

Date: 17/02/2025



Assorted Case Studies under GST Act

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Case Study 1 Return filing

Circular No 170/22 dt.06/07/2022

Details	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5
(A) ITC Available (whether in full or part)				
(1) Import of goods				
(2) Import of services				
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)				
(4) Inward supplies from ISD				
(5) All other ITC	ITC as per 2B			
(B) ITC Reversed				
(1) As per rules 42 & 43 of CGST Rules	Permanent Reversal- R. 42/43/17(5)			
(2) Others	Temporary Reversal- 180 days/ invoice not received			
(C) Net ITC Available (A) – (B)				
(D) Ineligible ITC				
(1) As per section 17(5)	180 days + Late invoice			
(2) Others	16(4) late filing + Place of supply mismatch			

Updated GSTR 3B -July 2022

- 1.** Start with GSTR 2B and compulsorily avail ITC as per GSTR-2B
- 2.** Reverse ITC under “permanent reversal” pertaining to:
 - Rule 42 & Rule 43
 - Section 17(5)
- 3.** Reverse ITC under “temporary reversal” pertaining to
 - Invoice appearing in GSTR 2B but not received by purchase team
 - Non-payment to vendors within 180 days.
- 4.** Re-claim ITC reversed under “temporary reversal” as and when same is eligible:
 - Invoice received late by purchase team,
 - Delay in payment to vendors beyond 180 days

New Scheme of return filing

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S. No	Category	Books	GSTR 2B	Traditional method	As per New Return Filing
1.	Correct Invoice	✓	✓		
2.	Non Filer	✓	×	Transfer to separate ledger	
3.	Ineligible ITC	×	✓	Expensed out	Avail and permanent reverse
4.	Late invoice	×	✓	Not availed	Avail and temporary reverse
5.	Wrong entry	×	✓	Not availed	Avail and pemanent reverse

Different Scenarios

1. Books of accounts and GSTR 3B does not match
2. Invoices accepted and reversed no separate list in books of account.
Need to keep manual back up
3. Communication with purchase department with respect to accepted and reversed invoices
4. Reversal column does not have transaction wise break up
5. Wrong entry

Challenges

S. 16 (2) Conditions for claiming ITC,-

- (a) he is in possession of a tax invoice or debit note
 - (aa) GSTR-1 filed by supplier and credit appearing in GSTR-2B;
- (b) Received the goods or services or both.
 - (ba) No restriction as per section 38;
- (c) the tax charged has been actually paid either in cash or through ITC
- (d) Has furnished the return in Form GSTR 3B:

R. 36 Documentary requirements and conditions for claiming input tax credit.

(4) No ITC to be claimed unless:

(a) Details have been furnished by supplier in his GSTR-1 or GSTR-1A

(b) Details are appearing in Form GSTR-2B

1. Disallowance of ITC does not arise since conditions of S. 16 and R. 36 are not violated anywhere
2. Penalty for incorrect filing of return of 10% of tax evaded- No tax is evaded
3. Misc penalty- Rs. 25,000/-. Can be contested
4. Taking wrong ITC appearing in GSTR-2B may lead to violation of S. 16- conditions for availing of ITC

Circular not mandatory

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Invoice Management System

Sr. No	Notification	Date	Narration
1.	GSTN Advisory	03/09/2024	Introduction to IMS
2.	GSTN Advisory	17/09/2024	Draft Manual on IMS
3.	GSTN Advisory	22/09/2024	FAQ on IMS
4.	GSTN Advisory	14/10/2024	Advisory on IMS
5.	GSTN Advisory	17/10/2024	Additional FAQ on IMS
6.	GSTN Advisory	12/11/2024	Initial phase of implementation
7.	GSTN Advisory	13/11/2024	Advisory on Supplier view
8.	GSTN Advisory	16/11/2024	GSTR 2B and IMS
9.	55 th GST Council Meeting		



- **Supplier Uploads Invoices:**

Suppliers will upload invoices to the GST portal through GSTR forms such as GSTR-1/ IFF. The uploaded invoices will be reflected in the recipient's IMS.

- **Recipient's Action:**

The recipient can choose to either

- Accept the invoice
- Reject the invoice
- Leave the invoice pending

- **Implication of Actions:**

- Accepted invoices will be added to in GSTR 2B
- Rejected invoices will not be considered in GSTR 2B
- Pending invoices will not be considered in GSTR 2B and will be carried forward in IMS for further action in subsequent months.

IMS Dashboard (Inward Supplies) - Accepted Records (B2B)

[VIEW ADVISORY](#)

[HELP](#)

GSTIN - 07IMSCC2941G1ZL

Legal Name - Reliance Industries Limited

Trade Name - GSTN

Records Per Page:

Display/Hide Columns:

<input type="checkbox"/>	S.No.	GSTIN of Supplier ^	Trade/ Legal Name ^	Invoice Number ^	Invoice Type ^	Accept	Reject	Pending	Status
<input type="checkbox"/>	1	11IMSCC2941N1ZH	GSTN	AAB1	Regular	A	R	P	Accept
<input type="checkbox"/>	2	24MAYAS0100J1Z6	GSTN	INV-001	Regular	A	R	P	Accept
<input type="checkbox"/>	3	24KLJIP1218A1ZS	GSTN	test001	Regular	A	R	P	Accept
<input type="checkbox"/>	4	24KLJIP1218A1ZS	GSTN	Test002	Regular	A	R	P	Accept



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[RESET](#)

[SAVE](#)

IMS Dashboard (Inward Supplies) - B2B Invoices (with all status)

[VIEW ADVISORY](#)

[HELP](#)

GSTIN - 32UATPY9011N1ZD

Legal Name - UATPCO

Trade Name - GSTN

Records Per Page:

Display/Hide Columns:

Filter

<input type="checkbox"/>	S.No.	GSTIN of Supplier ^	Trade/ Legal Name ^	Invoice Number ^	Invoice Type ^	Accept	Reject	Pending	Status
<input type="checkbox"/>	1	32UATPY9011M1ZF	GSTN	M1b1	Regular	A	R	P	Accepte
<input type="checkbox"/>	2	32UATPY9011M1ZF	GSTN	M1b2	Regular	A	R	P	Accepte
<input type="checkbox"/>	3	32UATPY9011M1ZF	GSTN	M1b3	Regular	A	R	P	Accepte
<input type="checkbox"/>	4	32UATPY9011M1ZF	GSTN	M1b4	Regular	A	R	P	Rejecte
<input type="checkbox"/>	5	32UATPY9011M1ZF	GSTN	M2b1	Deemed Export	A	R	P	Rejecte
<input type="checkbox"/>	6	32UATPY9011M1ZF	GSTN	M2b2	Regular	A	R	P	Accepte
<input type="checkbox"/>	7	32UATPY9011M1ZF	GSTN	M2b3	Regular	A	R	P	Pendin
<input type="checkbox"/>	8	32UATPY9011M1ZF	GSTN	M2b4	Deemed	A	R	P	Rejecte

IMS Dashboard (Inward Supplies) - B2B Invoices (with all status) VIEW ADVISORY HELP

GSTIN - 32UATPY9011N1ZD

Legal Name - UATPCO

Trade Name - GSTN

Records Per Page: 10

Display/Hide Columns:

Q Search

Filter

<input type="checkbox"/>	S.No.	GSTIN of Supplier ^	Trade/ Legal Name ^	Invoice Number ^	Invoice Type ^	Accept
<input type="checkbox"/>	1	32UATPY9011M1ZF	GSTN	M1b1	Regular	A
<input type="checkbox"/>	2	32UATPY9011M1ZF	GSTN	M1b2	Regular	A
<input type="checkbox"/>	3	32UATPY9011M1ZF	GSTN	M1b3	Regular	A
<input type="checkbox"/>	4	32UATPY9011M1ZF	GSTN	M1b4	Regular	A
<input type="checkbox"/>	5	32UATPY9011M1ZF	GSTN	M2b1	Deemed Export	A
<input type="checkbox"/>	6	32UATPY9011M1ZF	GSTN	M2b2	Regular	A
<input type="checkbox"/>	7	32UATPY9011M1ZF	GSTN	M2b3	Regular	A
<input type="checkbox"/>	8	32UATPY9011M1ZF	GSTN	M2b4	Deemed Export	A
<input type="checkbox"/>	9	32UATPY9011M1ZF	GSTN	M3b1	Regular	A

GSTIN of Supplier

Enter GSTIN

Invoice Type

Select

Status

Select

Source

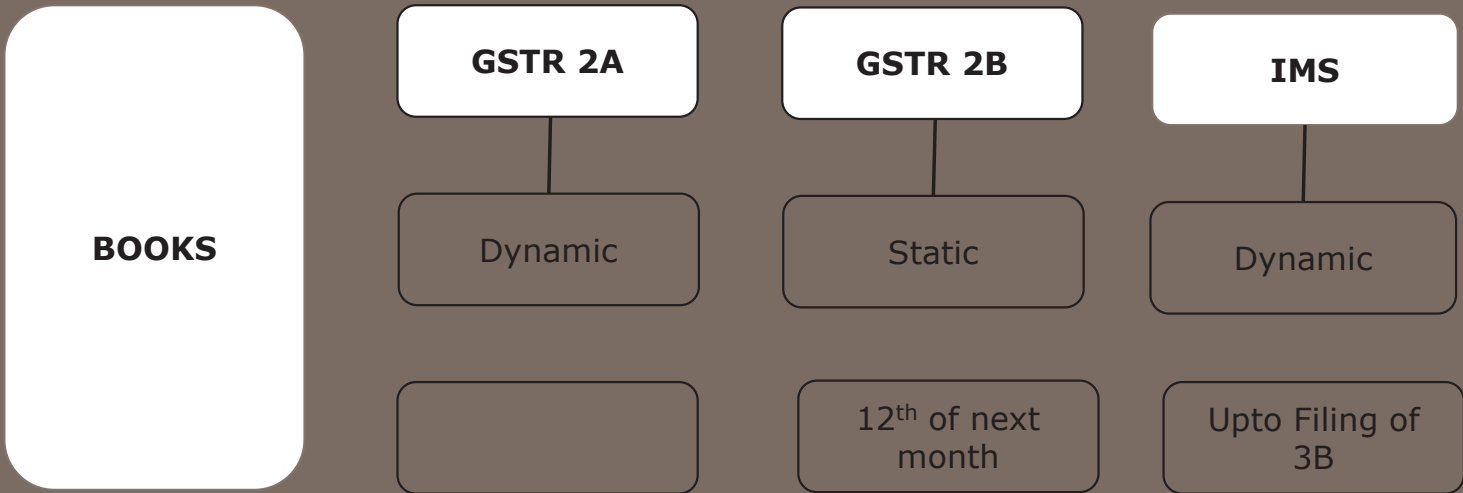
Select

CLOSE RESET APPLY

R	P	Rejecte
R	P	Accepte
R	P	Pendin
R	P	Rejecte
R	P	Pendin

S. No	Category	Books	GSTR 2B	IMS
1.	Correct Invoice	✓	✓	Accept
2.	Non Filer	✓	×	N.A.
3.	Ineligible ITC	×	✓	Accept
4.	Late invoice	×	✓	Pending
5.	Wrong entry	×	✓	Reject

Different Scenarios under IMS



ITC TOOLS AVAILABLE




IMS Food for thought

- Rejected invoices- implications on supplier
- Rejected Credit Notes- implications on supplier
- Action of High volume of purchase transactions
- User Access Control for IMS
- Integration with accounting software



Case Study 2 Blocked Credits



Plant & Machinery Vs Immovable Property

S. 17(5)

Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

S. 17(5)(c)

works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service

S. 17(5)(d)

goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

S. 17(5) of CGST Act

Imm v property

Explanation.-For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

P & M

Explanation. - For the purposes of this Chapter and Chapter VI, the expression "P & M" means **apparatus, equipment, and machinery fixed to earth by foundation or structural support** that are **used for making outward supply** of goods or services or both and includes such foundation and structural supports **but excludes-**

- (i) land, building or any **other civil structures;**
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

Immovable Property vs Plant & Machinery

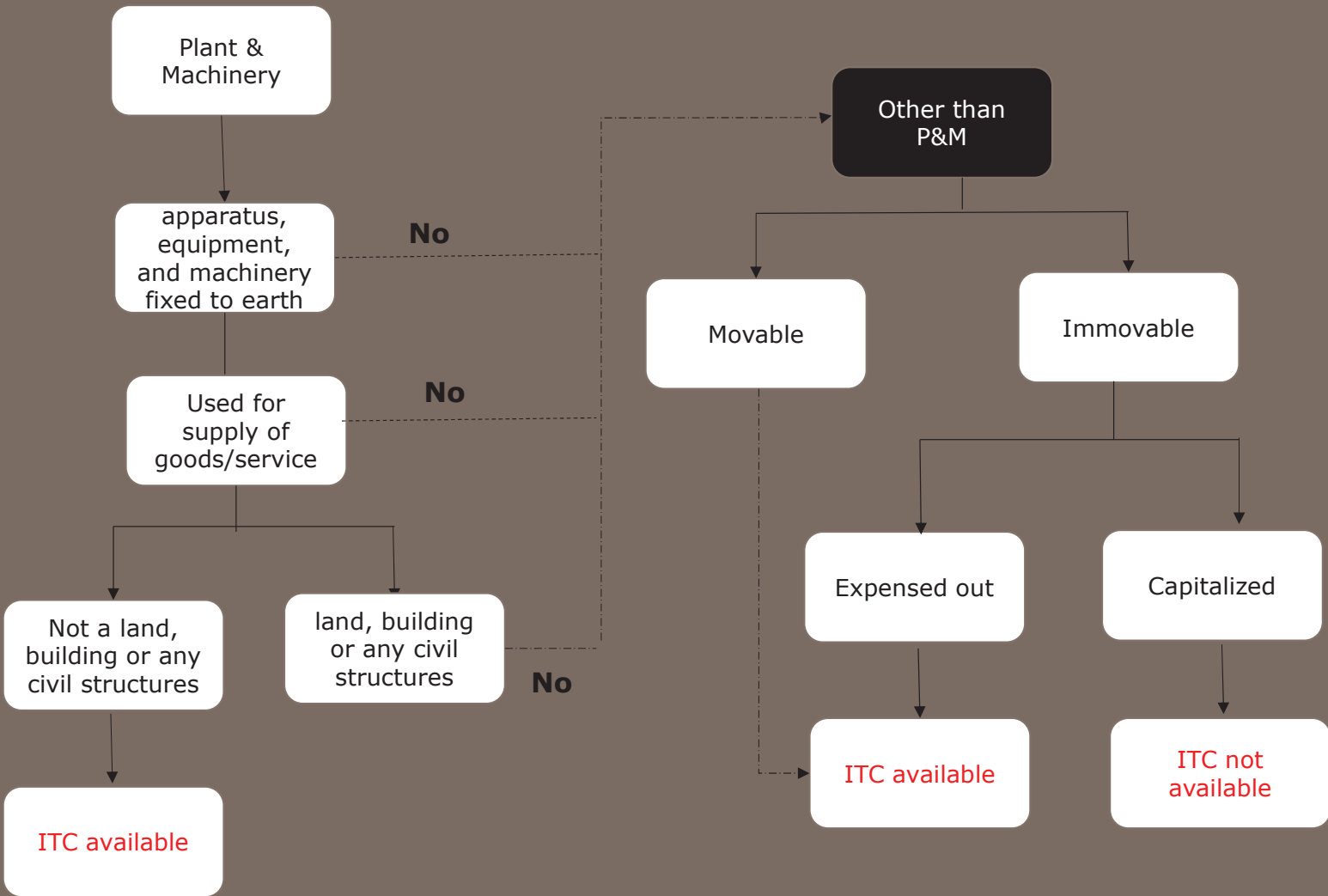
Plant & Machinery

1. apparatus, equipment, and machinery fixed to earth
2. by foundation or structural support
- 3. used for making outward supply of goods or services**
4. excludes land, building or any other civil structures;

Immovable Property

1. works contract services supplied for construction of an immovable property
2. goods or services or both received by a taxable person for construction of an immovable property
3. Construction- re-construction, renovation, additions or alterations or repairs,
4. to the extent of capitalization,

CONCLUSION



Facts of case

- *The dispute in this case is about the leviability of excise duty on paper making machine which was erected by the appellant-company by components purchased from the market and also by fabricating certain parts of the machinery in their factory*

Arguments in favor of immovable property

- *Machine was permanently attached to the ground.*
- *Machine cannot be worked until and unless the same was attached to the earth as a permanent fixture.*
- *The nature of the machine is such that it cannot be transferred and offered for sale to any other party.*
- *Hence, paper making machine is treated as immovable property not leviable to excise.*

Sirpur Paper Mills [1998 97 ELT 3 SC]...

Arguments in favor of movable property

- *Machine was attached to earth for operational efficiency.*
- *The whole purpose behind attaching the machine to a concrete base was to prevent wobbling of the machine and to secure maximum operational efficiency and also for safety.*
- *Paper making machine was saleable and if somebody wants to purchase, the whole machinery could be dismantled and sold to him in parts.*
- *The view that 'Whatever is embedded in earth must be treated as immovable property' is basically not sound.*
- *Hence, the machine was treated as movable and liable to excise duty*

...Sirpur Paper Mills [1998 97 ELT 3 SC]

CCE Indore vs Viridi Brothers [2007 (207) E.L.T. 321 (S.C.)]

CCE Indore vs Globus Stores P Ltd [2011 (267) E.L.T. 435 (S.C.)]

Sayaji Hotels Ltd vs CCE, Indore [2002 (141) E.L.T. 765 (Tri. - Del.)]

*Refrigeration/Air conditioning plants. These are basically systems comprising of compressors, ducting, pipings, insulators and sometimes cooling towers etc. **They are in the nature of systems and are not machines as a whole.** They come into existence only by assembly and connection of various components and parts*

Excise judgement- Air conditioning

Wago Pvt Ltd [2024 6 TMI 109 AAR Gujarat]

- Assessee was establishing new factory at Vadodra, Gujarat. The question in AAR- Whether ITC eligible for Air conditioning system and ventilation system
- Assessee contended that systems constitute plant and machinery and hence ITC should be allowed
- Authorities held that after installation, systems become immovable property and cease to be plant and machinery
- ITC blocked under Section 17(5)(c) of CGST Act, 2017 as works contract services for construction of immovable property

Air conditioning

Varracha Co Bank Ltd [2023 156 taxmann.com 4 AAR Gujarat]

- Once installed in a building Central Air Conditioner becomes a part of building and therefore, it becomes an immovable property and ceases to fall under category of plant and machinery
- After installation, lift/elevator becomes a part of immovable property and thus, ceases to fall under category of plant and machinery;
- Electrical fittings on installation, become a part of building which is constructed and, thus, it becomes an immovable property
- Roof Solar Plant is not permanently fastened to building and thus, it qualifies as a plant and machinery and is not an immovable property
- Where fire extinguishers are permanently attached to building, they cease to be a movable property and become immovable property

Immovable Property

- **Bahl Paper Mills Ltd 2018 [(14) G.S.T.L. 306 (A.A.R. - GST)]**

Office fixtures and furniture , AC plant and sanitary fittings of newly constructed building- Credit of GST paid in relation to building or any other civil structure not available - Sanitary fitting integral part of building or any other civil structure and therefore credit not available on them – Credit of GST available on office fixtures and furniture.

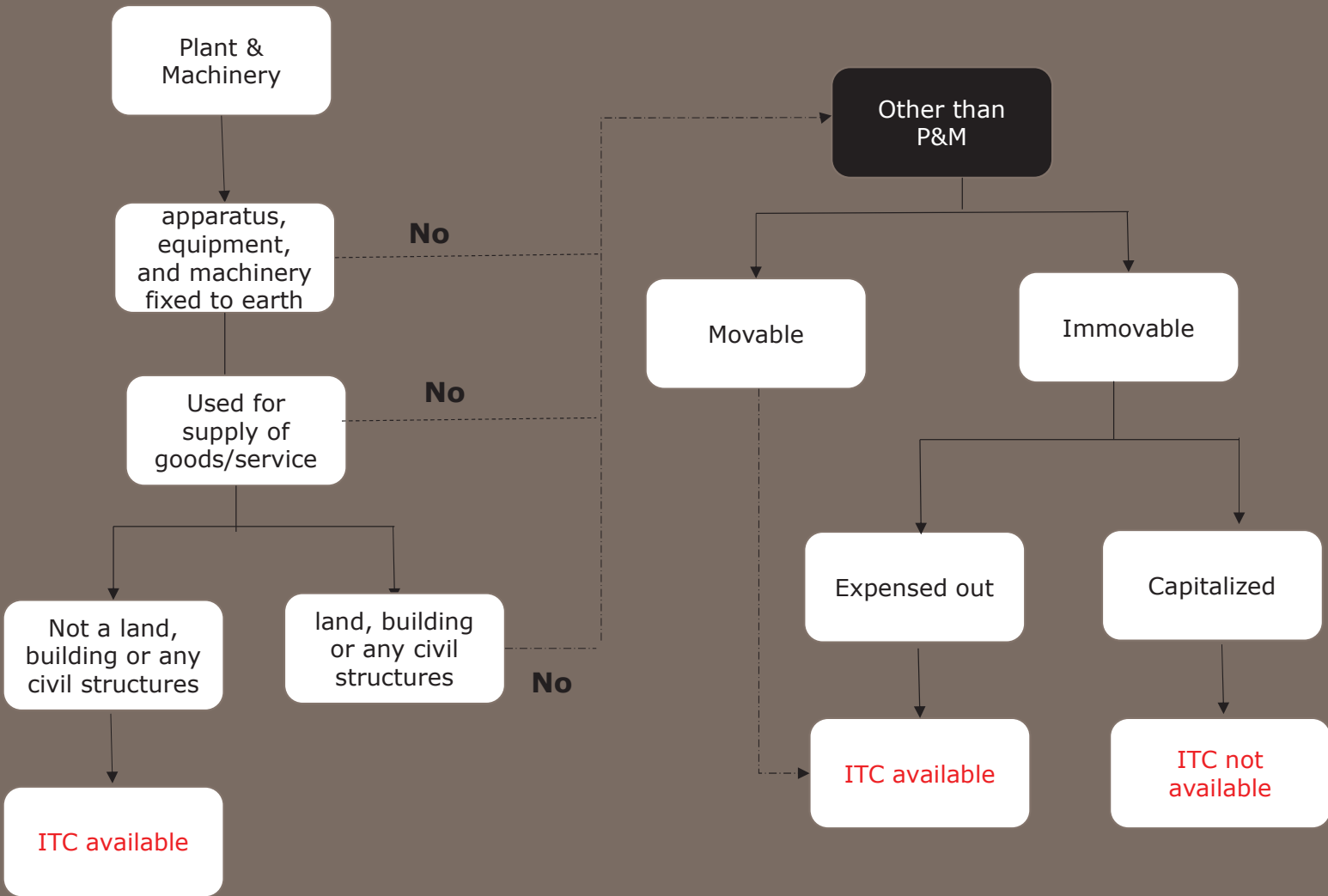
- **Nipro India Corpn Pvt Ltd [2018 98 txmann.com 319]**

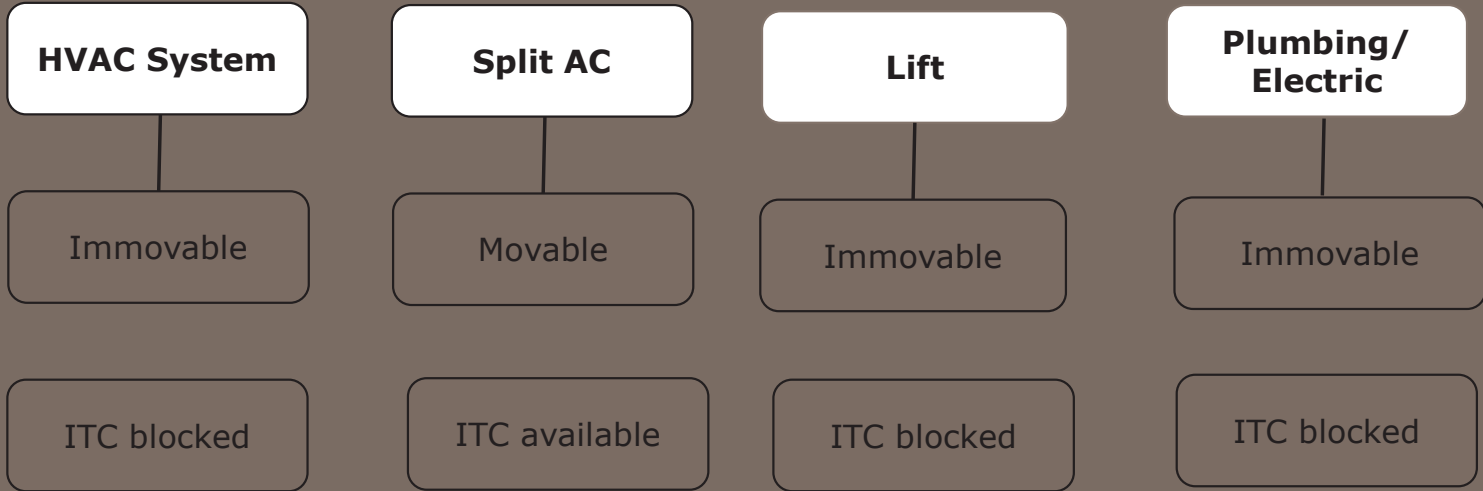
Internal fire hydrant system, Sprinkler works, Extinguishers, Fire documentation not being “plant and machinery”, not eligible

- **Otis Elevator Co (India) [2003 151 ELT 499]**

Lift/elevator becomes an integral part of immovable property as and when lift is installed and erected and lift itself becomes an immovable property - As erection, installation and commissioning of lift via a works contract service, makes it an immovable property, it ceases to be a plant and machinery.

Other items





CONCLUSION

Background

- *Section 16(1)*

Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

S. 17(5)

Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

S. 17(5)(c)

works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service

S. 17(5)(d)

goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

S. 17(5) of CGST Act

P & M

Explanation. - For the purposes of this Chapter and Chapter VI, the expression "P & M" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

Immovable Property vs Plant & Machinery

**Question before
Hon'ble SC**

- *The term 'Plant & Machinery' vs 'Plant or Machinery'*
- *Whether explanation to S. 17 i.e. definition of 'Plant & Machinery' be applied to S. 17(5)(c)*
- *If term 'Plant & Machinery' vs 'Plant or Machinery' have different meaning, what is meaning of word 'plant'*
- *Whether S. 17(c) & (d) are unconstitutional*

Observations of Hon'ble Supreme Court

- Whether S. 17(c) & (d) are not unconstitutional. Legislature has freedom to impose restrictions on ITC.
- The term 'Plant & Machinery' vs 'Plant or Machinery' are different.
- P&M appears at several places in the Act. Whereas P or M is used consciously only at 17(5)(d)
- Plant can include immovable property for e.g. building if it is specifically used for supplying goods or services
- If building is constructed to serve assessee's specific technical requirement, then building can be plant.
- Matter remanded to Hon HC to determine whether shopping mall qualifies for Plant

Way forward while claiming ITC on building

- Nature of immovable property- Whether building will be directly used for providing output services.
- Type of goods/ services procured.
- Works contract services for above will still be restricted in terms of S.17(5)(c).
- Goods and services procured will be allowable in terms of S.17(5)(d).
- Examples of buildings:
 - Warehouse
 - Factory shed
 - Breakaway wall/ jetty for construction of port
 - Shopping malls
 - Cinema Halls
 - Resorts and hotels

S. 17(5)

Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

S. 17(5)(h)

goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

S. 17(5) of CGST Act

Gift Tax Act

Transfer by one person to another of any existing movable or immovable property **voluntarily** and without consideration in money or money's worth

Biostadt Indian Ltd [AAR Maharashtra]

- Gold coins so distributed under so-called sales promotion scheme are nothing but gifts.
- Credit can be admissible only if output tax is paid at time of their giving away

GRB Dairy Foods [AAR Tamil Nadu]

Promotional rewards in goods being consumables in nature are gifts extended to retailers for promoting their products, voluntarily distributed by applicant without any consideration/Tax invoice.

Judgements....

**ARS Steels &
Alloys- Mad
HC- 2024**

The expression goods disposed by way of gift or free samples will specifically apply to the goods whether manufactured or traded by an assessee under the provisions of the respective GST enactments.

Therefore, it cannot be said that the petitioner is entitled to input tax credit for the items meant for sales promotional activities. The views of the Karnataka Authority for Advance Ruling and Telangana State Authority for Advance Ruling are rules in personam in terms of Section 98(4) of the respective GST enactments are correct

Judgements....

- **Natural love and affection vs Business Promotion**
- **S. 47(iii) of Income Tax Act**
 - Exemption from capital gains
 - on transfer of capital asset under gift, will or irrevocable trust
 - applicable to individual or HUF (wef FY 24-25)
 - Not applicable to companies
- **194R of Income Tax Act**
 - TDS on benefits/ perquisites
- **Sales incentive CBIC Circular No 92/2019**
 - Buy 1 Get 1 offer- Supply of 2 goods with price of 1. ITC is available on free items
- **Gifts provided as part of pre defined obligatory scheme- ITC shall be allowed**
- **Gifts provided without any obligation- ITC shall be blocked**

What is a gift

The background of the slide features a grayscale photograph of a desk. On the left, a portion of a tax form is visible, showing fields for 'Your social security number', 'Spouse's social security number', and 'Presidential Election Campaign'. Below these are checkboxes for 'Spouse' and 'No'. Further down, there are sections for 'Taxable interest', 'Ordinary dividend', and 'Taxable annuity'. In the center, two pencils lie horizontally. On the right side, a white pen is partially visible. A large, semi-transparent brown rectangle is overlaid in the center of the image, containing the title 'Normal Loss' in white text.

Normal Loss

S. 17(5)

Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

S. 17(5)(h)

goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

S. 17(5) of CGST Act

**R.K. Ganapathy
Chettiar [2021
133 taxman
259 Mad HC]**

Every manufacturing process results in some kind of loss such as evaporation, by-products, etc. - ITC is available on total quantity and value of inputs that went into making of final product

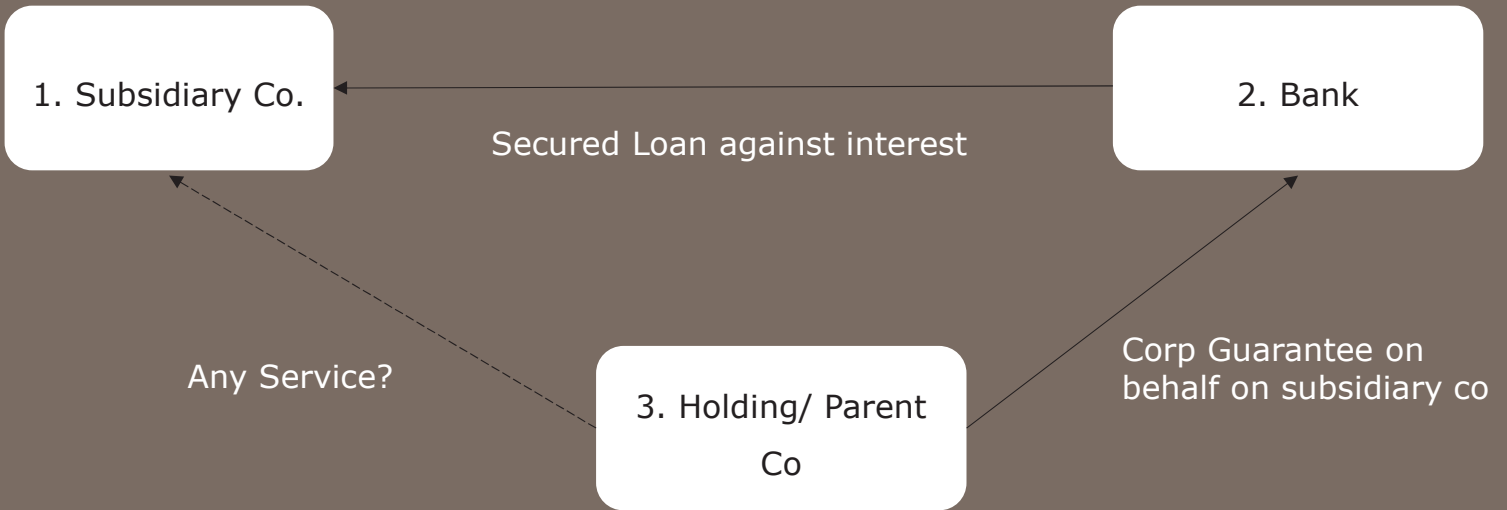
**ARS Steels &
Alloys [TS DB
GST HC Mad
2021 346]**

Reversal of ITC involving Section 17(5)(h) by the revenue, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived

Judgements



Case Study 3 Corporate Guarantee



Corporate Guarantee- Synopsis

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1. Cover its own exposure against default by subsidiary company

2. Safeguard financial health of the group

3. As a parent company, it is very much own function of holding company

4. Whether any service provided by Holding company to subsidiary company?

What is corporate guarantee?

- **S. 2(52)- Goods**

Means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

- **S. 2(102)- Services**

Means everything other than goods, money and securities but includes activities relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Fundamental Provisions

- ***Victorian Chambers - Victorian Chamber of manufacturers v. Commonwealth (of Australia) (1943) 67 CLR 335, 346 per Williams J.***

"Any" typically implies an absence of limitations or qualifications. It should be interpreted broadly, encompassing all possibilities within its context. "Any goods" includes all goods unless subject matter and context of a statute specify otherwise.

- ***Barron vs Littman - (1952) 2 All ER. 548***

The word 'any' in the context can mean 'all' but also mean 'some'

- ***Sahyadri SSK Ltd vs CCE, Pune 2003(153) ELT 18 (S.C.)***

The word has a diversity of meanings and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject-matter of the statute.

Interpretation of 'Anything other than goods'

Bank Guarantee

- Mandated under banking laws in the course of its business.
- Failure will lead to deficiency in services

Corporate Guarantee

- Issued for business needs, not based on banking laws.
- Issued without any underlying assets or securities.
- Facility provided to subsidiary.
- Out of service definition

Bank Guarantee vs Corporate Guarantee

1. Videocon Industries Ltd. v. Addl. CIT [2015] 55 taxmann.com 263 (Mumbai – Trib)

2. Bharti Airtel Ltd [2014] 63 SOT 113/43 taxmann.com 150

3. Manugraph India Ltd. [2016] 69 taxmann.com 400 (Mumbai – Trib.)

1. Does not involve cost or does not have any bearing on profits.

2. The issuance of corporate guarantee by assessee on behalf of its subsidiary company is in nature of quasi capital or shareholder activity and not in nature of 'provision for services'

3. Therefore outside purview of international taxation u/s 92B

Judgements under Income Tax

- **Sterlite Power Transmission Limited- 2024 (84) G.S.T.L. 42 (Del.) [28-02-2024]**
- **Acme Cleantech Solutions Pvt Ltd - 2024 (86) G.S.T.L. 257 (P&H.) [03-05-2024]**
- **No coercive action was to be taken against assessee**

Judicial Jurisprudence

-
- 1.** No services provided by Holding Co to Subsidiary company
 - 2.** No supply of goods or services
 - 3.** Bank Guarantee vs Corporate Guarantee

CG provided to Builder Company

Sr. No	Notification	Date	Narration
1.	Schedule I		Activities treated as supply, including transactions between related persons in the course of business (even without consideration)
2.	Nn 52/2023	26/10/2023	Insertion of Rule 28(2)
3.	Circular No. 204/16/2023	27/10/2023	Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee
4.	NN 12/2024	10/07/2024	Amendment in Rule 28(2) and proviso to 28(2)
5.	Circular No. 225/19/2024	11/07/2024	Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons

- **S. 25(4) - Distinct Persons**

A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

- **S. 25(5) – Establishment of Distinct Persons**

Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

- **Schedule I- Activities treated as supply, including transactions between related persons in the course of business (even without consideration)**

Supply of goods or services or both between 'related persons' or between 'distinct persons' as specified in section 25, will qualify as supply even if made without consideration provided the same is made in the course or furtherance of business.

Relevant Provisions...

Rule 28 - Value of supply of goods or services or both between distinct or related persons, other than through an agent. -

(1) The value of the supply of goods or services or both between distinct persons as specified in sub section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

Rule 28(1)

(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person located in India, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered per annum, or the actual consideration, whichever is higher.

Provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services.

Rule 28(2)- wef 26/10/2023

2.	Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.	<p>Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.</p> <p>Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act.</p>
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Circular No. 204/16/2023 dt 27/10/23

Issue	Clarification
<p>Whether sub-rule (2) of rule 28 of CGST Rules will apply to the corporate guarantees issued prior to insertion of the said sub-rule on 26th October 2023? Also, where intra-group corporate guarantees have been issued before 26th October 2023, which are still in force today, would they be liable to pay GST on "1% of the amount of such guarantee offered" on such guarantees?</p>	<p>It is to be clarified that the supply of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was taxable even before the insertion of sub-rule (2) in rule 28 of CGST Rules with effect from 26th October 2023. Rule 28(2) of CGST Rules is only for determination of the value of the taxable supply of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient and not regarding the taxability of the said supply itself. Prior to the insertion of the said sub-rule, i.e., before 26th October 2023, the valuation of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was to be done as per the provisions of Rule 28 of CGST Rules, as it existed then.</p> <p>Therefore, in respect of supply of services of providing corporate guarantee between related persons, in respect of corporate guarantee issued or renewed before 26th October 2023, the valuation of the said supply is to be done in accordance with Rule 28, as it existed during that time. However, if the corporate guarantee is issued or renewed on or after 26th October 2023, then the valuation of the said supply will be required to be done as per Rule 28(2) of CGST Rules.</p>

Circular No. 225/19/24 dt. 11/07/24...

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Issue	Clarification
<p>Whether the benefit of second proviso to sub-rule (1), which states that value declared in invoice is deemed to be the open market value in cases where full input tax credit is available to the recipient of services, is not applicable in cases falling under sub-rule (2)?</p>	<p>Proviso has been inserted in sub-rule (2) of Rule 28 of CGST Rules, retrospectively with effect from 26th October 2023 vide notification No. 12/2024 -CT dated 10.07.2024, similar to that provided in the second proviso to sub-rule (1) of Rule 28 of CGST Rules, to provide the benefit in cases involving supply of service of corporate guarantees provided between related persons.</p> <p>Accordingly, it is clarified that in cases involving the supply of service of corporate guarantees provided between related persons, where full input tax credit is available to the recipient of services, the value declared in the invoice shall be deemed to be the value of supply of the said service.</p>

...Circular No. 225/19/24 dt. 11/07/24

Before 26/10/2023

- No specific valuation
- Value charged on invoice deemed to be accepted, if recipient eligible for full ITC

After 26/10/2023

- 1% of corp. guarantee amount per year
- Value charged on invoice deemed to be accepted, if recipient eligible for full ITC

RULE 28

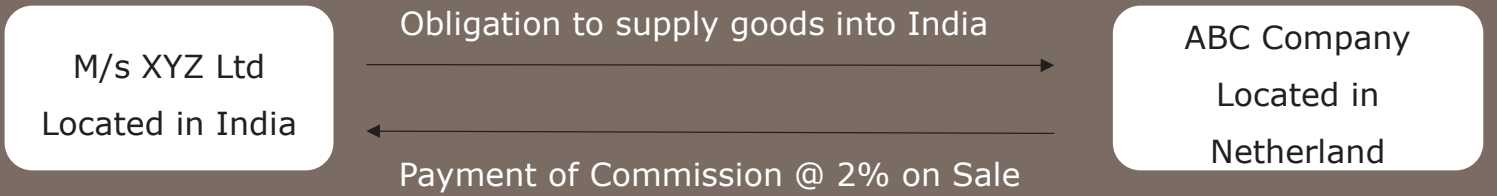
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F.Y.	Corp Guarantee	GST Net Value	GST	Comments
March 2022	Rs. 100 Crore	Rs. 10 Lakhs	Rs. 1.8 Lakhs	<ul style="list-style-type: none"> • Before 26/10/23 • No specific rule for 1% • Therefore value charged on invoice deemed to be accepted
March 2023	Rs. 150 Crore	Rs. 15 Lakhs	Rs. 2.7 Lakhs	
March 2024	Rs. 200 Crore	Rs. 20 Lakhs	Rs. 3.60 Lakhs	<ul style="list-style-type: none"> • After 26/10/2023 • Specific rule of 1% • Since EPC co. eligible for full ITC, value charged on invoice deemed to be accepted.

CG provided to EPC Company



Case Study 4 Intermediary



Scope of Work

- Market Research
- Identifying Potential Customers
- Marketing Activities
- Order Placement Coordination
- Customs Clearance Assistance
- Recovery of Amount from Customers

Facts Of The Case

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- **Section 2(11) of IGST Act, 2017 – Export Of Services**

2(6) “**export of services**” means the supply of any service, when,--

- i. the supplier of service is located in India;
- ii. the recipient of service is located outside India;
- iii. **the place of supply of service is outside India;**
- iv. the payment for such service has been received by the supplier of service in convertible foreign exchange;
- v. the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Export of Services

- **Section 2(13) of IGST Act, 2017 – Intermediary**

“intermediary” means a

- broker, an agent or any other person, by whatever name called,
- who arranges or facilitates the supply of goods or services or both, or securities,
- between two or more persons,
- but does not include a person who supplies such goods or services or both or securities on his own account;

- **Section 13 of IGST Act, 2017 – Place of Supply of services where location of supplier or location of recipient is outside India**

13(8) The place of supply of the following services shall be the location of the supplier of services, namely:--

- a)
- b) *intermediary services;*
- c)

Definition and Intermediary Services

- **CGST + SGST**

S. 8 (2) Subject to the provisions of section 12, supply of services where the **location of the supplier** and the **place of supply of services** are in the **same State** or same Union territory shall be treated as intra-State supply

- **S. 12. Place of supply of services where location of supplier and recipient is in India.**

- **IGST**

S. 3(5) Supply of goods or services or both,-

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

(c) **in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,**

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

(CGST + SGST) vs (IGST)



Dharmendra Jani- Bombay HC

- The petitioner, a proprietary firm, is engaged in providing marketing and promotion services to its customers located outside India.
- The overseas customers to whom services are provided by the petitioner are inter alia engaged in the manufacturing and/or sale of goods. The petitioner identifies customers for such foreign principal in India and facilitates supply of goods between the both.
- The foreign principal pays a commission to the petitioner against an invoice issued by the petitioner. The entire payment is received by the petitioner in India in convertible foreign exchange.
- Such transactions are popularly known as indenting commission/ foreign commission/ intermediary services.
- Issue was brought to Division bench of Bom HC- whether GST is payable on such foreign commission income earned in India?



Split verdict by Bombay HC (July 2021)

Favorable verdict by Justice Ujjal Bhuyan :

- Section 13(8)(b) of IGST Act, 2017 is ultra vires the said Act besides being unconstitutional.
- The extra-territorial effect given by way of section 13(8)(b) of the IGST Act has no real connection or nexus with the taxing regime in India introduced by the GST system.
- Dismisses Revenue's stance that levy of IGST on supply of services by Intermediaries to foreign customers would strengthen the 'Make in India' program by encouraging foreign investment

Adverse Verdict by Justice Abhay Ahuja

- Unable to be persuaded by Justice Bhuyan's opinion and therefore would like to record separate opinion in the matter.
- In view of the conflicting judgement, matter referred to 3rd Judge.



Verdict by 3rd Judge of Bombay HC (April 2023)

- Answering a reference arising from differing opinions of Division Bench Judges, 3rd Judge remarks that

"the view I have taken is distinct from the view taken by the Hon'ble members of the Division Bench. As a referral Judge, there would be no bar in expressing an independent opinion while deciding the reference by assigning reasons which would support such opinion"

- The 3rd Judge refuses to strike down provisions of Section 13(8)(b) and Section 8(2) of IGST Act as unconstitutional. Hence, the levy of GST on indenting commission/intermediary services is totally legal and valid in Law.
- Further, the ruling also states that the fiction which is created by Section 13(8)(b) would be required to be confined only to the IGST Act and there is no scope for the fiction to travel to the CGST and the MGST Acts.
- The judge therefore opines CGST + SGST is not payable.



Final verdict by Div Bench (June 2023)

- Earlier, due to the divergent opinion in order dated **June 9, 2021** , the matter was placed before the third judge, who vide order dated **April 18, 2023** upheld the provisions of Section 13(8)(b) and Section 8(2).
- The 3rd judge had held that the said provisions are confined in their operation to the provisions of IGST Act only and the same cannot be made applicable for levy of tax on services under the CGST and MGST Acts
- Accordingly, the division bench in its final judgement dt. 06.06.2023 considered the opinion of 3rd judge and has finally upheld the provisions of Section 13(8)(b) and Section 8(2) of the IGST Act to be legal, valid and constitutional.

Section 10(2A) of CGST Act, 2017 – Compensation Scheme for Services

1. whose aggregate T/o in the preceding FY did not exceed Rs. 50 Lakhs,
2. Not engaged in making any supply of goods or services which are exempted,
3. engaged in making any inter-State outward supplies of goods or services;
4. engaged in making any supply of goods or services through an electronic commerce operator;
5. a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
6. a casual taxable person or a non-resident taxable person
7. Shall not collect tax from recipient

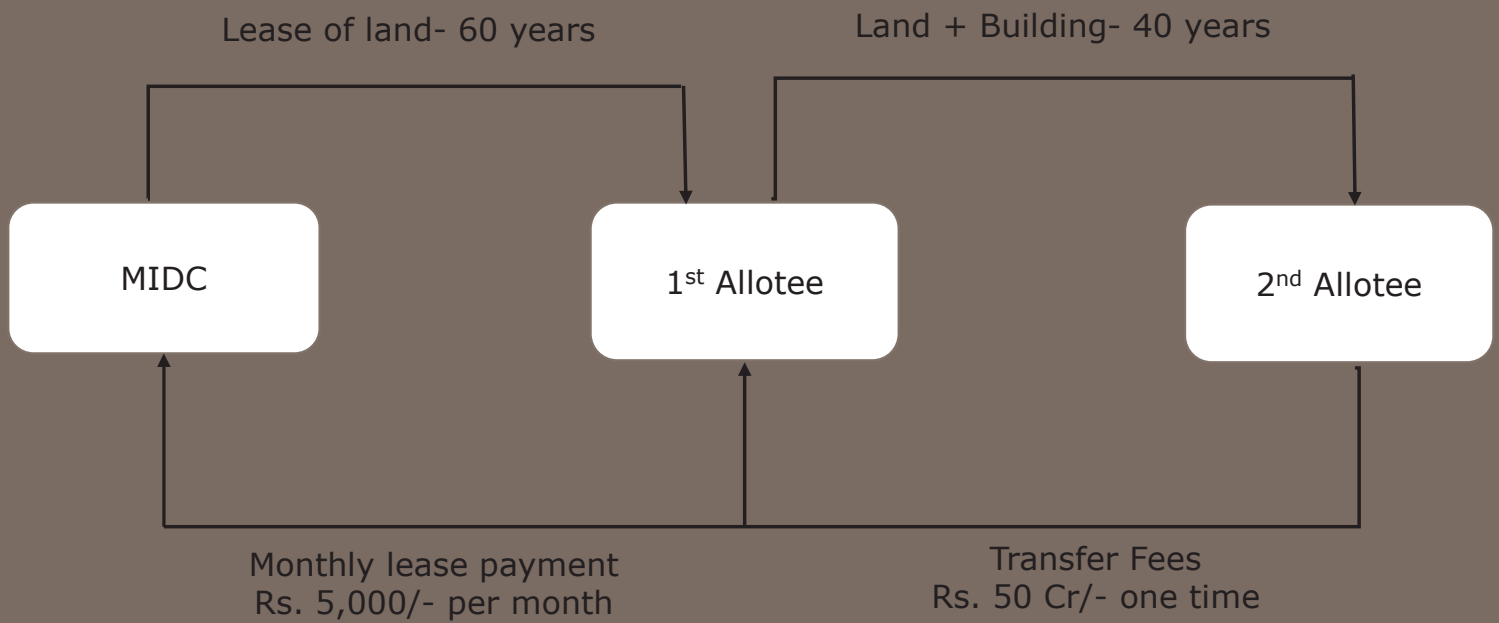
Composition Levy

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Case Study 5 Long term lease

Transfer of Lease hold rights



Issues under consideration

- Whether transfer of leasehold rights & building to 2nd allottee attracts GST?
- If yes, whether 2nd allottee is entitled to ITC?
- Whether implications will change if separate price is charged for lease and building?
- What are current practices followed by assignors of long term lease?
- Current status of litigation
- Possibility of refund claims

ISSUES

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S. 7(1)

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

Schedule II

2(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

Schedule III

Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building

S. 17(5) of CGST Act

**NN
12/2017**

Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area..”

S. 17(5) of CGST Act

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- ***Bombay High Court- Builders Association of Navi Mumbai [2018 (12) G.S.T.L. 232]***
GST applicbale on leasing as renting of premises
Challenged before Supreme Court- stay not granted
- ***Rajasthan AAR- Greentech Mega Food Park Pvt Ltd [RAJ/AAR/2019-20/10]***
Long term lease is supply of services and hence liable to 18% GST
- ***Greentech Mega Food Park [2019 (27) G.S.T.L. 143 (A.A.R. - GST)]***
Mere long period of lease does not make it a sale transaction. Liable to GST
- ***Goa Tourism Development Corporation [2018 (19) G.S.T.L. 700 (A.A.R. - GST)]***
Consideration received against services to be provided for next 60 years, i.e., the supply of service in the nature of continuous supply of service

Judicial Jurisprudence



Gujarat High Court Gujarat Chamber of Commerce & Industry



Facts of the case

- GIDC acts as a nodal agency for development of industrial parks in state of Gujarat. GIDC acquires plots of lands, develops infrastructure and thereafter allots plots on long term lease for 99 years.
- Registered lease deed is executed by GIDC in favour of the allottee/lessee after payment of applicable stamp duty. Lease deed also permits the allottees/lessee to assign the leasehold rights and interest in the plot to any other person subject to approval of GIDC.
- The issue pertains to levy of GST on assignment of leasehold rights of the plot of land allotted on lease by GIDC and building constructed thereon by the lessee or its successor (assignor) to a third party (assignee) on payment of lump-sum consideration.



Arguments by tax payer

- Based on references to TOPA Act, General Clauses Act, Registration Act, land Acquisition Act, leasehold rights to be treated as immovable property
- Transfer of leasehold rights is not a service. Service meaning cannot include immovable property within its ambit.
- Legislature never intends to tax immovable property. Therefore meaning of land does not restrict to land per se but also include land which constitute immovable property i.e. right in land
- Transfer of leasehold rights is not in course or furtherance of business- nothing to do with business of assignor.



- Stamp duty not subsumed under GST and hence taxing land and building may be unconstitutional- 7th GST council meeting agenda

Arguments by department

- Leasehold rights with respect to immovable property are interest in immovable property.
- Interest in immovable property should be understood in context of GST Act and not other Acts which are enacted for different purposes.
- The interest in immovable property cannot be dubbed as immovable property.
- GIDC has bundle of rights such as ownership, construction, license, possession, occupation, etc. When one of such rights is transferred, it should be termed as service.



...High Court Observations

- Article 30 of the Schedule-I of the Gujarat Stamp Act, 1958, provides for same rate of stamp duty as immovable property, in case where lease is more than 98 years.
- As per S.12(3), place of supply of services in relation to immovable property includes services provided by architect, interior decorators etc. and includes any service provided by way of grant of right to use immovable property.
- Levy of GST on construction services are exclusive of 1/3rd of total amount charged for such supply which includes transfer by way of lease or sub-lease meaning.
- Therefore, even for levy of GST on construction services, value of the land by way of lease is to be excluded.



- Therefore, scope of supply would not include transfer of leasehold rights as it would be transfer of immovable property.
- Considering the settled legal position as held by the Hon'ble Supreme Court and other High Courts from time to time, it is true that any lease or letting out of a building including commercial, industrial, residential complex for business either wholly or partly would be "supply of service".
- The consideration, therefore, as premium/one time premium is a measure on which tax is to be levied, assessed and recovered.
- Therefore, when the GIDC allots the plot of land on lease of 99 years and charges premium for such allotment followed by periodical lease rent to be paid, is to be considered as supply of service.

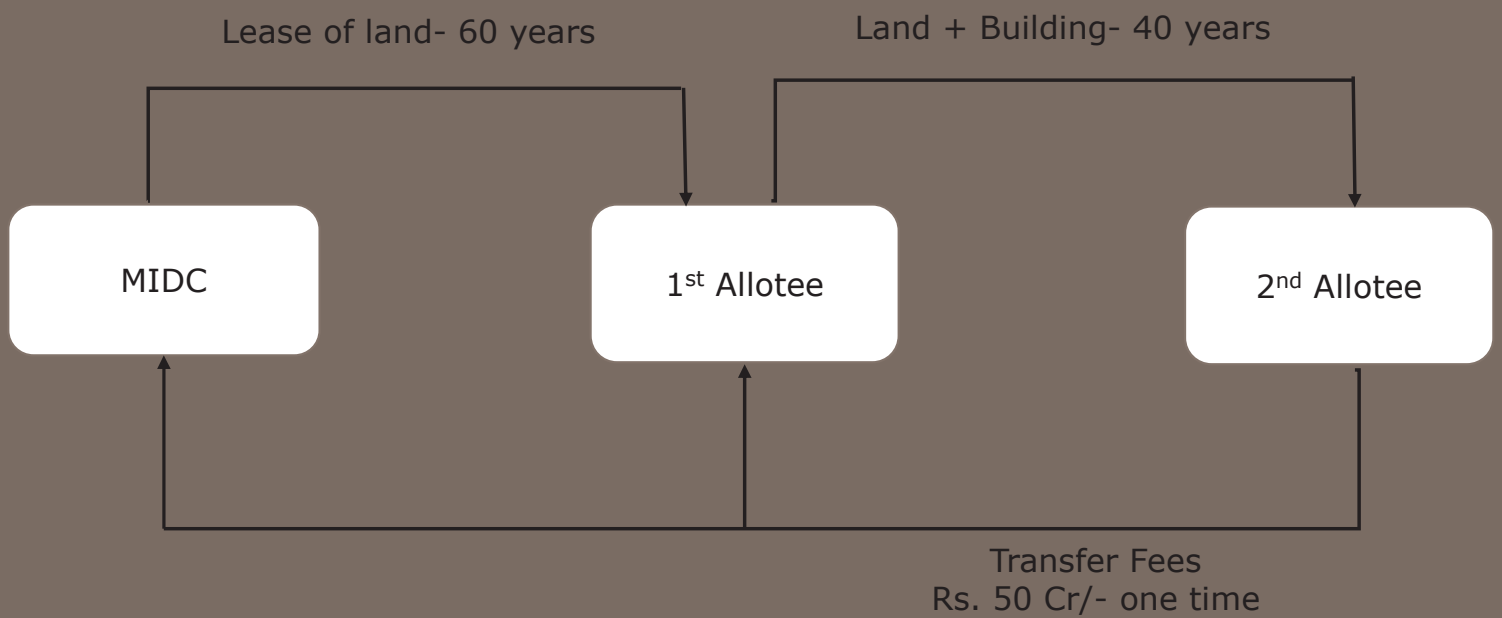


- However, when such leasehold right is transferred by the lessee-assignor in favour of a third person-assignee by execution of deed of assignment , it would be nothing but transfer of an “immovable property”
- There are 2 transactions, which are:
 - Allotment of plot of land from GIDC- service
 - Assignment of lease by assignor- immovable property
- Agenda 2A of 5th GST council meeting proposed to impose GST on sale of immovable property. However, in 7th meeting, said decision was deferred.



- Further, GIDC had only allotted the plot of land to the lessee who constructed the building. Therefore, what is transferred by assignor is not just land but building as well.
- Hence GST will not be applicable on transfer of assignment of leasehold rights by the assignor to the assignee

Transfer of Lease hold rights



S. 17(5)

Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

S. 17(5)(c)

works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service

S. 17(5)(d)

goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

S. 17(5) of CGST Act

- **Bayer Vapi Pvt Ltd [2023 9 TMI 165 AAR Gujarat]**

VEL has entered into a 99 year lease agreement with GIDC for setting up an industrial plant and for setting up/expanding manufacturing facility- applicant has entered into an MoU with VEL to transfer leasehold rights in Industrial plot- applicant is not entitled to take ITC of CGST and SGST paid by them on services received from VEL in form of transfer of its rights in leasehold land owned by GIDC.

- **Daicle Chiral Technologies [2020 8 TMI 103 Hyderabad AAR]**

"Lease premium charges", "annual lease rentals" and "maintenance charges" paid by applicant to the lessor towards lease of land - Applicant acquired land on lease for the purpose of construction of a building where their own laboratory would be accommodated - 'Building' constructed by applicant unquestionably falls within the ambit of 'immovable property (other than plant & machinery)' - Thus, it is established that such services received by the applicant for the purpose of construction of immovable property on their own account and covered under the exclusion clause (d) of Section 17(5) of Central Goods and Services Tax Act, 2017 and hence ineligible to ITC.

- **GACL Nalco Alkalies & chemical Pvt Ltd [2021 12 TMI 36 AAR Gujarat]**

AAR determines that as the Applicant wishes to use the service of grant of leasehold rights to set up a new manufacturing unit, it is hit by Section 17(5)(d) which bars ITC received for construction of an immovable property on its own account therefore, the ITC of the Applicant stands blocked

Negative AAR's

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- **Enfield Apparels Ltd [2020 40 GSTL 230 AAR WB]- Distinguished**

the transfer fee charged by the Sub-lessor is in the nature of a consideration for tolerating an act that the applicant is otherwise refrained from doing in terms of clause 12.28 of the Deed. It is also a service classifiable under 'Other miscellaneous service' (SAC 999794) and taxable @ 18% under Sl. No. 35 of the Rate Notification. The GST to be paid on such transfer fee is, therefore, admissible as input tax credit.

- **Kamarajar Port Ltd., [2022] 142 taxmann.com 19 (AAR TN)- Distinguished**

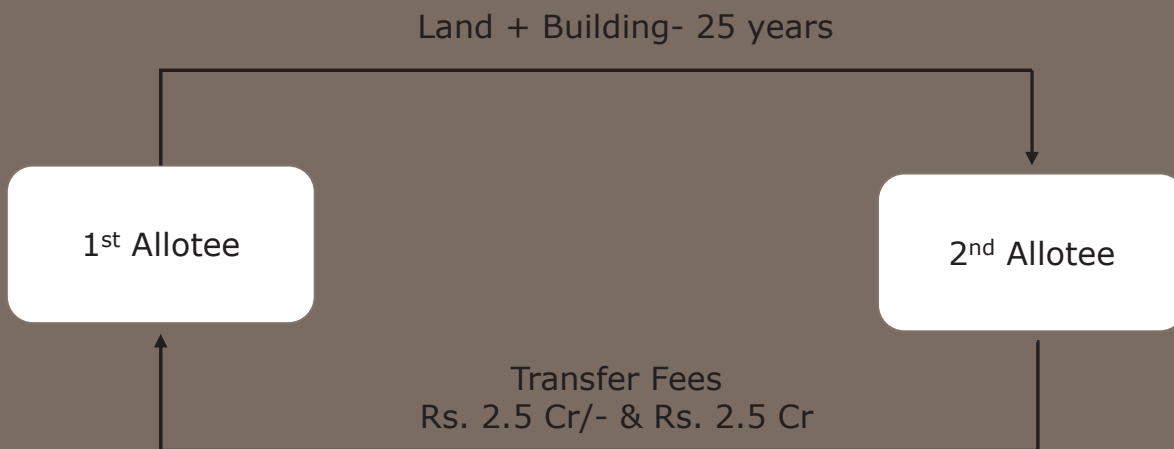
The lease allotment letter do not spell of lease for any construction activity on the closed space leased for business purposes. Hence, the upfront premium made is the lease rentals as per the allotment order/letter or Chennai Port Trusts and it is nothing but lease rentals paid for the services of "Renting of Immovable property" for business purpose.

Positive AAR's

1. New transactions- Not to pay GST
2. Old transactions where GST is not paid- Litigate on the basis of Guj HC
3. Old transactions where GST is paid and ITC is claimed- Status Quo
4. Old transactions where GST is paid but ITC not claimed- Refund
5. Refund by supplier or recipient

Grounds for challenge & Way forward

Separate Price



- GST Applicable on sale of lease land as deemed service
- ITC available since not an immovable property
- GST not applicable on sale of building since sold post OC

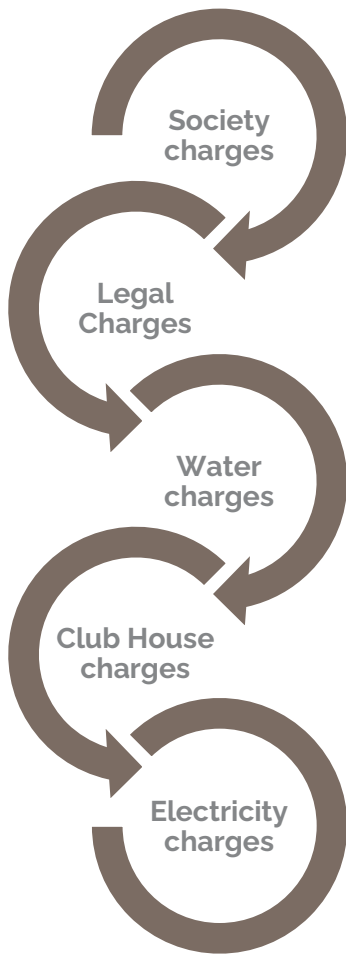
GST IMPLICATIONS



Case Study 6 Builder- Other Charges

OTHER CHARGES

Agreement Value	Other Charges
1. Flat Cost- Rs. 3.5 Crore + Stamp Duty + GST	1. Electricity charges : Rs. 25,000/- 2. Maintenance : Rs. 75,000/- 3. Club House Charges : Rs. 75,000/- 4. Water connection charges : Rs. 10,000/- 5. Development charges : Rs. 25,000/- 6. Society formation charges : Rs. 10,000/- 7. Corpus : Rs. 90,000/- 8. Share Application Money : Rs. 5,000/-



Composite Supply

- *S. 2(30) composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;*
- *S. 8. Tax liability on composite and mixed supplies.— The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—*
 - (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and*

PURANIK BUILDERS
MAHARASHTRA AAAR
30/03/2023

Facts of the case:

- Applicant is a builder/ developer and paying GST @ 12% on under –construction flats, as construction services. The applicant is also providing certain additional services, the charges for which are collected separately under respective heads.
- The list of such charges include electric meter installation, water connection charges, advance maintenance, club house maintenance, development charges, share money, application money, infrastructure charges, society formation charges, municipal taxes, legal charges, etc
- The Maharashtra AAR had rejected the applicants application and had upheld that other charges would be taxed at an individual rate of 18% and not 12%.



Ruling by AAAR:

- Some of the other charges collected by the builder are inextricably linked with construction services, while some other services are independently provided to the customer.
- The following category of services are naturally bundled and shall bear the same rate of tax as that of principal services of construction services i.e. 12%

Water connection charges | electric meter installation | development charges | Legal Fees

- The following services are independently supplies and will bear GST rate as independent services

Club house maintenance | advance society maintenance | municipal taxes | society formation charges | legal charges | infrastructure charges

ELECTRICITY CHARGES
CIRCULAR 206/18/2023
31/10/2023

GST on electricity charges collected by real estate companies, malls, airport operators etc. from their lessees/occupants.

Scenario I- GST applicable

- Supply of electricity as a part of renting of immovable property
- Principal supply is renting and ancillary supply is electricity
- Common billing or separate billing is immaterial

Scenario II- GST not applicable

- If electricity is supplied as pure agent i.e. mainly no mark up is charged. Actual bill received from power company is reimbursed to the tenant.
- All conditions of pure agent should also get satisfied

**PURE AGENT
EXPLN TO RULE 33**

- a) *enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*
- b) *neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;***
- c) *does not use for his own interest such goods or services so procured; and*
- d) *receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account."*

Conclusion

Naturally bundled

- Water connection charges
- Electric meter installation
- Development charges
- Legal Fees

Independent supplies

- Club House Maintenance
- Society Maintenance
- Society Formation Charges
- Legal charges
- Infrastructure charges
- Electricity charges

Deposits

- Share Application Money
- Corpus

OTHER CHARGES COLLECTED BY BUILDER

OTHER CHARGES- GST RATE

Sr. No	Other Charges	Amount	GST Rate
1.	Electricity charges	: Rs. 25,000/-	NIL
2.	Maintenance	: Rs. 75,000/-	18%
3.	Club House Charges	: Rs. 75,000/-	5%
4.	Water connection charges	: Rs. 10,000/-	5%
5.	Development charges	: Rs. 25,000/-	5%
6.	Society formation charges	: Rs. 10,000/-	18%
7.	Corpus	: Rs. 90,000/-	NIL
8.	Share Application Money	: Rs. 5,000/-	NIL



Case Study 7 Cross Charges vs ISD



Finance Bill, 2024 as introduced in Lok Sabha on 01/02/2024

- Government vide Notification No 16/2024 dated 06/08/2024 have notified amendments to GST Act proposed vide Finance Bill 2024 dt. 01/02/2024
- Vide the said amendment, separate ISD registration will be compulsorily required (as against optional) in case of dealers having multiple GSTIN's and who are receiving common input services on behalf of other branches.
- Therefore all common ITC received by Head Office is to be compulsorily distributed to its branches by way of ISD registration. ITC distribution to also include invoices liable for reverse charge.
- The above ISD compliance is mandatorily to be followed wef 01/04/2025



- Such amendment is likely to increase the compliance burden of companies having multiple GSTIN's viz obtaining registration, filing of separate ISD returns, disclosure in GSTR-3B, etc.
- Tax payers would also be required to have a robust accounting system in order to identify invoices which are common in nature and which are ought to be distributed vide ISD registration.
- Additionally there exists a concept of cross charges under GST. Presently, there exists lot of confusion between cross charges and ISD mechanism.
- The same is explained in detailed manner in succeeding slides

Maharashtra

Head Office

Common services

- Software License
- Audit Fees
- Brand Promotion
- Rent
- Legal services

Gujarat

Factory

MP

Factory

Haryana

Factory

ITC on Common Services

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1. Concept of distinct person i.e. multiple GST registrations

2. Schedule I- Activity between distinct person to be treated as supply even without consideration

3. Applicable only to internally generated services (Circular No. 199 dt/ 17/07/24)

4. Cross charge not mandatory - salary(Circular No. 199 dt/ 17/07/24)

Concept of Cross Charges

1. Introduced in regime of Central Excise to allow credit of services to entities having HO and factories across India

2. Under GST, HO registered in main state and branches across India.

3. HO performs function of centralized accounting, auditing, brand promotion, advertisement, etc

4. ISD mandatory from 01.04.2025

Concept of ISD

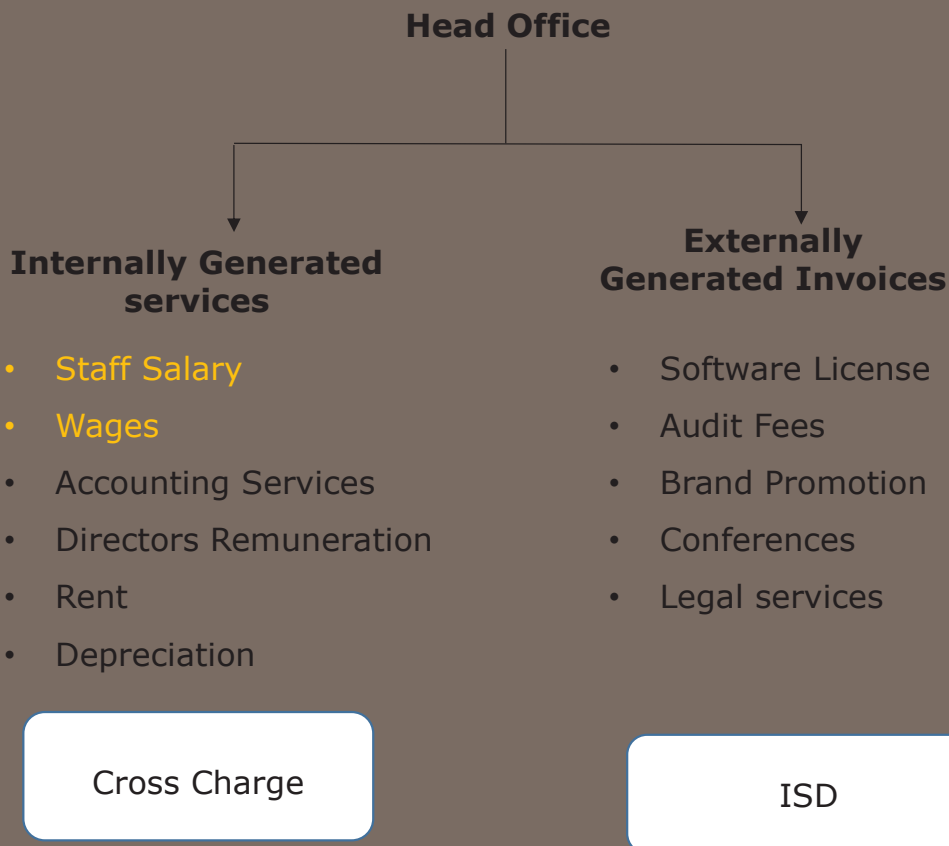
Sr. No.	Section/ Rule	Narration
1.	Section 2(61)	Definition of ISD
2.	Section 20	Manner of distribution of credit
3.	Section 24 (viii)	Compulsory Registration for ISD
5.	Proviso to Rule 8(1)	Separate Application to be done for ISD Registration
6.	Rule 36(1)	Allows ISD to avail ITC based on invoices issued by supplier
7.	Rule 39	Procedure for distribution of ITC by ISD
8.	Rule 54	Prescribes details to be furnished in invoice issued by ISD
9.	Form GSTR-6	By 13 th of next month

LEGAL FRAMEWORK OF ISD

**DEFINITION OF ISD
S. 2(61)**

Section 2(61) - Input Service Distributor

- *office of the supplier of goods or services or both*
- *which receives tax invoices towards the receipt of input services,*
- *including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9,*
- *for or on behalf of distinct persons referred to in section 25, and*
- *liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20.”*



Branches

Gujarat

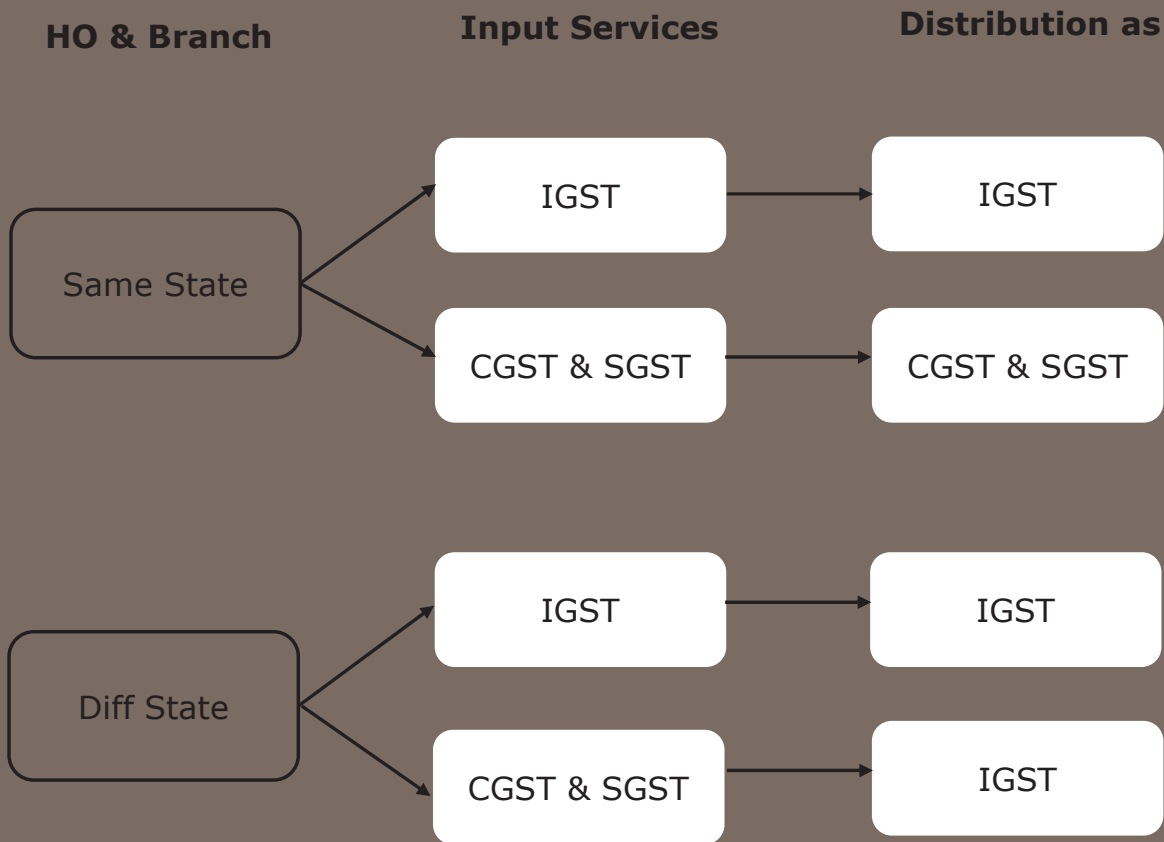
MP

Haryana

Cross Charges vs ISD

- ITC to be distributed in same month as under:
 - For specific branch- Distribution only to that recipient branch
 - For more than 1 branch but not all branch, then credit to be distributed to all relevant branches. However, distribution compulsorily in turnover ratio of previous year or previous quarter
 - For all branches- then credit to be distributed to all branches in turnover ratio.
- Ineligible ITC also to be distributed in above ratio
- Credit to be distributed through ISD invoice in terms of R.54(1)
- In case of subsequent reduction of ITC, ISD credit note to be issued for such reversal. In such case, recipient branch to reverse ITC or add it to its output liability.
- For RCM credits, entity paying such RCM shall issue invoice to ISD and ISD shall distribute credit further.

PROCEDURE OF DISTRIBUTION– Rule 39



DISTRIBUTION OF ISD – Rule 39(1)(j)

Sr. No.	Action
1.	Applicable to all taxpayers having multiple GSTIN under 1 PAN
2.	Obtain separate ISD registration before 01.04.2025
3.	Identify externally generated common services received on behalf of branches such as audit fees/ brand promotion/ advertisement/ stationery/ etc
4.	Input goods and capital goods not to be included
5.	Communicate ISD GSTIN to all such relevant suppliers
6.	Inform suppliers to raise invoice in new ISD GSTIN
7.	Distribute ITC to branches by raising ISD invoice in turnover ratio
8.	Branches to book respective portion of ITC received from ISD
9.	ISD to file Form GSTR-6 by 13 th of following month
10.	Branches to download Form GSTR-6A



Case Study 8 Amnesty Scheme

Sr. No	Notification	Date	Narration
1.	53 rd Council Meeting	22/06/2024	Announcement of amnesty
2.	S. 164 of F.A. Act (No 2), 2024	16/08/2024	Introduction of S. 128A of CGST Act
3.	NN 17/2024	27/09/2024	Effective date- 01/11/2024
4.	NN 20/2024	08/10/2024	Rule 164 of CGST Rules (Forms and procedures)
5.	NN 21/2024	08/10/2024	31 st March 2025- Last date to make payment of tax
6.	Circular 238/32/2024	15/10/2024	Clarification on several issues

Scrutiny notices in Form ASMT-10



Audit Observations in Form ADT-01 and Form ADT-02



Investigation observations



Email communications

Type of Notices

GST Liability not paid - covered



GST Liability short paid - covered



ITC wrongly claimed - covered



Erroneous refund- Not covered

Section 73 dues

S. 128A	Situation	Payment date	Mode	Form	Due Date
(a)	SCN u/s 73 issued but order u/s 73 not issued	31/03/25	DRC-03	SPL-01	30/06/25
(b)	Order u/s 73 passed but Appeal order/ Revisions order u/s 107/ 108 not passed	31/03/25	El Liability/ DRC0-3A	SPL-02	30/06/25
(c)	Appeal order/ revision order u/s 107/108 passed but Tribunal order u/s 113 not passed	31/03/25	El Liability/ DRC0-3A	SPL-02	30/06/25
Provi so	S. 74 matter held to be u/s 73	6 months from redetermina tion of liability			Within 6 months from re- determination

Procedure

- a) *If appeal or writ petition is pending- withdraw the same*
- b) *Pay full amount of tax (Last date- 31/03/2025)*
- c) *File SPL-02 along with appeal withdrawal order*
- d) *If appeal withdrawal order not issued, request letter for appeal withdrawal to be attached.*
- e) *Appeal withdrawal order to be filed post facto within 1 month of application*
- f) *If appeal not preferred, directly file SPL-02*
- g) *If SCN issued, directly file SPL-01*

If PO is satisfied

- Notice in Form SPL-03 within 3 months
- Applicant to respond in Form SPL-04 within 1 month
- Deemed approval if Form SPL-03 not issued within 3 months.
- Acceptance order in Form SPL-05 within 3 months.
- Deemed approval if Form SPL-05 not issued within 3 months
- If SPL-01 filed- no separate order is required.
- If SPL-02 is filed- liability in Electronic Liability register needs to be modified

If PO is not satisfied

- Notice in Form SPL-03 within 3 months.
- To respond in Form SPL-04 in 1 month
- Deemed approval if Form SPL-03 not issued within 3 months
- If PO not convinced0 Rejection order in Form SPL-07 within 3 months.
- If no rejection order in Form SPL-07 issued, the deemed approval.
- If no appeal is filed against Form SPL-07, original appeal will be restored
- If appeal filed and held to be in favour of applicant, SPL-07 to be issued accepting the application. If not in favour, original appeal restored

Important Clarifications

Payment of Tax

Payment mechanism

- SPL-02 & SPL-03 Cases, payment compulsory by debiting Electronic liability register.
- If payment made through DRC-03 already, rectification procedure as per R. 142(2B) should be followed.
- File application in DRC-03A. Adjust amount paid by DRC-03 towards demand created on Electronic Liability register.
- Thereafter make 100% tax payment.

Payment Date

- Payment should be made before 31/03/2025.
- All payments already made during the course of proceedings shall also be allowed i.e. before issuance of SCN or order

		128A.
13	Whether payment to avail waiver under Section 128A can be made by utilizing ITC?	<p>Yes.</p> <p>The payment of tax required to be made for eligibility for waiver under section 128A is the amount of tax demanded in the notice/ statement/ order. Therefore, it can be paid either by debiting from electronic cash ledger or by utilising the Input Tax Credit (ITC), by debiting the electronic credit ledger, or partly from both.</p> <p>However, where the demand is in respect of any amount of tax to be paid by the recipient under Reverse Charge Mechanism or by the Electronic Commerce Operator under section 9(5), then the said amount shall be required to be paid by debiting the electronic cash ledger only and not through the electronic credit ledger. Further, where the amount has to be paid for demand of erroneous refund, the demand in respect of erroneous refund paid in cash is required to be paid only by debiting the electronic cash ledger only and not through the electronic credit ledger.</p>
14	Whether the benefit of waiver	No

Important Clarifications

Interest & Penalty

Interest and penalty waiver not applicable in cases of

- Late filing of GST Returns
- Delay in reporting of invoice in GST Returns
- Full amount of tax as per SCN/ Order to be paid.
- No proportionate relief of interest and penalty available.

Important Clarifications

Multiple period SCN

- **R. 164(4)**

Where the notice or statement or order mentioned in sub-section (1) of section 128A includes demand of tax, partially for the period mentioned in the said sub-section and partially for the period other than that mentioned in the said sub-section, an application under sub-rule (1) or subrule (2) may be filed only after payment of the full amount of tax demanded in the said notice or statement or order, on or before the date notified under the said sub-section.

- **FAQ No. 5 of Circular 238/32/2024**

6	Where the notice/order involves multiple periods, ranging from the period for which waiver provided in Section 128A is applicable, and includes some other tax periods for which such waiver is not applicable, whether the benefit	The taxpayer is eligible to apply for waiver of interest or penalty or both, in such cases where the demand notice/ order spans tax periods covered under Section 128A and those not covered under the said section. However, as per sub-rule (4) of Rule 164, the taxpayer shall be required to pay the full amount of tax demanded in the notice/ statement / order, as the
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	of waiver of interest or penalty or both under Section 128A can be availed for the period covered under section 128A? If so, what is the tax amount payable for claiming waiver under Section 128A?	case may be, to avail the benefit of waiver of interest or penalty or both under Section 128A. Further, though the amount of tax demanded shall be required to be paid as per the notice/ statement / order, as the case may be, for whole of the period covered under the said notice/ statement / order, but the waiver of interest or penalty or both under section 128A shall only be applicable for the period specified in section 128A, and not for the period not covered under the said section.
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R. 164(5)

Payment under Amnesty as under:

- *Total Dues as per notice/ order*
- *Less: Dues on account of S. 16(4) disallowance*
- *Balance dues- Payment to be made*

Important Clarifications S. 16(4)

		Customs Act, 1962 and therefore, such cases are not covered under waiver of interest or penalty or both under section 128A.
15	<p>With retrospective insertion of sub-sections (5) and (6) to Section 16 of the CGST Act, the tax demanded in notice/ statement/ order reduces.</p> <p>Whether the entire tax amount demanded in the notice/ statement/ order has to be paid in such cases, to avail the benefit under section 128A?</p>	<p>Sub-rule (5) of rule 164 mentions that the amount payable in order to avail the benefit under section 128A, shall be calculated after deducting the amount not payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be.</p> <p>Therefore, the applicant is required to pay only the amount that is payable, calculated after deducting the amount not payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be, before submitting the application. While calculating the amount deductible on account of not being payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be, taxpayer is required to ensure that such amount is deducted only where ITC has been denied solely on account of contravention of Section 16(4) of the CGST Act and not on any other grounds.</p> <p>He is also advised to provide a breakup of the amount not payable by him anymore, as per sub-sections (5) and (6) of section 16, in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, to enable the officer to verify the payment easily.</p> <p>It is also re-iterated that where the taxpayer is deducting the amount of ITC which was denied on account of contravention of sub-section (4) of section 16 of the CGST Act, but which is now available, as per retrospectively inserted provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, he is not required to file application for rectification in respect of the same as per special procedure notified under Section 148 vide notification No. 22/2024-Central tax dated 8th October 2024.</p>

Important Clarifications
Transitional Credit

		statement/ order, as the case may be.
11	Whether Section 128A covers cases involving demand of irregularly availed transition credit?	<p>The transitional credit is considered to be availed on the date on which the said credit amount is credited in the Electronic Credit Ledger.</p> <p>On reading Rule 121 read with sub-rule (3) of rule 117, it is clear that any demand in respect of transitional credit wrongly availed, whether wholly</p>

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		<p>or partly can be made under section 73 or, as the case may be, section 74.</p> <p>Therefore, it is mentioned that if the amount of transitional credit has been availed in the period covered under Section 128A and notice for demand of wrongly availed credit is issued under section 73, the same is covered under Section 128A.</p>
12	Whether Section 128A will	



THANK YOU



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