SNR & COMPANY
CHARTERED ACCOUNTANTS

KRESTON SNR

GST BULLETIN

FEBRUARY 2024

Delhi, Pune, Bangalore

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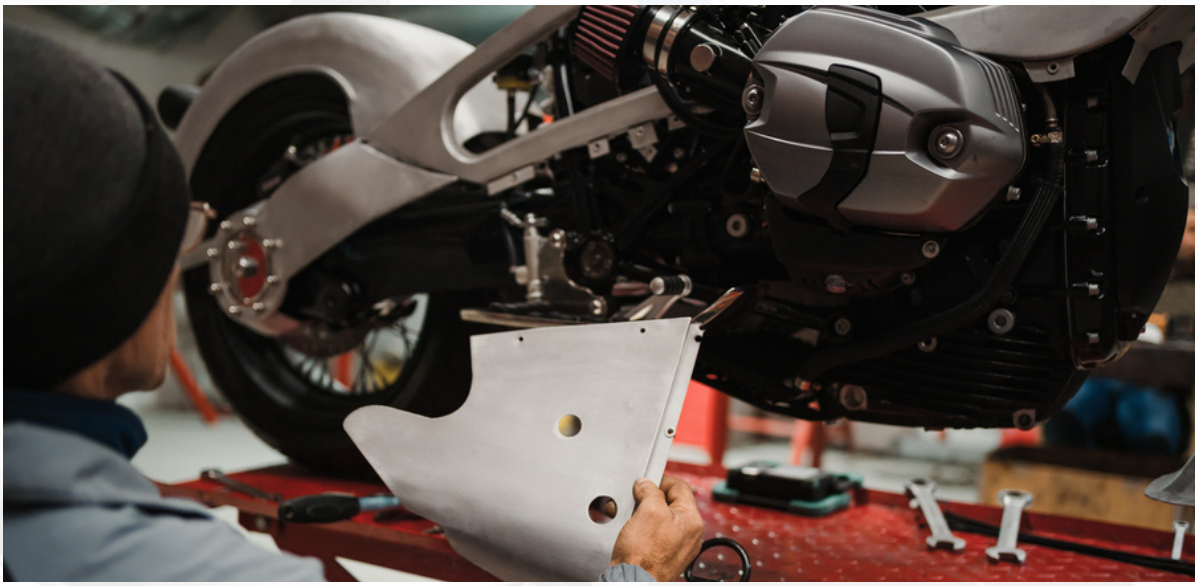
1. No interest on timely deposit of Tax payable in electronic cash ledger on common portal.

Case of : M/s. Eicher Motors Ltd.
Decision by : Madras High Court
Date of Ruling : 23rd January 2024

- Eicher Motors Ltd is a renowned manufacturer of motorcycles led by the iconic brand Royal Enfield. It is operating through its large network of dealers and distributors. Assessee filed Tran-1 of Cenvat credit of 33 crores in October 2017, however, amount did not got reflected in the ECL leading to non-filing of GSTR-3B.
- Though the returns were not filed, the assessee had ensured that the tax dues are fully paid within the due dates without any delay and accordingly, they had discharged GST liability for the period from July, 2017 to December, 2017 by depositing the tax amounts in the Electronic Cash Ledger under the appropriate heads as CGST, SGST, IGST within the due date for each month.
- Assessee submitted that a reading of Section 49(1) of GST Act read with RBI FAQ made it clear that the money is transferred from Assessee's account to the Government's account at the time of payment into ECL. Further, contended that any amount paid into ECL cannot be withdrawn by the Assessee at their sweet will i.e., once the money is deposited into the account of Government maintained with RBI, the same will not be refunded unless a suitable order is passed by the Department.
- Assessee further added that debit to ECL is only a journal entry and the same will not take away the fact that the tax already stood paid at the time of remittance into the Government account under Section 49(1) of the GST Act.
- GST department argued that the petitioner, being a registered dealer, was required to file the monthly return along with self-assessed admitted tax under Section 39(7) of the GST Act on or before 20th of the succeeding month.
- The department further, contended that though the time limit for filing the TRAN-1 was extended by the Government from time to time, there was no extension to file the monthly returns in Form GSTR-3B. Therefore, since the transitional credit could be availed as and when it was credited to the ECL on filing of Form TRAN-1, thus the non-filing of TRAN-1 cannot be a ground for delayed filing of monthly returns.



- HC noted that GST collections made by the registered person, have been made on behalf of Government and once the said collections were deposited to the Government account and the same is made available to the Government for its use.
- HC perused section 39 (1) of the CGST Act relating to 'Furnishing of returns' noting that in GSTR-3B, it is mandatory to provide the details about the tax paid, which means that prior to filing Form GSTR-3B, the tax should have been paid by the registered person as provided in Section 39(1).
- Thus, HC rejected the submission of Revenue that as long as the amount is available to the credit of Electronic Cash Ledger, the tax amount would be retained until the suitable debit entries are made by filing GSTR3B.
- Further, while ruling on interpretation of Section 50 relating to 'Interest on delayed payment of tax', HC clarified that a registered person is liable to pay interest only if there is any default in payment of GST subsequent to the due date for filing the monthly returns.
- Thus, Madras HC held that no interest is payable where the tax amount has already been credited to the Government via ECL within the prescribed time limit, i.e. before due-date and quashed the recovery notice and subsequent order in petition by Eicher Motors.

Full Judgement: M/s. Eicher Motors Ltd.

SNR's Take

High Court has passed a significant ruling holding that interest would not be attracted if timely payments to Electronic Cash Ledger (ECL) is made though filing of GSTR-3B and consequent debit entry in ECL is delayed. Department is going to challenge this ruling before higher forums since certain specific provisions of GST law have not been considered while passing this ruling though this ruling shall hold good on the principles of equity & fairness since Government has got the tax funds at its disposal once the ECL is credited.

2. Roof Top Solar System is not immovable property, shall be treated as a 'Plant and Machinery' and section 17(5) will not apply.

Case of : Unique Welding Products Pvt Ltd
Decision by : Gujarat AAR
Date of Ruling : 05th January 2024

- M/s Unique Welding Products Pvt. Ltd. (Applicant) is engaged in the business of manufacturing and sale of welding wires. The assessee entered into an interconnection agreement with power distribution licensee (Madhya Gujarat Vij Company Ltd) for captive use of power generated by Roof Top Solar System and the assessee further stated that the generated power is solely and captively used for manufacturing welding wires within the same premises.
- Applicant sought advance ruling on whether ITC can be availed on purchase and installation of solar roof top panels and if it can be included in plant and machinery.
- Applicant submitted that the electricity generated will be solely and captively consumed for the purpose of supplying taxable goods, thus, the roof top solar plant qualifies as plant and machinery that will be used for furtherance of business. Hence, it is not covered under blocked credit as mentioned in I7(5)(d) of the CGST Act.
- The authority examined the photographs of rooftop solar plant installed that revealed that the solar roof top plant is bolted to the factory roof by means of screws and bolts for operational efficiency and safety. Further, the rooftop solar plant can be dismantled and sold, if required. In other words, the roof top solar plant is not permanently fastened and therefore cannot be termed as immovable property.
- AAR observed that it is clear that the roof solar plant, affixed on the roof of the building is not embedded to earth. Accordingly, it is not an immovable property but a plant and machinery, which is utilized to generate electricity which is further solely and captively used in the manufacture of welding wires.

- Thus, AAR held that the applicant is eligible to avail ITC on roof top solar system with installation & commissioning under the CGST/GGST Act and the roof top solar system with installation and commissioning constitute plant and machinery of the applicant and hence is not blocked ITC under section I7(5) of the CGST/GGST Act.

Full Judgement: Unique Welding Products Pvt Ltd

SNR's Take

The AAR has deemed the rooftop solar power system as "plant and machinery" due to its non-permanent attachment and exclusive use for the business. Captioned roof solar plant could be dismantled and resold thereafter establishing that it is a movable asset.

3. ITC claimed beyond statutory time limit prescribed u/s 16(4) shall be reversed.

Case of : M/s. BBA Infrastructure Ltd.
Decision by : Calcutta High Court
Date of Ruling : 18th December 2023

- BBA Infrastructure Ltd. (Assessee) received a show cause notice alleging wrong availment of Input Tax Credit (ITC) in the returns filed for the period September 2018 to March 2019 on the ground that the said returns were filed beyond the due date prescribed under Section 16(4) of the CGST Act. The SCN was confirmed by the Department vide the Order-in-Original.
- Revenue initiated recovery proceedings and debited INR 23.20 lacs (CGST of INR 11.6 lacs and SGST of INR 11.6 Lacs) from the Electronic Credit Ledger balances along with interest which was debited from the Electronic Cash Ledger balances.
- Assessee filed an appeal first before Appellate Authority, who confirmed the Order-in-Original passed by the Department. Subsequently, the Assessee filed a Writ Petition against the aforesaid order passed by the Appellate Authority before the High Court.
- Assessee contended that ITC is not claimed through the return but is taken through books of accounts immediately on receipt of goods and services as per first proviso to Section 16(2) of the CGST Act and there is no mention of any time limit under Section 16(1) of the CGST Act. Further, there is no visible linkage between the provisions of Sections 16(1) and 16(4) of the CGST Act.
- Department contended that as Assessee has filed Form GSTR-3B beyond the time limit provided under Section 16(4) of the CGST Act, he is not eligible to claim ITC and shall reverse the same and that the statute should be interpreted while considering the entire text and exception clauses or non-obstante clauses should not be interpreted in isolation from the main enacting provision.
- On a joint reading of Sections 16(2)(d) and 16(4) of the CGST Act, it appeared that the eligibility to claim ITC arises after the filing of a return under Section 39 of the CGST Act. This condition is further qualified by imposing a time limit under Section 16(4) of the CGST Act.
- HC observed that the Hon'ble Andhra Pradesh High Court in Thirumalakonda Plywoods had held that Section 16(2) of the CGST Act prescribes the eligibility criteria which is mandatory and in the absence of fulfilment of the eligibility criteria, the dealer will not be entitled to claim ITC.

- Further, in Gobinda Construction & Ors., it was held that the right to claim ITC under Section 16(1) of the CGST Act is only vested if the conditions for claiming ITC, including those under Section 16(4) of the CGST Act, are fulfilled. Section 16(4) of the CGST Act cannot be said to be violative of Article 300A of the Constitution of India.
- It was held that Section 16(2) of the CGST Act does not appear to be a provision which allows ITC, rather Section 16(1) of the CGST Act is the enabling provision and Section 16(2) of the CGST Act restricts the claim of ITC which is otherwise allowed to taxpayers satisfying the prescribed conditions and therefore, dismissed writ petition filed by the Assessee.

Full Judgement: M/s. BBA Infrastructure Ltd.

SNR's Take

Decision of Calcutta High court of not allowing ITC claimed after statutory limit provided in section 16(4) appears to be reasonable as section 16(4) cannot be interpreted in isolation with section 16(1) or 16(2). Further, non-obstante clause is employed to give overriding effect to some contrary provision but not complementary provisions and section 16(1), 16(2) and 16(4) are complimentary.

4. GST Refund is allowed to recipient where GST on inputs is inadvertently paid at higher rate than the applicable rate by the supplier under inverted duty structure.

Case of : M/s. Suzlon Energy Ltd
Decision by : Madras High Court
Date of Judgement : 16th November 2023

- M/s. Suzlon Energy Ltd. (Assessee) is a registered person under the GST law and procures materials from its suppliers which are used for the outward supply of its products on which the Assessee discharges GST @ 5%. One of its suppliers had incorrectly levied GST @ 18% although the applicable GST rate of the said product was 5%.
- As the GST rate on inputs was higher than the GST payable on outward supply, the Assessee filed an application for a refund of unutilised Input Tax Credit (ITC) on account of Inverted Duty Structure (IDS) under Section 54(3) of the CGST Act.
- In response to the refund application, the GST department issued a Show Cause Notice (SCN) for rejecting the refund application alleging that the Assessee should have discharged GST @ 18% on its outward supply.
- The SCN was adjudicated and vide the Order-in-Original, the refund application was rejected as the product procured and supplied by the Assessee attracted GST @ 5% and the supplier has wrongly paid GST @ 18% and hence, the same does not qualify as IDS.
- Against this, the Assessee filed an appeal before the Appellate Authority, which was allowed and the GST Department was directed to sanction a refund. Aggrieved by this, the GST department filed a Writ Petition before the Madras High Court.
- GST department contented that the supplier ought to have discharged GST @ 5% but had wrongly charged GST @18%. Hence, the transaction in the present case cannot be said to be suffering from IDS. Alternatively, if the supplier had discharged GST @ 18%, the Taxpayer should also have discharged GST @ 18% on its final products. Consequently, the question of refund on account of IDS would not arise.
- To which, assessee contended that it is undisputed that the supplier had discharged GST @ 18%. Since the assessment in respect of the year to which the refund application pertains was already completed, the Assessee cannot contend that the assessment order was incorrect.

- Assessee further contended that in Order-in-Original, the Tax Authorities had confirmed that the product supplied by the Assessee is leviable to GST @ 5%. Accordingly, at this stage, the department cannot take a contrary view and contend that the Assessee ought to have discharged GST @ 18%. The department have taken different views from time to time as per their convenience and accordingly, have filed the present petition.
- HC held that since the GST rate on inputs (18%) is higher than the GST rate on output (5%), the transaction is covered under the purview of IDS. Accordingly, the assessee is entitled to claim a refund as per Section 54(3)(ii) of the CGST Act and the same was upheld vide the Impugned Order. And there is no error or illegality in the Impugned Order.
- Court further added that the contention of the Department that the Assessee should have discharged GST @ 18% on outward supplies is untenable because the department cannot insist or advise assessee to pay an excess rate of tax/duty than the rate stipulated under the GST law.
- Thus, HC dismissed the Writ Petition filed by the GST department with a direction to sanction the refund amount along with interest @ 9% per annum for the period of delay.

Full Judgement: M/s. Suzlon Energy Ltd

SNR's Take

This case clarifies that taxpayers may be eligible for ITC refunds due to unintentional errors committed by suppliers. It reinforces the principle that GST liability ultimately rests with the registered entity and thus they are eligible to claim refund of such excess tax through ITC refund under Inverted Duty Structure.

5. Incentives to dealers under promotional schemes are not gifts, constitute a supply and are leviable to GST.

Case of : M/s Orient Cement Ltd
Decision by : Karnataka Advance Ruling Authority
Date of Ruling : 18th August 2023

- M/s. Orient Cement Ltd. (Applicant) was engaged in the manufacture of cement and launched the Monthly / Quarterly Quantity Discount schemes for their dealers. Under Scheme, the benefit is disbursed in the form of a 'Gold coin', depending on the products supplied to the dealers.
- Scheme is a point-based scheme which entitled the dealers to earn points based on the products purchased. Such points can be redeemed against various goods 'White Goods' or 'Gold', based on the option selected by the dealer.
- For providing rewards under the schemes, the Applicant purchased 'White Goods' and 'Gold coin' (Products) from third parties for onward distribution to the dealers, on which, the applicant avails Input tax credit.
- Applicant sought advance ruling on the following points:

  a)Whether ITC on procurement of Products is restricted u/s 17(5)(h) of the CGST Act.
  b)Whether the distribution of Products to dealer without consideration is covered under Schedule I to the CGST Act (Entry 1).
  c)Whether the distribution of Products is regarded as a 'supply' under Section 7 of the CGST Act?

- Applicant contended that Section 16(1) of the CGST Act provides that a recipient is entitled to claim ITC of GST paid on goods used for furtherance of business. The distribution of Products to the dealers ensures that the dealers are motivated to purchase a higher quantity of cement, eventually leading to sales promotion. Accordingly, procurement of products has been made in furtherance of business.
- The restriction under Section 17(5)(h) of the CGST Act applies to 'gifts'. We shall refer Gift Tax Act, 1858 for defining 'gift' as no definition is provided under the GST law. As per Gift Tax Act, 1858, Gift must be provided without any contractual obligation and without any consideration. Here assessee is distributing products for brand/sales promotion based on a scheme, and hence, the same is in furtherance of business. Thus, ITC on procurement of Products should be available to the Taxpayer.

- Assessee further added that as per Entry 1 of Schedule II of CGST Act, 'Permanent transfer or disposal of business assets where ITC thereon has been availed' is deemed to be a 'supply', even in the absence of any consideration. Entry 1 specifically uses the phrase 'business assets' (as against 'goods'), thus, it can be construed that the legislature intended to apply Entry 1 only to 'business assets' forming part of the Balance Sheet.
- Since, no consideration flowed from the dealers to the Taxpayer in respect of the Products, the transaction cannot be covered under the purview of the term 'supply'.
- AAR observed that distribution of the Products cannot be covered under the scope of the term 'gifts' as the Assessee distributes the Products as incentives as per the agreement with the dealers on fulfilment of conditions and stipulations. However, 'Gift' is something which is given without any conditions and/or stipulations. Consequently, the restriction under Section 17(5)(h) of the CGST Act would not apply to the present case.
- The achievement of marketing targets set by the Assessee is an inducement from the dealers or a non-monetary consideration paid by the dealers for receiving the Products. Since, the distribution of Products is made for consideration, the same is covered under the purview of the term 'supply'.
- Even if it is not covered under the term 'consideration', the Products are permanently transferred to the dealers on which the Assessee has claimed ITC. The same would be covered under the purview of Entry 1 since the term 'assets' would include 'inventory' and the Products are procured in the course of business, they would be covered under the 'business assets'. Entry 1 does not mandate that the business assets should be capitalised.
- Thus, the activity of distribution of Products as an incentive would be treated as a 'supply' as per Section 7 of the CGST Act.

Full Judgement: : **M/S Orient Cement Ltd**

SNR's Take

This case clarifies that companies offering incentive programs with specific conditions attached can claim ITC on related purchases even when the rewards might seem like "gifts" though such distributions shall be considered as "supplies" under the GST Act, even in the absence of direct monetary exchange.

Circulars/ Notifications:

1. Advisory on HSN code by National Informatics Centre:

It is necessary to provide at least 6 digit HSN code for all the B2B and Export transactions by the taxpayers whose Annual Aggregate Turnover (AATO) is more than Rs. 5 Crores and the taxpayers, with AATO less than Rs. 5 Crores, need to provide at least 4 digits HSN code as per the notification No. 78/2020 –Central Tax, dated 15th October, 2020.

This validation will be implemented in e-way bill System from 1st February 2024. Hence, the taxpayers are advised to make necessary changes in their systems and enter 4 / 6 digit HSN codes while generating the e-way bills through web and API systems from 1st February 2024.

Read Circular: Advisory on HSN

2. Circular for calculation of time limit for appeal to appellate tribunal (Circular 1/2024)

Kerela State Goods and Service tax department clarified that for the purpose of calculating 3 months' time-limit for appeal to Appellate Tribunal, the start of 3 month period shall be considered to be the later of the following dates:

(I)Date of communication of order, or
(II)The date on which, President of Appellate Tribunal after its constitution u/s 109, enters office

Read Circular: Circular 1/2024 – Kerela GST

Compliance Calendar:

Date	Particulars
10-02-2024	The due date for filing GSTR 7 for the month of January 2024.
10-02-2024	The due date for furnishing GSTR 8 for the month of January 2024 for registered e-commerce taxpayers in India.
11-02-2024	The last date to file the GSTR-1 form is February 11, 2024, for taxpayers having an annual aggregate turnover of more than INR 1.5 crore or the ones who have opted for the monthly return filing.
13-02-2024	The due date for filing GSTR-6 for Input Service Distributor (ISD) of January 2024
20-02-2024	Due date for Form GSTR-3B for the month of January 2024.
24-02-2024	Due date for Form GSTR-3B for the month of January 2024 for quarterly filers of GSTR-1.

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