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Index

LEGAL PRECEDENTS	3
PART A: ADVANCE RULINGS	3
1. ITC on expenses incurred for construction of new building.....	3
2. ITC on air conditioning plant and ventilation system	3
3. ITC on canteen expenses and GST liability on recovery of such expenses from employees.....	4
PART B: CESTAT ORDERS	5
1. Refund of accumulated balance of EC and SHEC	5
2. CENVAT credit on collateral management service.....	5
RECENT NEWS	6
1. Directorate General of Foreign Trade sets target to go faceless in a year.....	6
2. Multinationals using franchisee model may face higher GST on royalty income	6

LEGAL PRECEDENTS

PART A: ADVANCE RULINGS

1. ITC on expenses incurred for construction of new building

The Applicant incurred various expenses on construction of new building such as central air conditioning plant, locker cabinet, lift, electrical fittings, roof solar plant, generator, fire safety extinguishers, architect and interior designing service.

The Applicant sought advance ruling from the Authority for Advance Ruling ('AAR') on whether it is entitled to avail Input Tax Credit ('ITC') on above-mentioned expenses.

The AAR noted that air conditioning plant, lift, electrical fittings, roof solar plant and fire safety extinguishers qualify as immovable property as these items cannot be shifted from one place to another without dismantling them. Therefore, ITC is not available on these expenses being in relation to immovable property under Section 17(5) of the Central Goods and Services Tax Act, 2017 ('CGST Act'). Further, the AAR held that ITC on architect and interior designing service is also not available as these are procured for construction of new building irrespective of their booking as revenue or capital expenditure.

The AAR allowed ITC on locker cabinet and generator being movable goods and not restricted under Section 17(5) of the CGST Act.

The Varachha Co-Operative Bank Limited, 2021-VIL-338-AAR (Guj.)

2. ITC on air conditioning plant and ventilation system

The Applicant incurred expenses on construction of new building, air conditioning plant and ventilation system.

The Applicant sought advance ruling from the AAR on whether it is entitled to avail ITC on air conditioning plant and ventilation system.

The AAR stated that air conditioning plant and ventilation system qualify as immovable property as these items cannot be shifted from one place to another without dismantling them. Therefore, ITC is not available on air conditioning plant and ventilation system being in nature of immovable property.

Wago Private Limited, 2021-VIL-337-AAR (Guj.)

NITYA Comments: These rulings are incorrect as Section 17(5)(d) restricts ITC on immovable property other than Plant and Machinery. Air conditioning plant, lift, electrical fittings, roof solar plant, fire safety extinguishers and ventilation system qualify as 'Plant and Machinery' under Explanation to Section 17(5) and accordingly eligible for ITC.

These rulings considered Plant and Machinery and immovable property as mutually exclusive while Plant and Machinery can be in nature of immovable property. [Refer NITYA's Roundup / Updates and Legal Precedents for February 2020 dated March 16, 2020](#), for our comments on eligibility of ITC on Plant and Machinery.

3. ITC on canteen expenses and GST liability on recovery of such expenses from employees

The Applicant was providing canteen facility to its employees as mandated under the Factories Act, 1948. The Applicant bore part of canteen cost and recovered remaining part from its employees for making payment to contractor.

The Applicant sought advance ruling from the AAR on whether it can avail ITC on canteen expenses or not. The Applicant also sought ruling on whether GST is leviable on recovery of such expenses from employees.

The AAR observed that proviso to Section 17(5)(b)(iii) stating that ITC is available on services obligatory for an employer to provide to employees is applicable on Section 17(5)(b)(i) covering food and beverages, outdoor catering etc. Accordingly, the Applicant is not entitled to avail ITC on canteen expenses.

Further, the AAR held that the Applicant collected subsidized canteen expenses from its employees and paid it to contractor without retaining any profit margin. Accordingly, the Applicant's activity is without consideration. Therefore, the Applicant is not required to pay GST on amount recovered from employees.

Tata Motors Limited, 2021-VIL-316-AAR (Guj.)

On similar facts, the AAR in the case of ***Dishman Carbogen Amcis Limited, 2021-VIL-334-AAR (Guj.)*** held that GST is not payable on canteen expenses recovered from employees.

NITYA Comments: Tata Motors (supra) ruling erred in interpreting second proviso to Section 17(5)(b) of the CGST Act. The proviso needs to be read with all clauses [i.e. (i), (ii) and (iii)] and ITC should be allowed on canteen services provided as per statutory requirement. Further, this proviso covers both goods and services whereas clause (iii) covers only services. The reasoning of AAR would render 'goods' in proviso redundant. Also, this interpretation defeats Government's intention of making this amendment to allow ITC on mandatory expenses incurred for employees. [Refer NITYA's Legal Precedents for January 2021 / Week 3 dated January 29, 2021](#)

On second issue also, both rulings are incorrect. The contractor was providing services to the Applicants and the Applicants were in turn providing services to their employees at subsidized cost. Thus, the Applicants were required to pay GST on amount recovered from employees.

PART B: CESTAT ORDERS

1. Refund of accumulated balance of EC and SHEC

The Appellant was engaged in export of service under Letter of Undertaking ('LUT') and had accumulated balance of Education Cess ('EC') and Secondary and Higher Education Cess ('SHEC'). The Appellant filed refund claim of accumulated EC and SHEC within 1 year of introduction of GST as the same was not transitioned to GST regime. The revenue rejected this refund claim stating that there was no specific provision under erstwhile or GST regime for refund of EC and SHEC. The Appellant filed appeal against rejection order before the CESTAT.

The CESTAT followed decision in case of **Bharat Heavy Electricals Limited v. CGST, 2020-VIL-402-CESTAT-DEL-CE** wherein it was held that CENVAT credit is a vested right and there is no provision for lapsing of credit. Further, vested right cannot be extinguished because of change of law. Basis above, the CESTAT held that the Appellant is entitled to claim refund of EC and SHEC.

Kirloskar Toyota Textile Machinery Private Limited v. CCE, 2021-VIL-375-CESTAT-BLR-CE

***NITYA Comments:** This ruling is correct and rendered in context of accumulation of credit on account of exports. This judgment has limited application for taxpayers who filed refund claim on account of exports and that too within limitation period. The revenue has filed an appeal against ruling of CESTAT in **Bharat Heavy Electricals Limited** (supra) before the High Court. The Court has admitted the revenue's appeal and stayed order of the CESTAT till final decision.*

2. CENVAT credit on collateral management service

The Appellant was a banking company providing loans to borrowers. Interest earned on such loans was exempt from Service Tax. The Appellant was availing collateral management services for processing loans on which it availed CENVAT credit. The revenue denied CENVAT credit on collateral management services on the ground that they relate to exempted service. The Appellant filed an appeal before the CESTAT against denial of such credit.

The CESTAT observed that giving loans by banking company is not a service (not exempted service also) rather it is transaction in money akin to goods. Basis this, the CESTAT allowed CENVAT credit on collateral management service.

State Bank of Patiala v. CCE, 2021-VIL-371-CESTAT-DEL-ST

***NITYA Comments:** This ruling is incorrect. Interest on loan is an exempted service and hence CENVAT credit on expenses incurred in relation to processing of loans qualify as in relation to exempted service. The distinction created by the CESTAT treating giving loans and earning interest as different activities is incorrect.*

RECENT NEWS

1. Directorate General of Foreign Trade sets target to go faceless in a year

<https://www.aninews.in/news/national/general-news/directorate-general-of-foreign-trade-sets-target-to-go-faceless-in-a-year20210828150800/>

2. Multinationals using franchisee model may face higher GST on royalty income

<https://economictimes.indiatimes.com/news/economy/policy/multinationals-using-franchisee-model-may-face-higher-gst-on-royalty-income/articleshow/85755092.cms?from=mdr>

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