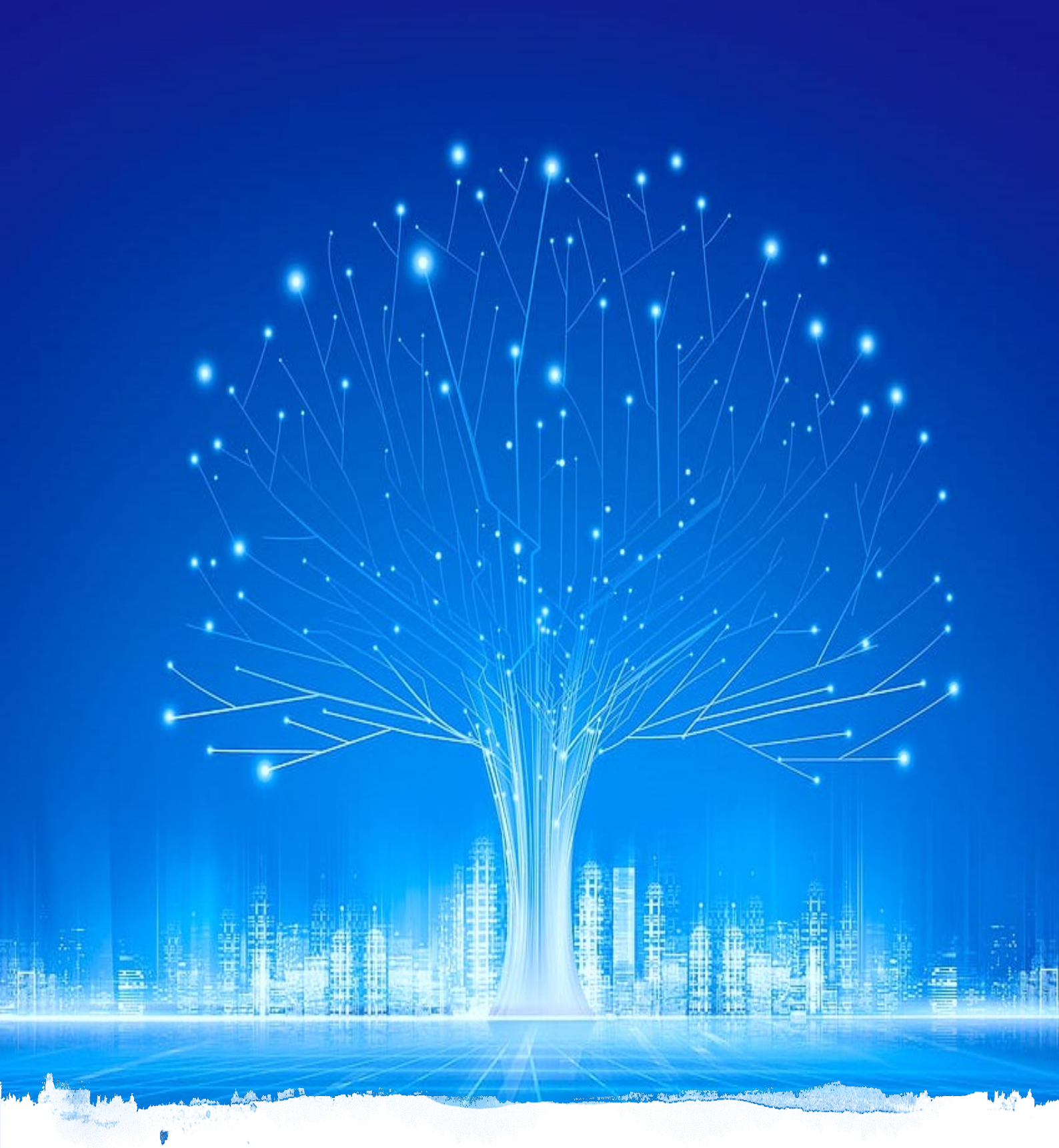

Indirect Tax Compendio

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Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

Contents

Articles

A Soothing Salve for Taxpayer Troubles! (published in TIOL)

THE Goods and Services Tax (GST) regime in India has faced numerous legal challenges since its implementation, especially in terms of availment of ITC. Numerous onerous conditions have been enumerated under law which requires a cumulative satisfaction for an assessee to retain the ITC. One of the key conditions prescribed under the law is the time limit prescribed for availment of ITC. The history of prescribing time limit for taking ITC can be traced to Rule 57G of the Central Excise Rules, 1944 introduced by Notification No. 28/95-C.E. (N.T.) wherein a time limit of six months was prescribed under law.

After the liberalization of the scheme relating to ITC under the central tax laws, the Cenvat Credit Rules, 2004, as introduced, did not for a large period prescribe any time limit for the availment of ITC. Subsequently, in the year 2014, the conditions for time limit were reintroduced.

The GST law continued with this condition, albeit in a newer avatar, where an outer time limit for availment of ITC has been prescribed under Section 16(4). Recently, the vires of this provision along with certain other concomitant provisions of law was a subject matter of challenge before the Hon'ble Kerala High Court [M/s M Trade Links 2024-TIOL-968-HC-KERALA-GST].

This article delves into the legal grounds raised by the petitioners, the key questions of law considered by the courts, and the detailed decisions rendered by the High Court in addressing these issues and the bonus benefits granted by the Court.

Legal Grounds

The petitions challenging the provisions of the Section 16(2)(c) and Section 16(4) CGST/SGST Act brought forth several significant legal grounds:

1. Violation of Article 14 of the Constitution:

Petitioners argued that the provisions of the CGST/SGST Act violated Article 14, which guarantees equality before the law. They contended that the denial of ITC based on the actions of the supplier (such as non-payment of tax) was arbitrary and discriminatory. This ground was rooted in the belief that the recipient should not be penalized for the supplier's non-compliance.

2. Arbitrary Denial of ITC:

The arbitrary nature of ITC denial was another major ground. Petitioners claimed that the provisions were unreasonable and lacked a rational basis, leading to unwarranted financial burdens on the taxpayers. The retrospective application of certain provisions exacerbated this issue, causing significant hardship to businesses.

3. Retrospective Application of Provisions:

The retrospective application of the ITC provisions was challenged on the grounds that it led to unforeseen financial burdens and disrupted business operations. Petitioners argued that such retrospective changes were unjust and violated the principle of legal certainty.

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Questions of Law

The High Court identified and addressed several crucial questions of law:

1. Constitutionality of Taxing Statutes:

What are the grounds on which a taxing statute can be held unconstitutional? This question necessitated an examination of the principles governing the validity of taxlaws, including legislative competence, public purpose, and adherence to fundamental rights.

2. Nature of ITC under GST Act:

What is the nature of the claim to Input Tax Credit under the GST Act and Rules? This involved determining whether ITC was an absolute right or a conditional entitlement subject to statutory compliance.

3. Validity of Sections 16(2)(c) and 16(4) of CGST/SGST Act:

Do Section 16(2)(c) and Section 16(4) of the CGST/SGST Act infringe constitutional provisions and are they unsustainable? These sections impose conditions and time limits on claiming ITC, and their validity needed to be assessed in light of constitutional rights.

High Court Decisions

1. Constitutionality of Taxing Statutes

The High Court extensively examined the constitutionality of the provisions under scrutiny, drawing from established principles and major judicial precedents:

Doctrine of Classification:

The Court reiterated that a taxing statute must adhere to the principle of classification, ensuring that any differentiation between classes of taxpayers is based on an intelligible differentia with a rational nexus to the objective of the law. This principle was derived from landmark cases such as State of West Bengal v. Anwar Ali Sarkar and Budhan Choudhry v. State of Bihar.

Legislative Competence and Public Purpose:

The Court emphasized that a tax must Fall within the legislative competence and serve a public purpose, as upheld in R.K. Garg v. Union of India. It observed that the GST law, including ITC provisions, was enacted within the legislative framework and aimed at a broader public purpose of streamlining the indirect tax regime.

Court's final finding

The Court upheld the constitutionality of the GST provisions, stating that they were within the legislative competence and did not violate Article 14. The provisions were deemed to have a rational basis, serving the public purpose of ensuring compliance and preventing tax evasion.

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2. Nature of ITC under GST Act

The High Court analyzed whether ITC constituted an absolute right or a conditional entitlement:

Statutory Conditions:

The Court noted that ITC claims are governed by specific conditions and restrictions outlined in the CGST/SGST Act and Rules. It emphasized that ITC is not an inherent right but a benefit conferred by the statute, subject to compliance with the prescribed conditions.

Balancing Fiscal Administration:

The Court highlighted the importance of maintaining a balance between granting ITC and ensuring effective tax collection. The ITC scheme was designed to eliminate the cascading effect of taxes while ensuring that tax credits are transferred only upon meeting statutory requirements.

Decision:

The Court following various Supreme Court decisions, ruled that ITC is a conditional entitlement, not an absolute right. Taxpayers must comply with the statutory conditions to claim ITC, thereby ensuring fiscal discipline and integrity in the tax system

3. Validity of Sections 16(2)(c) and 16(4) of CGST/SGST Act:

Sections 16(2)(c) and 16(4) impose specific conditions for claiming ITC:

Section 16(2)(c):

This section mandates that ITC can be claimed only if the supplier has paid the tax. Petitioners argued that this condition unfairly penalized the recipient for the supplier's non-compliance. However, the Court emphasized that this provision was crucial for ensuring tax compliance and preventing revenue leakage.

Section 16(4):

This section imposes a time limit for claiming ITC. Petitioners contended that this time limit was arbitrary and restrictive. The Court, however, observed that the time limit was necessary for maintaining fiscal discipline and ensuring timely tax settlements.

Decision:

The Court upheld the validity of Sections 16(2)(c) and 16(4), stating that they were reasonable and necessary for the effective functioning of the GST system. These provisions were found to align with the broader objective of preventing tax evasion and ensuring timely compliance.

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Granting retrospective application to time limit:

ɭThough the Hon'ble Court had upheld the validity of the constitutional provisions, the Court also granted relief to assessee by extending the time limit prescribed for availment of ITC.

ɭThe Court noted that the legislature has amended the deadline for filing returns for the month of September to 30th November in each succeeding Financial Year.

ɭThis amendment, aimed at easing the difficulties faced during the initial implementation of the GST regime, was held to be procedural in nature and Court held that the same is to be given retrospective effect from 01.07.2017. Consequently, the Court held that dealers who filed their returns for September between 1st October and 30th November, and claimed Input Tax Credit (ITC) before 30th November, are entitled to have their ITC claims processed if they are otherwise eligible.

Conclusion:

ɭThe High Court's detailed examination and decisions in these cases have significant implications for the GST regime in India. By upholding the constitutionality of the ITC provisions and emphasizing the conditional nature of ITC claims, the Court has reinforced the legislative framework's integrity. The rulings underscore the importance of statutory compliance and fiscal discipline, ensuring that the GST system functions effectively and fairly. At the same time, the findings of the court that the time limit prescribed for availment of ITC being procedural is extremely important as many such provisions exist in the Act and this finding of the Court can be applied to many scenarios. It is a trite law that non-compliance with procedural conditions is condonable. Thus, the benefit of this decision can be extended to many other scenarios.

Unpacking Legal Circulars: The Scoop on Warranty and GST Implications (published in TIOL)

IN 2023, the Supreme Court, in the Larger Bench decision of M/s Tata Motors Limited [2023 -TI OL- 66 -SC- CT- LBJ, reaffirmed the decision of the Supreme Court in Moh d. Ekram Khan.

ϧIn Mohd. Ekram Khan [(2004) 6 sec 183], the Supreme Court concluded that warranty transactions were taxable, as the manufacturer made payments for the parts by issuing credit notes to the dealers.

ϧThe Larger bench, while examining the taxability of warranty transactions gave crucial findings on the following aspects

Nature of Transactions: The Court analyzed whether the relationship between the manufacturer and dealer was principal-to-principal or principal-agent . It was determined that transactions involving the replacement of defective parts under warranty, compensated through credit notes, constituted taxable sales.

Credit Notes as Consideration: The issuance of credit notes by manufacturers to dealers for replacing defective parts under warranty was deemed a form of monetary consideration, thus falling under the ambit of 'sale' as defined under the Sales Tax Acts.

Warranty Obligations: The Court noted that warranty replacements were conducted free of charge to customers, and the dealers were reimbursed by manufacturers, establishing the taxable nature of these transactions.

ϧThe Court further noted that sales tax cannot be levied where the dealer simply receives spare parts from the manufacturer to replace a defective part under a warranty. Pursuant to the Court's decision, issued in the context of sales tax, the Central Board of Indirect Taxes & Customs (CBIC) issued detailed clarifications on Goods and Services Tax (GST) implications for warranty replacements and repair services. These clarifications aim to streamline the treatment of such transactions, ensuring uniformity and reducing litigation. This article delves into the key aspects of these circulars and their implications for businesses and distributors involved in warranty-related transactions.

Circular No. 195/07/ 2023-GST (Dated 17-07-2023).

Background and Purpose

ϧThe CBIC issued Circular No. 195/07/ 2023-GST in response to industry representations seeking clarity on the GST treatment of warranty replacements and repair services . The primary concern was whether GST would be applicable on replacement goods or repair services provided during the warranty period without separate consideration from customers. Additionally, the circular addressed the issue of input tax credit (ITC) reversal in such scenarios.

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Key Clarifications

GST on Warranty Replacements and Repair Services

ϟThe circular clarifies that when manufacturers provide replacement parts or repair services during the warranty period without charging customers separately, no additional GST is payable. This is because the value of the original supply, which includes the warranty, already covers these potential costs. However, if any additional consideration is charged for replacement parts or services, GST will apply to the additional amount.

Input Tax Credit (ITC) Reversal:

ϟManufacturers are not required to reverse ITC for replacement parts or repair services provided under warranty without additional consideration. Since the original supply's value already includes these costs, such supplies cannot be considered exempt. Therefore, ITC reversal is not warranted.

Distributor's Role

ϟWhen distributors provide replacement parts or repair services on behalf of manufacturers without charging customers, no GST is payable by the distributor. If the distributor charges the manufacturer for these parts or services, GST applies, and the manufacturer can claim ITC. Various scenarios involving distributors and manufacturers were clarified, ensuring no GST liability or ITC reversal where no additional consideration is involved.

Extended Warranty Offers

ϟExtended warranties offered at the time of the original supply are treated as part of the composite supply, with GST payable on the total value. However, extended warranties sold separately after the original supply are considered distinct supplies of services, subject to GST based on the contract's nature.

Circular No. 216/10/2024-GST (Dated 26-06-2024)

Background and Purpose:

ϟFollowing the issuance of Circular No. 195/07/ 2023-GST , further clarifications were sought by the industry regarding the treatment of warranty replacements, especially when goods as such (not just parts) are replaced. Circular No. 216/10/2024-GST addresses these concerns, providing additional clarity on the GST and ITC implications.

Key Clarifications

Replacement of Goods Under Warranty

ϟThe circular extends the clarifications from the previous circular to situations where entire goods, not just parts, are replaced under warranty. It affirms that the same principles apply: no additional GST is payable on such replacements, and no ITC reversal is required by the manufacturer.

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Replenishment by Manufacturers

ϧWhen distributors replace goods from their own stock and seek replenishment from manufacturers, the transactions are clarified as follows:

ϧIf the manufacturer replenishes the distributor without charging additional consideration, no GST is payable on the replenishment.

ϧNo ITC reversal is required by the distributor or manufacturer in such cases.

Extended Warranty as Separate Supply:

ϧThe circular distinguishes between extended warranties offered by different suppliers (e.g., OEMs or third parties) and those provided at the time of the original sale . Extended warranties offered by different suppliers at the time of the original sale are treated as separate supplies and taxed accordingly . Subsequent sales of extended warranties are always treated as distinct supplies of services, irrespective of the original supply.

Implications for Businesses:

ϧThese clarifications bring much-needed certainty for businesses involved in manufacturing and distributing goods with warranty provisions. By clarifying the tax and ITC implications, these guidelines help reduce litigation and provide a uniform framework for businesses. Manufacturers and distributors must align their practices with these clarifications to ensure compliance and optimize their GST management strategies

Key Rulings and Insights

1. M/s. Sravankumar Blasting Works(AP HC)

Facts of the case

- **The question of law is whether an unsigned order, uploaded by the competent authority under the Central Goods and Services Tax Act, 2017 (CGST Act), can be considered valid and enforceable in light of under Section 160 and Section 169 of the CGST Act 2017?**
- The petitioner argued that the impugned order dated 10.11.2020, issued by the Department, is not signed by the authority as required by law. Therefore, it is contended that it is not an order in the eyes of law and cannot be implemented.
- Further, the petitioner Citied the judgment in M/s. SRK Enterprises v. Assistant Commissioner (ST), Bheemili Circle, Visakhapatnam [2023 (12) TMI 156 - Andhra Pradesh High Court], the petitioner argued that Section 160 and 169 of the CGST Act do not provide for dispensing with the requirement of signatures on orders.
- The Department acknowledged that the impugned order was indeed not signed but was uploaded by the competent authority.
- Further, the Department relied on the provisions of Section 160 and 169 of the CGST Act, the Department Argued that the mere absence of a signature should not invalidate the order, especially when the substance and effect of the order are in conformity with the law.
- The Court agreed with the petitioner that an unsigned order cannot be considered valid. The Court reiterated that the provisions of Section 160 of the CGST Act, which allows that no assessment, adjudication, notices shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission, and the present matter do not encompass the omission to sign the order itself. Thus, the order in question, being unsigned, is deemed to be no order in the eyes of the law.
- The Court emphasizes that the requirement of a signature is essential to establish the authenticity and legal validity of any official order.

Key insights

- In many cases, it is being observed that the order which is passed by the Department is unsigned. In such cases, the assessee can challenge the vires of the order as non-signing of the order ipso facto cannot be considered as a mere procedural defect contemplated under Section 160 and 169 of the CGST Act.
- **Citation** - 2024 (6) TMI 230.

2. M/s. Tvl. Shivam Steels. (Mad HC)

Facts of the case

- **The question of law before the Hon'ble Court was whether the petitioner is liable to reverse Input Tax Credit (ITC) in respect of credit notes issued by the supplier under the Goods and Services Tax (GST) statutes, considering the nature of the credit notes and the applicability of Section 15(3) of the GST statutes?**
- **Secondly, whether a petitioner can challenge only a specific defect in an order through a writ petition, while pursuing appeals before the appellate authority for other defects, is such selective approach is permissible under the principles of judicial review and administrative law?**
- The petitioner received a show cause notice which outlined six defects that needed to be addressed.
- The petitioner argued that the credit notes issued by the supplier should be considered as financial credit notes, not affecting the ITC reversal as they were issued after effecting the taxable supplies, therefore the conditions of Section 15(3) are not satisfied and there is no need to reverse ITC. This is based on the interpretation of Section 15(3) of the GST statutes.
- Further, the petitioner contended that the impugned order has incorrectly characterized the discount as an amount from the supplier to enhance sales volume, thereby boosting the supplier's total turnover, goodwill. This performance by the taxable person was seen as providing a service to the supplier, contributing to enhanced company value in the trading sector.
- The Department argued that the petitioner should exhaust the statutory remedy available before the appellate authority instead of seeking relief directly from the court. It is pointed out that the petitioner has already appealed other defects in the order before the appellate authority, further it is contended that such practice should not be encouraged. Therefore, he submits that the petitioner should be relegated to the statutory remedy.
- The court examined Section 15(3) which provides for the exclusion of discounts from the value of supply, subject to certain conditions. It concluded that the discount received by the petitioner did not meet the conditions specified in the statute, thus requiring a reconsideration of the ITC reversal issue.
- The court held that the impugned order erroneously characterized the discount received as a service provided by the petitioner to the supplier. This interpretation is deemed incorrect and not aligned with the principles of GST law. The credit notes were only financial credit notes.
- Despite the availability of statutory remedy before the appellate authority for other defects, the court can exercise jurisdiction due to the purely legal nature of the issue concerning the interpretation of GST provisions and the erroneous conclusion reached in the impugned order.

Key insights:

The decision of the Hon'ble Court is noteworthy for providing clarity on the treatment which is to be meted out to discounts. The Court held that financial credit notes issued by the supplier cannot be construed as a consideration for a service which is provided by a recipient to the supplier. The Court also laid a very important proposition that the Court can assume jurisdiction even if a portion of the order has been challenged before the Hon'ble Court.

- **Citation** - 2024 (6) TMI 1381

3. M/s. Shree Kr Engineering Works (RJ HC)

Facts of the case

- **The Question of law before the Hon'ble Court was whether the petitioner is entitled to file a supplementary refund claim under the "Any Other" category for the period of December 2018, despite having initially filed claims under specific categories, due to an inadvertent arithmetical error, and whether such claim can be rejected solely on the ground of technical non-compliance with the category selection on the GST portal?**
- The petitioner contended that the rejection of the supplementary refund claim solely on the basis of selecting the "Any Other" category instead of the specific category applicable to accumulated ITC for export goods is unjust. It is argued that the initial claims were under a specific category but for a lesser amount due to an inadvertent arithmetical error, and the subsequent supplementary claim was necessary to rectify this mistake.
- Citing judicial precedents such as the decisions in Shree Renuka Sugars LTD. vs. State of Gujarat, and VKC Footsteps India Private Limited, it is argued that technical errors or system limitations should not bar legitimate claims for refund, especially when the entitlement to the refund amount is not in dispute.
- The Department argued that the rejection of the supplementary refund claim under the "Any Other" category was justified because the petitioner had already filed initial claims under specific categories. It is contended that the GST portal does not allow for filing multiple claims for the same period under different categories, and such technical non-compliance cannot be overlooked.
- Referring to the provisions of Section 54(3) of the CGST Act and the procedural rules governing refund applications, the Department asserts that the legislature has provided clear guidelines for filing refund claims. The Department emphasizes that these procedural requirements ensure orderly conduct and prevent abuse of the refund mechanism.
- The court acknowledged the inadvertent arithmetical error made by the petitioner in initially filing refund claims for a lesser amount. It notes that the petitioner subsequently filed supplementary refund claims to correct this error, opting for the "Any Other" category due to the system constraints preventing multiple claims under different categories for the same period.
- Drawing upon judicial precedents, including those from the Gujarat High Court decision in case of the Shree Renuka Sugars Ltd. and Supreme Court decision in the case of VKC Footsteps India Private Limited (supra), related tax matters, the court underscored the principle that procedural technicalities should not obstruct substantive justice. It highlighted that while procedural rules are important, they should not override the entitlement of a taxpayer to a legitimate refund amount.
- Further, the Court also drew a difference between how law conceives a clear differentiation between illegality and irregularity. Illegality represents a fundamental defect in compliance with law, whereas irregularity denotes a technical defect in the manner of conducting proceedings, without altering the substantive rights of the parties. The distinction is key in determining the gravity and

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consequences of a procedural flaw. The court emphasizes the importance of balancing procedural requirements with the substantive rights of taxpayers, urging administrative flexibility in addressing genuine errors to ensure fair and equitable application of tax laws.

- In light of the above considerations, the court rules that the rejection of the petitioner's supplementary refund claim solely on the grounds of selecting the "Any Other" category constitutes a technical error rather than a substantive issue. It directs the Department authorities to reconsider the petitioner's refund application, ignoring the technical non-compliance with the category selection, and evaluate it on its merits within a reasonable time frame.

Key insights

- The decision of the Hon'ble court would assist various cases of refund. Further the crucial finding in respect of illegality and irregularity would be of assistance in numerous tax litigation matters.
- **Citation:** 2024 (6) TMI 114

4. M/s. Hitachi Nest Control Systems Pvt. Ltd. (Kar HC)

Facts of the case

- **The Question of law is whether tax assessment proceedings under the CGST Act can be initiated against a company that has been dissolved under Section 59(8) of the Insolvency and Bankruptcy Code, 2016 (IBC Act), and whether the principles of jurisdictional defect apply in such cases?**
- The petitioner company was dissolved by the NCLT, Bangalore on 15.02.2023 under Section 59(8) of the IBC, Act 2016. As a result, the petitioner company ceased to exist for any purpose thereafter and the GST registration was cancelled prior to the dissolution and NOC certificate was also obtained from the Income Tax Department.
- The petitioner argued that the impugned show cause notice and the subsequent adjudication order was passed against the petitioner company, which was a non-existing entity at the time. Since,, the petitioner company was dissolved and was no longer in existence when the order was passed, these actions are void, non-est (having no legal existence) and a nullity in the eyes of the law.
- The Department argued that even if the petitioner company was dissolved after the issuance of the show cause notice, the department can still proceed against the erstwhile directors to recover the dues by the virtue of Section 88(3) which provides that if a company ceases to exist, and any tax due is still liable to be recovered the same can be recovered from the directors of the company.
- Therefore, the department can initiate proceedings against the erstwhile directors of the dissolved petitioner company to recover the dues.
- The court held that, dissolution of the petitioner company under Section 59(8) of the IBC, was prior to the impugned actions renders those actions void and without legal basis, as they were taken against a company that had legally ceased to exist. This provides the basis for quashing the show cause notice and order.
- Further, the argument regarding applicability of Section 88, the court found that Section 88 (3) of the CGST Act could not be invoked against the directors of the dissolved company because the tax liability was not determined during the company's existence and there was no compliance with the procedural requirements of Section 88 (1) and (2).
- The court allowed the writ petition, and the impugned show cause notice and adjudication order were quashed.

Key insights:

- The decision of the Hon'ble court would assist various companies who are dissolved and whose name have been struck off from the registrar of companies.
- **Citation -** 2024 (6) TMI 227.

5. M/s. BNR Infrastructure Project (P) Ltd.(Mad HC)

Facts of the case

- **The Question of law is whether exclusion of GST from the total consideration vests the liability for GST payment on the petitioner and does it preclude the petitioner from claiming GST from the TNSCB?**
- The petitioner participated in a tender issued on 22.06.2017 under Vertical-III (AHP) of the Pradhan Mantri Awas Yojna (PMYA) for constructing 2112 tenements. The bid submitted by the petitioner was accepted and approved by the Tamil Nadu Slum Clearance Board. (TNSCB)
- Following the acceptance of the bid, negotiations were held on 18.08.2017, and subsequently, on 27.09.2017, the TNSCB approved the rates quoted by the petitioner amounting to Rs. 179,69,05,781/-. On 19.10.2017, an agreement was executed between the petitioner and the TNSCB for the execution of the construction work.
- Various taxes and dues such as income tax, sales tax, service tax, etc., were included in the contract value, except for GST. It was explicitly agreed that GST would be borne by the TNSCB separately. The petitioner paid GST amounting to Rs. 10,79,12,794/- during the course of executing the agreement. Initially, the TNSCB reimbursed GST at 12% extra on the amount paid. However, for the subsequent bills the TNSCB failed to pay the GST.
- Therefore, the petitioner submitted representation to the TNSCB for the payment of GST amount. Since the same was not considered, the petitioner approached this Court by way of the present writ petition.
- The petitioner argued that the TNSCB by letter stated that GST against the works of the said project may be given only after approval of a Revised Financial Statement (hereinafter called as "RFS"). Even after the RFS report, the TNSCB did not settled the amount of GST. While being so, the TNSCB raised query as to why the government order passed in G.O.Ms.No.296 of 2017 Finance (Salaries) Department, dated 09.10.2017, cannot be applied to the project with respect to ascertain the value of subsumed taxes, which will in turn lead to finding of value of supply on which amount GST was paid.
- It is further, argued that since the contract was finalized before GST implementation, the orders issued by the government department to mitigate any losses due to GST introduction, is applicable to pre-GST contracts. The petitioner's agreement was based on the understanding that GST would be paid by the respondent separately, as explicitly stated in the agreement. Therefore, he requested the court to grant relief in the present writ petition.
- The TNSCB argued that the writ petition not maintainable since an alternative remedy is available under the Act. As per Section 95 of the CGST Act, 2017, if the petitioner has any doubt regarding the applicability of GST, they could have sought an advance ruling from the competent authority. The agreement also contained an arbitration clause.
- Further, it is argued that the petitioner has not stated whether they are eligible for input tax credit (ITC) claim and whether they have a claim under ITC as per Section 16 of the GST Act. A declaration under Section 16 of the GST Act is mandatory to test the bona fides of the petitioner regarding payment of GST.

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- The court has observed that the petitioner's assertion under Clause 1.1 of the agreement regarding the scope of work, that taxes including GST are included in the quoted rates, corroborates the understanding that the bid encompassed all tax liabilities. Given the consolidation of various taxes into GST post-implementation, the contract's scope remains inclusive of all taxes. The petitioner's attempt to claim additional GST would amount to double taxation, contrary to the contract terms and the principles of fair competition under the Tamil Nadu Tender Transparency Act, 2000.
- Further it is observed that the order passed by the government of Tamil Nadu in G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017, by way of amendment, which is binding on the contractor as signatory to the contract. In the order, the government considering the transparent means of estimating subsumed tax, it had directed a methodology to estimate the value of subsumed taxes in the contracted value of work.
- As per the order, the procuring entities shall negotiate existing agreements with works contractors and enter into supplemental agreements with revised agreement value fixed as the original contracted value minus the value of subsumed tax arrived in the above plus GST as applicable. Accordingly, a supplemental agreement was made, and the contract value was reduced and the same was communicated to the petitioner but the petitioner failed to execute any supplemental agreement. As the order was applicable to pre-GST contracts, it is binding on both the parties and applicable to the present case. Further, the petitioner has also failed to produce the documents to establish that he had claimed ITC.
- The court held that the issues raised in this writ petition involve factual complexities intertwined with legal considerations under Article 226 of the Constitution of India. Such matters necessitate adjudication in accordance with established legal procedures. Notably, the agreement includes an arbitration clause, compelling dispute resolution through arbitration or legal recourse within Chennai city jurisdiction, precluding relief sough through this writ.

Key insights:

- There are various contracts where the clause to GST is silent. This is more particularly prevalent in cases of government contracts where the clauses relating to tax may not be specifically present. The decision of the court is a detailed treatise in such cases.
- **Citation:** 2024 (6) TMI 167.

6. M/s. Trade Links private Ltd.(Ker HC)

Facts of the case

- **The question of law pertains as to what are the grounds on which a taxing Statute can be held to be unconstitutional?**
- **What is the nature of the claim to Input Tax Credit under the scheme of the GST Act and the Rules made thereunder?**
- **Whether Section 16(2)(c) and Section 16(4) of the CGST/SGST Act infringe the Constitutional provisions and are unsustainable?**

Key insights:

- From the reading of the article, earlier in this compendio, the key arguments raised by the petitioners and Department are already discussed
- The Court upheld the constitutionality of the GST provisions, stating that they were within the legislative competence and did not violate Article 14.
- The Court ruled that ITC is a conditional entitlement, not an absolute right.
- The Court upheld the validity of Sections 16(2)(c) and 16(4), stating that they were reasonable and necessary for the effective functioning of the GST system.

Key Insights

- After the decision of the Hon'ble Court, in agenda of the 53rd GST council meeting, it has been recommended that the time limit to avail input tax credit with respect to any invoice or debit note under Section 16(4) of CGST Act, through any GSTR 3B return filed up to 30.11.2021 for FY 2017-18, 2018-19, 2019-20 and 2020-21, may be deemed to be **30.11.2021.**
- **This would provide a huge relief for many assessee where SCN are issued on the basis of delay in filing GSTR 1 etc.**

7. M/s. Millenium Cement Company Pvt. Ltd. (Cal HC)

Facts of the case

- **The Question of law is whether the appellate authority under the GST Act has the power to condone a delay in filing an appeal beyond 120 days?**
- The petitioner filed GST TRAN-1 within the stipulated time to carry forward unutilized Cenvat Credit (input tax credit claim), however, the department issued a show cause notice dated 06.04.2020 under Section 73(1) of the CGST Act, alleging short payment of tax. Subsequently, an Order dated 08.02.2022 was passed. The petitioner claimed that without receiving notice of demand in GST DRC 07, they were unable to file an appeal in online form. Despite following up, the petitioner received the notice of demand on 21.04.2023.
- To meet the impending deadline for filing the appeal, the petitioner filed the appeal manually before the Appellate Authority on 30.06.2022. The petitioner made the required pre-deposit on 21.07.2022 in accordance with the statutory requirements. However, the appellate authority refused to condone the delay in filing the appeal, on the grounds that there was a delay of 152 days.
- The petitioner argued that the delay in filing the appeal was due to the non-receipt of the notice of demand in GST DRC 07, which is a prerequisite for filing an appeal online. Despite following up, the notice was received only on 21.04.2023, which was after the expiry of the appeal filing period. The petitioner contended that the appellate authority should have condoned the delay considering these circumstances. It was also argued that recent judgments, such as those cited from the Calcutta High Court, establish that the appellate authority has discretion to condone delays beyond 120 days.
- The Department argued that the appeal was filed after a delay of 152 days, well beyond the statutory limit of 90 days prescribed under Section 107 of the CGST Act. The department argued that there is no provision in the law allowing for the condonation of such a lengthy delay. It was further contended that the petitioner failed to provide a satisfactory explanation for the delay in filing the appeal.
- The court observed that the delay in filing the appeal was erroneously calculated by the appellate authority, as it included the period before the issuance of the notice of demand. Correctly deducting the statutory period for filing the appeal from the date of the order, the court found that the delay was within the condonable limit.
- The court held that the appellate authority indeed possesses the power to condone delays beyond the initial 90-day period. Therefore, the court set aside the appellate order dismissing the appeal and remanded the matter back to the appellate authority for fresh consideration, directing it to condone the delay and adjudicate on the merits of the appeal.

Key insights:

- This decision of the Hon'ble court is extremely beneficial for delayed filing of Appeals as SC in many cases have not extended the relief to assessee. The decision of the writ court would be beneficial for such cases
- **Citation:** 2024 (6) TMI 549.

8. M/s. Little Brain Works Pvt Ltd.(AP HC)

Facts of the case

- **The question of law is whether the petitioner, who was unable to rectify deficiencies in their GST refund application due to the closure of the portal, can be permitted to file the application manually, and whether the competent authority is bound to consider such manually filed application for refund?**
- The petitioner argued that they had initially submitted an application for refund of Input Tax Credit amounting to Rs. 40,10,932 for the period from April 2018 to March 2019. However, a deficiency memo dated 31.12.2019 was issued citing missing supporting documents and advising them to file a fresh application. Due to the portal being closed, the petitioner was unable to file the fresh application or rectify the deficiencies online. Despite attempts, the authorities did not accept manual filing. Therefore, the petitioner sought a writ of mandamus directing the authorities to process their application for refund or allow them to file manually and ensure consideration without imposition of interest or penalties.
- The Department argued that as per the counter affidavit and the deficiency memo, the deficiencies in the application for refund were validly pointed out. They emphasized that the portal closure did not absolve the petitioner from the requirement to upload necessary documents or comply with procedural requirements for filing the refund application. The Department maintained that the Letter of Undertaking (LUT) required under the IGST Act was not uploaded, and a fresh application was necessary to rectify these deficiencies, which must be done on the portal as per statutory rules.
- The court observed that the rules, which mandate filing and rectification on the portal and the petitioner's inability to do so due to technical reasons (portal closure) should not deprive the petitioner of their right to seek a refund, especially when they had attempted to comply promptly
- Therefore, the court held that the procedural rules should facilitate timely redressal of grievances and not obstruct legitimate claims and disposed of the writ petition by allowing the petitioner to manually file the application for refund, completing the requisite documents to rectify deficiencies as pointed out in the deficiency memo. The competent authority was directed to consider the application within six weeks from filing, and explicitly instructed that the application should not be rejected solely for being filed manually.

Key insights:

- The ruling would be relevant for many cases where due to portal glitches & technicalities the assessee are unable to obtain the refund / tax filing. It's a very assessee friendly case useful in many question of law.
- **Citation:** 2024 (6) TMI 551.

9. M/s. Sunwoda Electronic India Pvt Ltd.(TN AAR)

Facts of the case

- **The Question of law is whether GST is leviable on the sale of goods warehoused in a third-party Free Trade Warehousing Zone ("3P FTWZ33) on "as is where is" basis to customer who clears the same to bonded warehouse under MOOWR Scheme?**
- The Applicant has entered into a contract with an Original Equipment Manufacturer (OEM) licensed under Section 65 of the Customs Act, 1956, and governed by the Manufacture and Other Operations in Warehouse Regulations, 2019 (MOOWR). The contract involves the supply of imported Portable Lithium System Batteries. To fulfill the contract, the goods are imported by the Applicant from overseas to a third-party Free Trade Warehousing Zone (3P FTWZ) in India. The goods remain stored in the 3P FTWZ. The Applicant sells these goods to the OEM's MOOWR unit while they are still in the 3P FTWZ. The OEM's MOOWR unit clears the goods under bond as needed.
- The Applicant stated that under GST law, the taxable event is defined as 'supply'. Section 7(1)(a) of the Central Goods and Services Tax (CGST) Act, 2017 expansively defines 'supply' to encompass all forms of supply of goods and services. However, Section 7(2)(a) of the CGST Act provides exceptions to this rule, stating that activities or transactions listed in Schedule III of the Act shall neither be treated as a supply of goods nor a supply of services. In Schedule III, Para 7 and Para 8(a) covers the case of the Applicant.
- Para 7 provides the exclusion of the supply of goods from a place in a non-taxable territory to another place in a non-taxable territory without the goods entering into India from the scope of GST, further, the term 'non-taxable territory' is defined under Section 2(79) of the CGST Act as a territory outside the taxable territory of India.
- Para 8(a) provides for the exclusion of the supply of warehoused goods to any person before clearance for home consumption from the scope of GST. Additionally, Explanation 2 to Para 8 clarifies that 'warehoused goods' has the same meaning as assigned to it in the Customs Act, 1962, which defines 'warehoused goods' as goods deposited in a warehouse.
- The applicant relies on the Special Economic Zones Act, 2005 (SEZ Act) to argue that goods stored in a Free Trade Warehousing Zone (FTWZ), which is deemed to be outside the customs territory of India under Section 53 of the SEZ Act, do not enter home consumption until they are cleared from the FTWZ. This argument is supported by judicial decisions such as Covema Wood Blast vs. State of Kerala [2006 (334) E.L.T. 649 (Ker.)], which reinforce the interpretation that FTWZs are treated as being outside the customs frontiers of India. Furthermore, Section 51 of the SEZ Act asserts that its provisions override any inconsistent provisions in other laws, emphasizing the legal standing of FTWZs as territories outside the customs territory of India for the purposes of authorized operations. In conclusion, the

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applicant contends that the sale of goods from their warehousing facility in a third-party Free Trade Warehousing Zone (3P FTWZ) to a customer, who subsequently clears them to a bonded warehouse under the MOOWR Scheme, qualifies for exemption from GST under both Para 7 and Para 8(a) of Schedule III to the CGST Act, 2017. They argue that since the goods remain in the FTWZ and are not cleared for home consumption, they fall outside the scope of GST liability as per the provisions and definitions provided in the relevant Acts and Schedules. Therefore, the applicant seeks confirmation that GST is not applicable on such transactions under the described circumstances.

- The AAR has observed that Section 2(n) of the Special Economic Zones Act, 2005 (SEZ Act) defines "Free Trade and Warehousing Zone" (FTWZ) as a Special Economic Zone primarily for trading, warehousing, and related activities and Section 2(za) of the SEZ Act clarifies that a Special Economic Zone includes FTWZ and Rule 8(5) of the SEZ Rules, 2006 allows units within FTWZs to hold goods on behalf of foreign suppliers for dispatch and trade without requiring processing, labeling, or repacking and Section 53 of the SEZ Act designates SEZs as territories outside India's customs territory for authorized operations. and Section 51 of the SEZ Act stipulates that its provisions supersede any inconsistent provisions in other laws. Therefore, it is established that FTWZs are integral to the SEZ scheme and function as customs bonded warehouses.
- On 01.02.2019, an amendment to the Schedule III took place and paras 7 and 8 were introduced which provided that supply of warehoused goods to any person before clearance for home consumption shall be neither a supply of goods nor a supply of services. By virtue of Section 20 of the IGST Act, 2017 this amendment also impacts the Integrated tax.
- On the first leg of transaction, that is, the import of goods, it is clear that, by virtue of clause 8 (a) of the Schedule III there is no requirement of payment of duties of Customs including IGST, as long as the imported goods in question stay warehoused, either in a Customs bonded warehouse, or in a warehouse under a FTWZ/SEZ.
- Now, on the sale of warehoused goods to a MOOWR unit, it is observed that Section 65 of the Customs Act, 'Manufacture and other operations in relation to goods in a warehouse'. The CBIC Circular No. 48/2020-Customs dated 27.10.2020, clarified that Section 65 unit may source capital goods or inputs from a SEZ/FTWZ, following the applicable procedures. Further, under Rule 46 (13) of the SEZ Rules, 2006, a unit is permitted to transfer goods to a bonded warehouse without payment of duty.
- Further, under FAQs by CBIC in F. No. 484/03/2015-LC (Pt), in which it was again clarified that Manufacture and other operations in a bonded warehouse is a duty deferment scheme. Thus, both BCD and IGST on imports stand deferred. In the case of goods other than capital goods, the import duties (both BCD and IGST) stand deferred till they are cleared from the warehouse for home consumption,
- The AAR has observed that when the imported goods are warehoused, as long as the said goods are not cleared for home consumption, duties under Customs including IGST are not required

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to be discharged, it became much clearer, after the amendment whereby clauses 7 and 8 were added to Schedule III of the CGST Act, 2017.

- The AAR ruled that GST is not leviable on the sale of goods warehoused in 3P FTWZ on "as is where is" basis to customer who clear the same to bonded warehouse under the MOOWR Scheme.

Key Insights:

- The decision of the AAR would be beneficial for many assessee who are operating under MOOWR schemes. Assessee in the power sector are specifically advised to take the benefit of this AAR.
- **Citation:** 2024 (6) TMI 11.

10. M/s. Arthanarisamy Senthil Maharaj(TN AAR)

Facts of the case

- **The question of law is whether the rotary car parking system is movable or immovable property based on its installation and permanence criteria ?**
- **Whether the rotary car parking system qualifies as "plant and machinery" under the GST regime ?**
- **Whether Input Tax Credit (ITC) is admissible under Section 17(5)(d) of the CGST Act, 2017 on the purchase and installation of the rotary parking system.**
- The applicant is supplying services of Renting of Immovable Property and to enhance the quality of output service provided they are desirous of installing a rotary parking system classifiable under HSN code 84289090. The applicant submitted that the parking facility is essential to retain the existing tenants as well as to have full occupancy.
- The applicant submitted that the rotary parking system is an independent installation and certainly not part of the building. Even though the parking system is fixed to the base bed, it is detachable, and this factual position illustrates parking system is a movable property.
- The applicant argued that the parking system, despite being fixed by bolts, nuts, and screws, retains its identity and functionality as movable goods because it can be dismantled and relocated using simple technology without losing its essential characteristics. Therefore, the parking system qualifies as plant and machinery as defined in the explanation to Section 17(5). Further it is argued that parking system is a standalone facility designed to enhance service standards. Unlike immovable property, it does not require statutory installation requirements and does not become an integral part of the building. It can be relocated to another location without structural damage, demonstrating its movable nature.
- The applicant argued that there is no definition provided for immovable property in the GST Act , therefore, based Section 3(26) of the General Clauses Act, 1897, immovable property includes things permanently attached to earth. They contend that the parking system, which is fixed by bolts, nuts, and screws to a specific foundation for stability, does not meet this criterion. Furthermore, citing Section 3 of the Transfer of Property Act, 1882, they highlight that attachment to earth implies either being rooted in the ground (like trees) or embedded (like walls), for the permanent beneficial enjoyment of the property. Since the parking system does not fulfill these conditions and can be relocated intact, it retains the characteristics of movable property. Therefore, the parking system cannot be classified as immovable property.
- The AAR as placed reliance on the test of permanency established by the Supreme Court in Municipal Corporation of Greater Bombay vs. Indian Oil Corporation, which states that if an item can only be moved by dismantling, it qualifies as immovable property. Further in the case of Commissioner Trade Tax U.P. Lucknow Vs S/S Triveni N.L. Ltd.,, which involved machinery embedded in earth, highlighted that intention and functional permanence are crucial in determining immovability. Applying these principles, the court observed that the rotary car parking system, intended for long-term use without relocation plans, meets the criteria of being permanently fastened for the permanent

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beneficial enjoyment of the property. Therefore, Rotary Car Parking system is not a movable property as contested by the applicant.

- The AAR has observed that despite mechanical components, the primary purpose of the rotary parking system is to provide parking space, not machinery used directly for making outward supplies of goods or services. The parking system fits within the exclusion clause for civil structures, referred to in the explanation to Section 17, as it serves a functional purpose akin to infrastructure enhancing community functioning. Further, the term civil structure is broadly defined in civil engineering as man-made constructions designed to enhance community or societal functioning, built from various materials. The meaning of the building, structures, and foundation can be found in the Tamil Nadu Combined Development and Building Rules, 2019. Therefore, from the combined reading of the rules and definitions it can be concluded that rotary parking systems are civil structures. Construction of the rotary parking system falls in the definition of construction as referred in the explanation to Section 17 and acts as an addition to the existing building and becomes part of the existing building.
- The AAR held that ITC is not admissible under section 17 (5) (d) of CGST/TNGST Acts 2017 on the Rotary Parking System desired to be installed by the applicant.

Key insights:

- The rationale of the ruling would have far reaching consequences in terms of admissibility of ITC for plant & machinery items. What is movable is a legally debatable subject & revenue would rely on this ruling.
- **Citation:** 2024 (6) TMI 12.

11. M/s. Dormer Tools India P Ltd.(GUJ AAR)

Facts of the case

- **The Question of law is whether the deduction of a nominal amount made by M/s. Dormer Tools India P Ltd. from the salary of employees who avail the facility of food provided in the factory premises constitutes a 'supply of service' under the provisions of section 7 of the CGST Act, 2017 and GGST Act, 2017?**
- **Whether Input Tax Credit (ITC) to the extent of the GST borne by M/s. Dormer Tools India P Ltd. is available on the GST charged by the canteen service provider for providing catering services?**
- The Applicant is engaged in the manufacture and sale of industrial products, operates a manufacturing facility in Gujarat with over 500 employees, They have established a canteen facility within their premises as mandated by Section 46 of the Factories Act, catering to their employees through a contracted Canteen Service Provider (CSP). Each employee contributes Rs. 338 monthly towards the cost of food provided by the CSP, which is nominal in nature.
- The Applicant argued that Schedule III of the CGST Act, provides that services provided by an employee to an employer in the course of employment are not considered supplies for GST purposes. It is argued that deductions from employees' salaries for canteen services do not constitute consideration under GST laws, highlighting a lack of quid-pro-quo and business intent. Additionally, it is argued that the Input Tax Credit (ITC) on GST paid to the CSP, can be availed by the Applicant as there is a statutory obligation under the Factories Act to provide such facilities to employees.
- The court has observed that as per Section 7 of the CGST Act, 2017, 'supply' encompasses various forms of transactions made for a consideration in the course or furtherance of business. Notably, Schedule III of the Act excludes certain activities from the definition of supply, including services provided by an employee to the employer in the course of or in relation to employment. Further, the Circular No. 172/04/2022-GST issued by the Authority clarifies that perquisites provided under a contractual agreement between employer and employee, which are in lieu of services provided by the employee to the employer, are not subject to GST. This includes facilities such as subsidized canteen services.
- The AAR observed that section 17(5)(b) specifies that ITC shall not be available for food and beverages, among other items, unless such goods or services are obligatory for an employer to provide to its employees under any law. And the Circular No. 172/4/2022-GST clarifies that post the amendment effective from 1st February 2019, ITC on goods or services, including food and beverages, which are obligatory for an employer to provide to its employees under any law, is available. Further the reference was made to the ruling in the case of M/s. Tata Motors Ltd., Ahmedabad, which supported the interpretation that ITC on GST charged by the CSP should be restricted to the extent of the cost borne by the applicant.
- The AAR ruled that the deduction of a nominal amount from the salary of employees availing the canteen facility does not constitute a ‘supply’ under Section 7 of the CGST Act, 2017 and the GGST Act, 2017.

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- Since the first issue is resolved in the negative, the ruling sought in respect of the second question concerning the applicability of GST on the canteen facility is rendered infructuous.
- ITC will be available to Applicant on GST charged by the canteen service provider for the canteen facility provided to its employees working in their factory premises. However, this ITC is restricted to the extent of the cost borne by Applicant itself for providing these canteen services to its permanent employees, excluding any proportionate credit embedded in the cost recovered from employees.

Key insights:

- The ruling of the AAR has given a key finding on the issue of canteen recovery by holding that no GST would be payable. Further, a positive interpretation has been rendered in respect of the ITC eligibility
- **Citation:** 2024 (6) TMI 222.

12. M/S. Wago Private Limited.(GUJ AAAR)

Facts of the Case

- **The question of law is whether the Appellant is eligible to avail Input Tax Credit (ITC) on the supply of air conditioning and cooling systems and ventilation systems under the CGST Act, 2017?**
- The applicant argued that the air conditioning and cooling systems and ventilation systems consist of various inter-dependent machines that perform specific tasks. They contended that each component retains its individual identity even when assembled into these systems.
- It is highlighted that despite being supplied under a single work order to M/s. Skai Air Control P Ltd., the systems have distinct requirements for different areas of their factory, administration building, and canteen, indicating they are not singular entities but collections of separate machines.
- It is argued that the systems in question (air conditioning and ventilation) should not be classified as immovable property as per definitions under the General Clauses Act and Transfer of Property Act, since they are not permanently affixed and can be dismantled without substantial damage. Therefore, the ITC cannot be blocked under 17(5)(c) of the CGST Act, which blocks credit for works contract services used for construction of immovable property (other than plant and machinery).
- The Court observed that air conditioning and ventilation systems, as supplied and installed under a single works contract, become part of the immovable property once installed. The reliance was placed on precedents and definitions from the General Clauses Act and Transfer of Property Act to support this classification. The court has also relied on CBIC Circular No. 58/1/2002-CX and the Supreme Court's judgment in Globus Stores P. Limited to assert that such systems qualify as works contract services for the construction of immovable property, thereby disallowing ITC under Section 17(5)(c).
- The court confirmed the order of the GAAR and rejected the appeal filed by the applicant further holding that the appellant is not eligible to avail ITC on supply of air conditioning and cooling system and ventilation system since it ceases to be a plant and machinery and is blocked under Section 17 (5) (c) of CGST Act, 2017 as the same is works contract services for construction of an immovable property.

Key insights:

- The inference that can be bought from this decision of the AAR is that the rule of permanence has been the basis of classification for movable or immovable plant & machinery, However, the same is always a debatable subject matter & the revenue would rely on this decision.
- **Citation:** 2024 (6) TMI 109.

Notifications, Circulars and Other Developments

GST Circulars

1. Circular on Reduction of monetary limits for filing appeals or applications by the Department. - Circular No. 207/1/2024-GST:

- Monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court.

Appellate Forum	Monetary Limit
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

- **Exclusions:**
- Where any provision of the GST Law ultra vires the Constitution of India or
- Where any Rules or regulations made under GST Act ultra vires the parent Act or
- Where any order, notification, instruction, or circular ultra vires GST Act or Rules or
- Where the matter is related to – Valuation or classification of goods or services, or Refunds or Place of Supply or Any other issue recurring in nature and/or involves interpretation of the provisions
- Where strictures/adverse comments passed against the Government/Department or their officers
- Any other case where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

2. Circular on determination of Place of supply of goods to unregistered persons - Circular No. 209/3/2024-GST.

Provision says:

where the supply of goods is made to an unregistered person (particularly supplied through e-commerce platform) → Place of supply → Address of the said person recorded in the invoice → If not recorded → Place of supply shall be the location of the supplier is the Place of supply

Issue :

where billing address is different from the address of delivery of goods, especially in the context of supply being made through e-commerce platforms.

Clarification given:

Place of supply of goods shall be the address of delivery of goods recorded on the invoice

GST Circulars

3. Circular on Valuation of import of services by related person where recipient is eligible for full ITC - Circular No. 210/4/2024-GST:

Supply of goods or services or both between the distinct or related persons where the recipient is eligible for full ITC

→ Value declared in the invoice shall be deemed to be the open market value of the said goods or services.

→ If the invoice is not issued by the related domestic entity with respect to any service.

→ Value of such services may be deemed to be declared as Nil, and may be deemed as open market value

4. Circular on time limit with respect to RCM Invoice - Circular No. 211/5/2024-GST:

Issue:

Whether the relevant FY for calculating time limit (September/November of relevant FY) within which the recipient can avail ITC for the invoices of the said FY is

(a) FY in which Supply was received.

(Or)

(b) FY in which Invoice was issued by the Recipient.

Supplies from unregistered to registered person Where invoice shall be raised during the time of supply and tax shall be paid by Recipient on RCM basis

Clarification:

The Relevant FY for calculating for calculating time limit within which ITC can be availed shall be the FY in which invoice has been issued by the Recipient

GST Circulars

5. Circular on providing evidence for compliance – Circular No. 212/6/2024-GST

Law relating to post supply discounts while calculating Value of Supply

Post sale discount can be excluded from Value of supply provided the following conditions are satisfied

(a)Such discount clause shall be provided at the time of entering into Agreement
and
(b) ITC w.r.t such discount shall be reversed by the recipient

The Recipient shall reverse ITC pertaining to discount component

No suitable Mechanism for suppliers to prove the same

Clarification

Evidence for proving such reversal shall be

Where discount given vide tax credit note

Upto Rs. 5,00,000/-
Undertaking/Certificate from recipient stating that ITC has been reversed on such component

More than Rs. 5,00,000/-
CA/CMA Certificate containing details of relevant invoice and UDIN

6. Circular on taxability of ESOP/ESPP/RSU - Circular No. 213/07/2024-GST:

To Employees of Domestic Subsidiary Company

← Issuance of ESOP/ESPP/ RSU

Foreign Holding Company

Reimburses the market value for issuance of ESOP/ESPP/RSU →

Domestic Subsidiary company

Clarification given:

No GST payable as ESOP/ESPP/RSU is a part of Consideration to employees and thus, not a supply

No GST payable Supply of services as transfer of securities is neither supply of goods/services.

What if?

Additional consideration is charged by the Foreign Holding company such as fee, markup or commission?

GST on such additional amount is payable by Domestic subsidiary on RCM basis

GST Circulars

7. Circular on taxability of salvage/ wreck value earmarked in the claim assessment of the damage caused to the motor vehicle - Circular No. 215/9/2024-GST:

Whether the insurance company deducts the salvage value from the claim amount

→ NO →

- Insurance contract provides for full claim settlement without deducting salvage value
- The salvage becomes the property of the insurance company
- Discharge GST liability on the sale or disposal of the salvage

↓

YES

↓

Salvage remains the property of the insured and the insurance company is not liable to pay GST on the salvage value.

8. Circular on GST liability and input tax credit (ITC) availability in cases involving Warranty/ Extended Warranty - Circular No. 216/10/2024-GST:

GST and ITC rules for warranty replacements apply to both parts and whole goods

Distributors replacing parts or goods under warranty and getting replenishment from the manufacturer without additional consideration → No GST is payable on the replenished items and no ITC reversal is needed

For extended warranties, if sold at the time of original goods supply by a different Supplier → It is treated as a separate supply of service, not part of the composite supply of goods.

If sold later, it is also treated as a separate service

GST Circulars

9. Circular on Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode settlement - Circular No. 217/11/2024-GST:

Repair expenses incurred and paid by the Policy holder and subsequently reimbursed by the Insurance company.

ITC available ?

YES

ITC available to the insurance company only to the extent of reimbursement of the approved claim cost

Provided invoice for the repair of the vehicle is issued in the name of the Insurance company.

10. Circular on taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person - Circular No. 218/12/2024-GST:

Loans provided by an overseas affiliate to its Indian affiliate or between related persons

considered a supply under GST

However, when the only consideration is interest or discount

These services are Exempt from GST

If additional fees like processing or administrative charges are levied

They will be subject to GST

GST Circulars

11. Circular on availability of input tax credit on ducts and manholes used in network of optical fiber cables (OFCs) - Circular No. 219/13/2024-GST:

Input tax credit (ITC) on ducts and manholes used in the network of optical fiber cables (OFCs) for telecommunication services is not restricted under Section 17(5) of the CGST Act, 2017.

Board clarifies that ducts and manholes are considered "plant and machinery" and are not excluded from ITC eligibility. Therefore, ITC is available for these components as they are essential for the OFC network used in providing telecommunication services.

Indirect Tax Compliance Calendar for July 2024

JULY 2024

Important Due Dates under Indirect Tax

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Important Due Dates under Indirect Tax

Due Date	Description
10 July 2024	↳ Filing of GSTR-7 - By Tax Deductor for the month of June 2024 ↳ Filing of GSTR-8 - By E-Commerce Operator for the month of June 2024
11 July 2024	↳ Monthly filing of GSTR-1 for the month of June 2024 (Regular taxpayers)
13 July 2024	↳ GSTR 1 - IFF by Taxpayers under QRMP Scheme for the Quarter April – June 2024 ↳ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of June 2024 ↳ Filing of GSTR-6 - By Input Service Distributor for the month of June 2024
18 July 2024	↳ CMP-08 for payment of self-assessed tax liability to be filed quarterly by composition taxable person
20 July 2024	↳ Filing of GSTR-3B (Regular Taxpayers) for the month of June 2024 ↳ Filing of GSTR-5A by OIDAR Service Providers for the month of June 2024
22 July 2024	↳ Filing of GSTR-3B under QRMP Scheme for the Quarter April – June 2024 (Taxpayer Opted QRMP Scheme)
24 July 2024	↳ Quarterly Filing of GSTR-3B for the quarter January to March 2024 (Taxpayer Opted QRMP Scheme and located in the specified states)
28 June 2024	↳ Filing of GSTR-11 - Statement of Inward supplies by persons having Unique Identification Number (UIN) for claiming GST refund.

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