

# CNK & Associates LLP

Quarterly Insights, April 2020

GST- Judicial Decisions

## In Brief

*No input tax credit (ITC) is admissible under Section 17(5) even if there is no break in the tax chain of supply*

*Levy of interest only on belated cash payment (net of ITC)*

### ***Unity Traders, In re [2020] 115 taxmann.com 147 (AAR – Madhya Pradesh)***

(In favor of Revenue)

#### ***Relevant Facts***

The applicant is engaged in providing clearing and forwarding agent ('C&F') service. As a C&F agent, it stores its client's goods in its warehouse for which consideration is received in the form of rent. Its revenue streams are C&F commission, warehouse rent and other reimbursements (freight etc.). The applicant sought advance ruling on the eligibility of ITC on the following:

1. GST paid on goods for construction & maintenance of warehouse i.e., tiles, granite, bricks, cement, paint and so on;
2. GST paid on work contract service received from registered and unregistered contractor for construction & building maintenance contract;
3. GST paid on goods purchased and works contract service received during financial year (FY) 2017-18 for the purpose of construction & maintenance of warehouse.

#### ***Held***

The Authority held that none of the above ITC would be admissible under S. 17(5) of the CGST Act, 2017.

#### ***CNK Comments:***

The applicant did not rely on the judgement of Safari Retreats (P.) Ltd., [2019] 67 G S.T.R. 16 (Ori), 2019 (25) G. S. T. L. 341 (Ori.) which could have possibly made an impact on the final judgment. The said judgment had stated that if the assessee is required to pay GST on the rental income than it is eligible to claim ITC on the inputs and input services used for constructing the immovable property which generates the rental income.

### ***Refex Industries Ltd, In re [2020] 114 taxmann.com 447 (Madras High Court)***

(In favor of Assessee)

#### ***Relevant Facts***

The assessee filed belated returns for the period FY 2017-18. They had sufficient ITC in the Credit Ledger and argued that if interest was to be charged, it should be only on the cash component of the tax paid belatedly and not the entire liability.

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## In Brief

*Transfer of title in moulds amounts to supply of goods*

### **Held**

The Court held that the levy of interest on belated payments would apply only on payments of tax by cash and would not stand triggered on the entire liability since credit in ITC Ledger represents credit due to an assessee which is held by the Department and as such it is not deprived of the funds. It in fact denotes the enrichment of the State. The Court also highlighted the amendment brought in to insert proviso to Section 50(1) of the Central Goods and Service Tax Act, 2017 ('CGST Act') which states that interest on tax payable shall be levied on that portion of tax that is paid by debiting the Electronic Cash Ledger.

### **CNK Comments:**

The proviso to Section 50(1) was inserted from July 2019 and the GST Council in its 39<sup>th</sup> meeting held on 14<sup>th</sup> March 2020 has recommended that the amendment will apply retrospectively from 1<sup>st</sup> July 2017.

### ***Automotive Components Technology India (P.) Ltd., In re [2020] 115 taxmann.com 99 (AAR – Tamil Nadu)***

(In favor of Revenue)

### **Relevant Facts**

The applicant is engaged in the supply of automotive components like door locks, parts and tools for the automotive industry. The applicant deals with an Indian buyer (client) and a foreign supplier in Thailand who manufactures these parts and components with the help of moulds. These moulds are developed by the foreign supplier. In the case of moulds there is only a transfer of title between the parties and the moulds do not physically leave Thailand as they are used for further processing in Thailand. The applicant sought advance ruling on the following issues since the moulds do not enter India:

1. Whether GST will be applicable on the transfer of title in moulds from applicant to Indian buyer?
2. If yes, whether the Indian buyer would be eligible to take ITC of the GST paid to the applicant for such purchase?

### **Held**

The Authority referred to the definition of Supply under Section 7 of the CGST Act and Schedule II thereto to conclude that transfer in title in moulds is a supply chargeable to GST. No ruling was given on the second question.

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## In Brief

*No ITC is admissible for plant and machinery being Lift / elevators*

*Leasing of Vehicles to GTA is taxable service.*

### **CNK Comments**

This judgement could be further litigative since the provisions of Section 10(1)(c) of the Integrated Goods and Service Tax Act, 2017 are not factored by the Authority. As per Section 10(1)(c) there is no movement of moulds from Thailand to India and as such the right in these goods gets transferred outside India

### **Las Palmas Co-operative Housing Society Ltd., In re [2020] 114 taxmann.com 233 (AAR – Maharashtra)**

(In favor of Revenue)

### **Relevant Facts**

The applicant is a Co-operative Housing Society collecting maintenance charges from its members and discharging GST liability on such receipt. The applicant sought advance ruling on the following:

1. Whether the applicant can claim ITC on the GST paid on replacement of existing lift / elevator at its own premises to such vendor registered under Goods and Service Tax Act for manufacture, supply, installation and commissioning of lift / elevator?
2. If yes, whether the ITC falls under blocked credits under Section 17(5) of CGST Act, 2017?

### **Held**

The Authority observed that replacing the lift / elevator involves highly technical skills, knowledge, customization and expertise which is conducted inside the building as an integral part of the building. Once installed, it becomes an immovable property. S. 17(5)(d) of the CGST Act, 2017 was referred to along with the explanation to S. 17(5) which excludes works contract resulting into immovable property. Hence, no ITC would be available to the applicant.

### **Ishan Resins & Paints Ltd., In re [2020] 113 taxmann.com 424 (AAR – West Bengal)**

(Partly in favor of Revenue and partly in favor of assessee)

### **Relevant Facts**

The applicant intends to lease out vehicles like trucks and tankers without operator to goods transport agencies ('GTA'). It sought advance ruling in respect of the following:

1. Whether supply of services by way of leasing of goods transport vehicles without operators to GTA would be exempt under Sl. No.

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22(b) of Notification no. 12/2017 Central Tax (Rate)?

2. If not exempted, what would be the appropriate classification and rate of tax?
3. Whether the credit of input tax paid on purchasing of motor vehicles is admissible or not?

***Held***

The Authority held that the service of leasing goods transport vehicles is not exempt. It is a taxable service classifiable under SAC 997311 and taxable under Sl. No 17(iii) of Notification No. 11/2017 – Central Tax (Rate). The applicant can claim ITC in accordance with the law.

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