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Indirect Tax Alert

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Ruling under GST era

M/s. Daicel Chiral Technologies (India) Private Limited – Authority for Advance Ruling, Telangana[1]

Issue for Consideration

Can Input Tax Credit ("ITC") be availed on GST paid on one-time lease premium, annual lease rentals and maintenance charges paid for land taken on lease for business purpose?

Discussion

- The Applicant is engaged in providing pharmaceutical research and development services. The Applicant is registered under GST and pays tax under the head of 'Technical Testing and Analysis Services' (SAC 998346).
- In order to meet the growing demand for its services, the Applicant acquired land on lease from M/s. IKP Knowledge Park ("lessor") for a period of 33 years and executed a lease deed.
- As per the terms of the lease deed, the Applicant is required to pay to the lessor the following charges:
  - One-time lease premium charges at the beginning of the lease period;
  - Annual lease rentals at the end of every year for 33 years; and
  - Maintenance charges for the leased premises.

  (the above charges are hereafter collectively referred as "leasing services").
- The lessor has classified the leasing services under SAC 997212 (Rental or Leasing services involving own or leased non-residential property) and would charge GST at the rate of 18% on the aforementioned charges.
- The Applicant approached the Authority for Advance Ruling ("the Authority") to contend that they are entitled to avail ITC of GST paid on leasing services on the following grounds:
  - In order to avail ITC under section 16(1) of the CGST Act, 2017, the person should be a registered person and the services supplied to him should be used in the course or furtherance of his business. In the present case, GST registration had been obtained and the land acquired on lease will be used in rendering the

[1] Ruling no. TSAAR Order No. 05/2020, A.R.Com/26/2018 dated June 24, 2020

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services from the lab to be constructed on the said land.

- The scope of the definition of 'input service'[2] is enlarged by usage of the word 'any service'. Thus, all input services used in activities in relation to or for furtherance of business are 'input services', whatever may be its purpose. Furthermore, the definition of 'input service' seeks to cover every conceivable service used in the provision of outward supply. Therefore, the charges for lease of land is an input service in terms of section 2(16) of the CGST Act, 2017.
- GST is a consumption-based tax which must be ultimately borne by the consumer and the business should not bear the burden of tax.
- All the conditions specified in section 16(2) of the CGST Act, 2017 viz. possession of tax invoice, receipt of services, payment of tax and furnishing of GST returns have been fulfilled.
- Section 17(5) of the CGST Act, 2017 does not bar a person to avail ITC on lease charges. The Hon'ble Supreme in the case of *M/s Bajaj Tempo Ltd*. v. *CIT* had observed that that while interpreting the statute, provision granting incentives for promoting economic growth and development should be liberally construed. Therefore, the leasing service received is an eligible input service.

- The Authority observed and held as follows:
  - As per the lease agreement, the Applicant has acquired the land from the lessor on lease for the purpose of construction of a building where the Applicant's own laboratory would be accommodated. Section 17(5)(d) of the CGST Act, 2017 restricts the availment of ITC on goods / services used for construction of an immovable property. The building which is to be constructed falls within the ambit of 'immovable property'.
  - As the leasing services have been received by the Applicant for the purpose of construction of 'immovable property' on their own account, such service is not eligible in terms of section 17(5)(d) of the CGST Act, 2017.
  - The various contentions put forth and the case laws cited by the Applicant are either not relevant or are distinguishable from the facts / situations in the present case and hence not applicable.

Ruling

The Applicant is not eligible to avail ITC of the GST paid on lease premium charges, lease rental charges and maintenance charges.

Dhruva Comments:

A similar ruling was pronounced by the Appellate Authority for Advance Ruling in the case of *M/s GGL Hotel and Resort Company Ltd.*[3] wherein the Applicant had also taken a land on lease on which a resort / hotel would be constructed. The Appellate Authority had denied the ITC of the tax paid on the lease premium paid during the pre-operative period.

The Hon'ble Orissa High Court in the case of *M/s Safari Retreats Private Limited and Another* v. *Chief commissioner of CGST and others*[4] had allowed ITC on the goods and services used for construction of a mall which was to be let out. This judgment has been appealed before the Hon'ble Supreme Court and is pending for hearing.

Judgments under GST era

Amani Machine Centre v. The State Tax Officer[5]

Issue for Consideration

Should the best judgement assessment under section 62 of the CGST Act, 2017 be initiated only after the due date of the filing of annual returns under section 44 of the CGST Act, 2017?

[2] Section 2(60) of the CGST Act, 2017 defines input service as any service used or intended to be used by a supplier in the course or furtherance of business
[3] 2019 (5) TMI 964
[4] 2019 (5) TMI 1278
[5] 2020-TIOL-1303-HC-KERALA-GST

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Discussion

- Aggrieved by the issuance of assessment orders under section 62 of the CGST Act, 2017, the Petitioner filed the present Writ Petition. The Petitioner submitted the relevant returns for the months of November and December 2019 after 30 days of the date of service of the assessment orders and therefore was not entitled to avail the benefit of the deemed withdrawal of the assessment orders.
- Placing reliance upon sections 62 and 44 of the CGST Act, 2017 the Petitioner submitted that an assessment on a best judgment basis could only be completed after December of a financial year i.e. in accordance with the time limit for the submission of annual returns under section 44 of the CGST Act, 2017. Considering the availability of time till 31st December following the end of the financial year for the filing of annual returns the Respondents could only proceed to complete the assessment after this date.
- After perusing the facts of the case, the Hon'ble High Court of Kerala observed as follows:
  - The reference to section 44 has been provided in section 62 of the CGST Act, 2017 only for the purpose of determining the five-year period within which an assessing officer must complete the assessment on a best judgement basis.
  - The Court also observed that the provisions nowhere mandate the initiation of steps for the completion of a best judgment assessment after 31st December following the end of the financial year.
  - Section 62 of the CGST Act, 2017 empowers an officer to assess tax liability on a best judgment basis due to the non-filing of returns even after a service of notice under section 46 of the CGST Act, 2017. The time limit of five years prescribed under section 62(1) of the CGST Act, 2017 must be seen as an outer time limit prescribed and is not indicative of any point in time when the assessing officer can proceed to complete the assessment.

Judgment

The Hon'ble High Court dismissed the Writ Petition and directed the recovery proceedings to be kept in abeyance for six weeks to enable the Petitioner to file appeals before the Appellate Authority for challenging the impugned assessment orders.

Dhruva Comments:

The authorities based on their reasoning and making use of the information available conduct an assessment on a best judgment basis in cases involving non-filing of returns. The Court has correctly interpreted the provisions contained under section 62 of the CGST Act, 2017 and held that the authorities can initiate best judgment assessment due to the non-filing of returns by the tax payers even after the service of notice under section 46 of the CGST Act, 2017.

Downtown Auto Pvt Ltd v. Union of India[6]

Issue for Consideration

Is transitional credit of Excise duty allowed, in the absence of credit transfer documents ("CTDs"), on the basis of invoices issued by the dealers to the Petitioners and by the manufacturers to such dealers as per section 140(3) of the CGST Act, 2017?

Discussion

- The Petitioner is an authorised dealer of Honda Cars India Pvt. Ltd. and purchases cars directly from the manufacturer as well as other authorised dealers. The Petitioners are not manufacturers and therefore are not covered under the provisions of the Central Excise Act, 1944. However, the Petitioners have borne the impact of Excise duty on the vehicles purchased.
- On introduction of GST from July 1, 2017, the Petitioners became liable to pay GST on supplies made by them from the stock available as on June 30, 2017.
- Section 140(3) of the CGST Act, 2017 provided a facility for a person to transition the credit of duty in

[6] 2020-TIOL-1301-HC-AHM-GST

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respect of inputs held in stock or contained in finished or semi-finished goods to the GST regime if the person was in possession of an invoice or other prescribed duty-paying documents. Furthermore, the proviso to section 140(3) of the CGST Act, 2017 enabled a trader to take deemed credit in the absence of the invoice or other prescribed duty-paying documents.

- Accordingly, the Petitioners claimed the transitional credit of Excise duty paid by manufacturers in the Form GST TRAN-1 for goods lying in stock on June 30, 2017 with the Petitioners, purchased either directly from the manufacturers or through dealers.
- Thereafter, the authorities verified the documents relied upon for availing transitional credit and a notice was issued for the submission of CTDs or vouchers in their name for the goods purchased from dealers.
- The Petitioners filed a reply to the notice stating that it was not possible for them to submit an excise invoice or duty-paying documents in their name for goods purchased from dealers. Furthermore, the Petitioners stated that they had already submitted the excise invoice issued by the manufacturers to the dealers and such excise invoices also mentioned the chassis number of the vehicles.
- Aggrieved by the issuance of notice, the Petitioner filed the present Writ Petition before the Hon'ble High Court of Gujarat on the following grounds:
  - The Petitioners are entitled to avail the transitional credit in terms of section 140(3) of the CGST Act, 2017 and have submitted all the related documents in their possession. Also, the submission of documents bearing the name of the Petitioner is not possible for vehicles purchased from dealers.
  - Placing reliance upon notification no. 21/2017-Central Tax (N.T.) dated June 30, 2017 ("the notification") issued under rule 15(2) of Cenvat Credit Rules, 2017 ("CC Rules") the Respondents called for submission of CTDs. However, no such document has been prescribed under section 140(3) of the CGST Act, 2017. Furthermore, the Petitioner, not being registered under the Excise law, was unaware of the procedure to obtain CTDs from the dealer or the manufacturer for goods held in stock on June 30, 2017.
  - Having fulfilled all the conditions mentioned under section 140(3) of the CGST Act, 2017, the Petitioner is entitled to the transitional credit and are not bound by the CC Rules or the notification.
  - The denial of transition credit on goods held in stock on June 30, 2017 would lead to double taxation which is contrary to the intent and purpose of the GST law.
- The Respondents, on the other hand, submitted as follows:
  - The present Writ Petition is not maintainable as the Petitioners have challenged the notice requiring the submission of details and the verification of transitional credit is still pending before the adjudicating authority. Furthermore, verification is required only in cases where purchases were made from other dealers.
  - The Petitioners are liable to follow the procedure prescribed under the notification and rule 15(2) of the CC Rules for claiming transitional credit.
  - Reliance was placed upon the judgments pronounced by the Hon'ble Supreme Court[7] to submit that the Petitioners are required to obtain CTDs in their name from the manufacturers to avail transitional credit.
- Perusing the facts of the present case and the provisions under section 140 of the CGST Act, 2017 and rule 15 of the CC Rules the Hon'ble High Court observed as follows:
  - Section 140(3) of the CGST Act, 2017 does not mandate submission of any CTDs in order to claim transitional credit.
  - Rule 15 of the CC Rules requires the issuance of CTDs by the manufacturer of specified goods to the person who was not required to register under the Excise laws. Furthermore, specified

[7] *J. K. Housing Board and Anr.* v. *Kunwar Sanjay Krishan Kaul and Ors.* [(2011) 10 SCC 714] and *Indian Aluminium Company Limited* v. *Thane Municipal Corporation* [1991 (55) ELT 454 (SC)]

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goods include cars identifiable by a chassis or engine number with values of more than ₹25000/- and bearing brand names of the manufacturer or the principal manufacturer.

– Even though the Petitioners are unable to furnish the CTDs, the Respondents can verify the payment of Excise duty on purchases from dealers based on the documents submitted by the Petitioner.

Judgment

The Hon'ble High Court directed the Respondents to verify the documents submitted by the Petitioner for transitional credit within three months from the date of receipt of this order and allow the claim upon the satisfaction of the verifications and the conditions under section 140 of the CGST Act, 2017.

Dhruva Comments:

The proviso to section 140(3) of the CGST Act, 2017 provides that a trader who is not in possession of an invoice nor a duty-paying document can transition the credit for goods held in stock on June 30, 2017 in the manner provided under rule 117(4) of the CGST Rules, 2017. The said rule provides that credit up to 60/40% of the CGST can be transitioned. However, the rule does not prescribe any requirement to obtain CTDs from the manufacturer.

Furthermore, rule 15(2) of CC Rules read with the notification, provides that 100% of the credit held in stock can be transitioned into GST if the value of goods is more than ₹25000/-, bears a brand name, is identifiable by a distinct number and obtains CTD.

Hence, on a combined reading of both the provisions, a taxpayer can either avail credit as prescribed under the GST law or as per the CC Rules read with the notification.

The present judgment although allows credit of Excise duty on goods held in stock on June 30, 2017 even in absence of the CTDs but does not discuss the impact of the provisions under rule 117(4) of the CGST Rules, 2017.

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