.

We once again appeal to all of you to contribute generously to the noble cause of extending helping hand to our fellow members who are in dire need of financial assistance to overcome the present situation.

Printed by : Pankaj Ghiya, Published by : Pankaj Ghiya on behalf of All India Federation of Tax Practitioners (name of owner) & Printed at Vee Arr Printers, Bandari Ka Nasik, Subhash Chowk, Jaipur (Name of the Printing Press & Address) and Published at All India Federation of Tax Practitioners, Jaipur • Editor : Pankaj Ghiya • **PUBLISHED ON 25TH EVERY MONTH.**

All India Federation of Tax Practitioners
215, Rewa Chambers, 31, New Marine Lines, Mumbai-400 020