Dimensions – 24th Edition

Rulings / Judgments under GST era:

1. M/s Daimler Financial Services India Pvt. Ltd. – Tamil Nadu[1]	
Issue for Consideration	Whether the subvention interest income received by the Applicant from Mercedes-Benz India Pvt. Ltd. ('MB India') to reduce the effective interest rate to the final customer is chargeable to GST?
Discussion & Ruling	**Discussion:** • The Applicant is engaged in the activity of 'Leasing and Finance' of vehicles to end customers and has entered into a memorandum of understanding ('MOU') with MB India to provide loan at a concessional rate to the buyers of Mercedes Benz vehicles. • The MOU states that the Applicant is free to enter into similar agreements with other parties and MB India can appoint more such financiers. • As per the finance agreement entered into between the Applicant and the customer, the customer is liable to pay only the net interest rate after deducting the subvention interest rate, which is paid by MB India. • The subvention interest is paid upfront by MB India to the Applicant which is recognised as income by the Applicant over the tenure of the loan. • The Applicant contended that the subvention income received is not liable to GST on the following grounds: - The income received is in the nature of interest since It is an outcome of providing the loan to the customer. Also, MB India deducts TDS under section 194A of the Income Tax Act 1961 i.e. TDS on interest other than interest on securities;

[1] Order No. 16/AAR/2019 dated April 15, 2019

	- As per the definition of 'consideration' under the CGST Act read with Indian Contract Act, 1872, the consideration may flow from any person and the subvention payment is the consideration in the form of interest paid by MB India on behalf of the customer. In this regard, reliance was also placed upon the 'Taxation of Service: Education Guide' issued under the pre-GST era; - Consideration received in the form of interest is exempt under GST; - Reliance was also placed upon the judgment in the case of *Ashok Leyland Finance Ltd.* v. *Comm. of Service Tax* wherein the CESTAT held that the discount received by the assessee from the dealer in respect of the loan provided to the customer is not consideration. • The Authority observed the following: - The consideration payable by the customer in terms of section 2(31) of CGST Act, is only the net interest rate which excludes the subvention interest rate; - Further, as per section 15 of CGST Act, the value of supply is the transaction value which is the price actually paid or payable for the said supply which in the present case is again only the net rate of interest; - Accordingly, the subvention income received from MB India cannot be regarded as interest since the buyer is under no obligation to pay the said amount to the Applicant; - The MOU has been entered into for furtherance of business of the Applicant since the customers would prefer to take the vehicles on loan at a lower interest rate; - As per the MOU, MB India is giving subvention amount in lieu of which the Applicant is required to provide better customer luxury experience, structured insurance products offerings with claims processing within minimum turnaround time, tailor made products, quick loan approvals, maintain customer relation, etc.; - Accordingly, the said transaction is a 'supply' as per section 7 of the CGST Act. **Ruling:** • The interest subvention income received by the Applicant is a supply and covered under SAC 999792 as 'Other miscellaneous services – agreeing to do an act' and chargeable to GST at the rate of 18%.
Dhruva Comments / observations	• Applicability of provisions of section 15 of CGST Act which requires inclusion of "subsidies" in transaction value could be debated in the current context. • Also, from valuation perspective, the AAR excludes subvention income as the buyer is under no obligation to pay the same. Interestingly, recent CBIC circular requires inclusion of additional discount as consideration to transaction value for dealers even though there is no obligation on the customers to pay the same. • Also, whether this ruling could also have a bearing on transactions undertaken by the developers offering subvention scheme to customers?

2. Rotary Club of Mumbai Queens Necklace - Maharashtra[2]	
Issues for Consideration	• Whether the amounts collected by the Applicant ('Club') from its members as membership subscription and admission fees ('fees') are liable to GST? • If yes, whether the Club claim Input Tax Credit ('ITC') of the tax paid on banquet and catering services for holding members meetings and various events?
Discussion & Ruling	**Discussion:** • The Club is an un-incorporated association of individuals and is registered under GST. It works to promote various social causes. • The Club collects fees from its members and is currently charging GST on the same. The fees so collected are utilised for administration purposes of the club viz. meeting expenses such as banquet and catering services, stationery, printing, audit fees, etc. • The Club contended that the fees collected from its members are not leviable to GST on the following basis: - The definition of 'person' under section 2(84) of CGST Act does not include a deeming clause to treat a club and its members as different persons. Therefore, the vital condition for a transaction to be taxable under GST, i.e. the supplier and recipient should be different persons, is not satisfied; - In order to be regarded as a 'supply' under section 7(1)(a) of the CGST Act, it should be in the course of furtherance of business. In order to satisfy the term 'business' there must be some benefit / facility provided to the members which is not so in the present case; - The principle of mutuality is applicable in the instant case and since the fees collected are pooled together only for convenience and for defraying administrative and other expenses, the same should not be brought under the purview of GST; - Para (7) of Schedule II of the CGST Act stipulates that supply of goods by an unincorporated association or body of persons to a member for consideration shall be treated as supply of goods. Thus, the said para only covers supply of goods and not supply of services; - Para (2) of Schedule I of the CGST Act provides that supply of goods / services between distinct persons / related persons made or agreed to be made without a consideration, shall be treated as supply. The said para is not applicable to the aforesaid transaction since the club and members are not distinct persons. Further, there must be more than one person who can be considered as related. As an association and its members are the same because of the principle of mutuality, they cannot be regarded as related persons; - Reliance was also placed upon a similar advance ruling in the case of *Lions Club of Poona Kothrud* [Order No. GST-ARA-33/2018-19/B-100 dated August 28, 2018] wherein the Authority held that the club does not render any 'supply' for the purpose

[2] Order No. GST-ARA-118/2018-19/B-46 dated April 30, 2019

	of the CGST Act since it is not formed to supply goods or services to its members qua the fees received from them; - Banquet and catering services are used by the club for its members and hence ITC for the same should be allowed. • The Authority observed as follows: - The ruling in the case of 'Lions Club of Poona Kothrud', has been overruled by the Appellate Advance Ruling Authority wherein it was held that the membership fees collected are not only meant for administrative expenses but also for organising leadership programs for direct and indirect benefits of the members. Thus, in terms of Section 7 of CGST Act, there was supply of services against the consideration from club to its members and accordingly, the consideration was liable to GST; - In respect of ITC on banquet and catering services, the Club has not substantiated how their outward taxable supply is of the same category as that of the inward supply and hence it would not be entitled to claim the said ITC. **Ruling:** • Membership subscription and admission fees collected from members are liable to GST; • ITC of the tax paid on banquet and catering services for holding members meetings and various events is not eligible.
Dhruva Comments	• A similar ruling was given by the West Bengal Appellate Authority for Advance Ruling in the case of *The Association of Inner Wheel Clubs in India* [Order No. 11/ WBAAAR/Appeal/2018 dated March 08, 2019]. • The principles of mutuality have been recognised by the Courts under the pre-GST era. It will be interesting to see how Courts would interpret these principles under the GST regime.

3. M/s AAP and Company vs Union of India and 3 Others[3]	
Issues for Consideration	• Whether the return in Form GSTR-3B is a return required to be filed under section 39 of the CGST Act? • Whether the press release clarifying the last date of availment of Input Tax Credit ('ITC') is valid and in consonance with section 16(4) of the CGST Act?
Discussion & Judgment	**Discussion:** • The Petitioner, a practicing Chartered Accountant, filed a writ-application challenging the validity of paragraph 3 of the Press Release dated October 18, 2018 which clarifies that a taxpayer shall not be able to claim the ITC for the period July 2017 to March 2018 after filing the return in Form GSTR-3B for the month of September 2018. • The contentions of the Petitioner are as under:

[3] 2019-TIOL-1422-HC-AHM-GST – The High Court of Ahmedabad

- Clarification provided by the said Press Release is not in parity with section 16(4) of the CGST Act read with section 39 of the CGST Act and rule 61 of CGST Rules which provides for the last date to avail the ITC. It was also submitted that the return prescribed under section 39 is a return to be furnished in Form GSTR-3 and not GSTR-3B;
- Section 16(4) provides the last date for taking the ITC to be due date of furnishing the return under section 39 of the CGST Act i.e. Form GSTR-3 for the month of September following the end of the financial year or the annual return, *whichever is earlier*. Further, Form GSTR-3B was never introduced as a substitute to Form GSTR-3 and is only a temporary arrangement till Form GSTR-3 is kept in abeyance.

- The contentions of the Respondents are as under:
  - Section 16(4) of the CGST Act provides the last date to avail ITC for a particular financial year to be due date of filing of return as per section 39 or annual return, whichever is earlier;
  - No specific name has been given to the return to be filed under Section 39 of the CGST Act. The only condition mentioned under the said section is that the return should contain details of inward and outward supplies, ITC availed, tax payable and tax paid and the return in Form GSTR-3B contains the aforementioned details. Thus, Form GSTR-3B is the return to be filed under section 39 of the CGST Act;
  - Further, the last date of availing the ITC has been extended till the due date of filing the return of March 2019 vide Order no. 02/2018 – CT dated December 31, 2018, subject to specified conditions.
- The Hon'ble High Court tested the aforesaid submissions on the anvil of validity of the impugned Press Release and observed as under:
  - Section 39 of the CGST Act provides every specified taxpayer to furnish a monthly return in the form and manner prescribed. Rule 61 of the CGST Rules prescribes the manner and form for the submission of the said return and the same should be furnished in Form GSTR-3;
  - It was initially decided to have three return filings in a month i.e. Form GSTR-1 for outward supplies, Form GSTR-2 for inward supplies and combined return in Form GSTR-3. However, due to technical glitches and difficulties faced by the taxpayers, the filing of Form GSTR-2 and GSTR-3 was kept in abeyance and a new shorter return i.e. Form GSTR-3B was introduced as a temporary measure till the due date of filing of Form GSTR-3 is notified;
  - It is also pertinent to note that Notification no. 10/2017- CT dated June 28, 2017 introduced Form GSTR-3B as a mandatory return in lieu of filing Form GSTR-3. However, on noticing the mistake that the return in Form GSTR-3B was never intended to be in lieu of Form GSTR-3, it was retrospectively rectified the said mistake vide issuance of Notification no. 17/2017-CT dated July 27, 2017.

	Judgment: • The Hon'ble High Court disposed of the writ-application holding that the paragraph 3 of the impugned Press Release clarifying the last date for availing ITC for the period July 2017 to March 2018 could be said to be illegal and contrary to the provisions contained in section 16(4) read with Section 39(1) of the CGST Act read with Rule 61 of the CGST Rules.
Dhruva Comments / Observations	• With the return in Form GSTR-3 being kept in abeyance, the date for filing the Annual Return could be considered as the last date for availing ITC for the period July 2017 to March 2018 in terms of section 16(4) read with section 39 of CGST Act. Recently, the due date for the submission of the Annual Return for the said period has been extended to August 31, 2019. • Resultantly, the instant decision provides for an opportunity to claim ITC for FY 2017-18 which has been missed or omitted erroneously. • It is also pertinent to note that the instant judgment could be appealed against before the Hon'ble Supreme Court and thus it is imperative for the taxpayers to decide on the availment or otherwise of such missed out credits.

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