

GST NEWSLETTER MAY 2019

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ARTICLES

• **Is ITC on immovable property in-eligible?**

As per Section 17(5) of the CGST Act, 2017 Input Tax Credit (ITC) on works contract services and goods or services received by any person in relation to an immovable property (not being a plant and machinery) are ineligible to be claimed by the taxable person receiving them. This ineligibility is applicable regardless of whether such goods or services are obtained in the course of business or furtherance of business. However, the ITC is ineligible only when the expenses are capitalized in the books of accounts and the benefit of depreciation is claimed.

In the month of August 2018, a ruling from the Advance Ruling Authority, Madhya Pradesh was given for M/s Jabalpur Entertainment Complexes Pvt. Ltd. in which one of the questions that was answered 'Whether ITC on GST paid on goods purchased for the purpose of maintenance such as vitrified tiles, marble, granite ACP sheets, Steel plates, TMT TOR, Bricks, Cement, Paint, Chemicals, Sanitary items, like wash basin, urinal pots and toilet accessories can be claimed in full?'

The learned authority held that the above stated goods and services are used for the purpose of immovable property and hence the same will not be available to the applicant. It also stated that capitalization of expenditure depends on the nature of expenditure and the period of benefit from such expenditure. This statement and the ruling which denies the benefit of such ITC to the applicant was understood by many to mean that even if

expenditure, which would normally be capitalized, was choose the status of such expenditure. Such an interpretation had serious repercussions on various tax payers and would have resulted in a loss of ITC.

There was also an opinion amongst tax and legal experts that an item which is capital in nature but which is written off to the revenue account for the sake of claiming ITC would be against established accounting principles and may also be construed as 'avoidance of tax' in the form of reduction of tax payable by claiming ITC on capital expenditure which was being treated as revenue expenditure. But there were also arguments in favour of considering such expenditure as revenue due to the understanding that any expenditure incurred to 'restore' the asset or property to its original situation would be revenue in nature even if such benefits accrue over a longer period of time.

However, the provisions of the GST act are quite clear in the words stated i.e. 'to the extent of capitalization to the immovable property'.

In the month of April 2019, another advance ruling was given by the Advance Ruling Authority, Rajasthan to M/S Rambagh Palace Hotels Pvt. Ltd where it was held that ITC on any expenditure incurred against an immovable property whether as a works contract or as goods and services would not be available to the extent of capitalization of such goods and services. In this ruling, the focus of the ineligibility was restricted to just the amount of capitalization and not whether such expenditures were capital or revenue in nature. This brought relief to various tax payers as the option to consider the nature of the expenditure was left to the tax payer and not the GST authorities. However, it must be noted that if capital expenditure on immovable property is

written off to revenue account just for the sake of claiming ITC on the expenditure without due regard to ICDS V Tangible Fixed Assets and AS-10 Accounting for Fixed Assets/IND AS 16 Property, Plant and Equipment then such expenditure may still be held as capital in nature and ITC may be re-payable along with Interest at 24% p.a. It must be noted, that ICDS V and AS 10/IND AS 16 provide for expenditure to be capitalized if such expenditure is an extension of the existing asset and it becomes an integral part of the asset then it needs to be capitalized as well. This issue may be raised by Statutory and Income Tax auditors and the tax payer needs to be prepared to address the issues to avoid any qualification in the audit reports.

Case laws:

1. Facts of the case: M/S. Senco Gold Ltd. – Advance Ruling Authority, West Bengal.

The applicant is into manufacturing and retailing of jewellery and articles made of gold silver, platinum, diamonds and other precious stones. They have their own retail stores and also franchisee-operated stores. The applicant supplies and invoices to the franchisee's jewellery and articles and support services while the franchisees invoice the sale of old jewellery received from customers. The applicant sets-off the amount due for the invoices with the amount payable to the franchisees. Hence, they seek to know whether the input tax credit is admissible when they settle through book adjustment the debt created on inward supplies from the franchisee.

Provisions of the law:

As per second proviso to section 16(2) of the GST Act, "where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed."

Also, under Section 2(31) of the GST Act, Consideration includes, in relation to the supply of goods or services, any payment, made or to be made, whether in money or otherwise, and also the monetary value of any act or forbearance.

Ruling:

Hence, as per the above sections it's established that the recipient can pay the supplier consideration by way of setting off book debt. The GST Act and rules made there under does not restrict the recipient from claiming the input tax credit when consideration is paid through book adjustment.

2. Facts of the case: M/S Bharat Vijay Transport Co. Versus State of Gujarat – Gujrat High Court.

The applicant is a manufacturing company who was carrying goods belonging to M/s Standard Sales Corporation along with others. It was found that the GST registration of M/s Standard Sales Corporation was obtained by one Vipulbhai in the name of Mahendrabhai Venilal Solanki by paying him certain sum of money. Hence, due to fraudulent manner of obtaining the GST registration the goods along with the conveyance being the truck were detained by the GST authorities.

Provisions of the law:

As per Section 130 of the GST Act, if any person uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty.

Ruling:

The learned Judge held that in the given case the owner of the conveyance does not appear to have doubted the person who engaged it for transport of the goods as an invoice and e-way bill were produced by him. Hence, the conveyance being the truck should be released to the owner provided an undertaking is taken that in the event the petitioner fails in the petition or is otherwise found to be liable under the CGST/IGST Act, the petitioner shall forthwith discharge such liability.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF APRIL 2019

- Six Central Tax Notification.
- Five Central Tax Circulars
- One Central Tax Order.

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to notify the provisions of rule 138E of the CGST Rules w.e.f 21st June, 2019.	22/2019-Central Tax, dt. 23-04-2019
2.	Seeks to notify procedure for quarterly tax payment and annual filing of return for taxpayers availing the benefit of Notification No. 02/2019- Central Tax (Rate), dated the 7th March, 2019	21/2019-Central Tax, dt. 23-04-2019
3.	Seeks to make Third amendment, 2019 to the CGST Rules.	20/2019-Central Tax, dt. 23-04-2019
4.	Seeks to extend the due date for furnishing of returns in FORM GSTR-3B for the Month of March, 2019 for three days (i.e. from 20.04.2019 to 23.04.2019).	19/2019-Central Tax, dt. 22-04-2019
5.	Seeks to extend the due date for furnishing FORM GSTR-7 for the month of March, 2019 from 10.04.2019 to 12.04.2019	18/2019-Central Tax, dt. 10-04-2019
6.	Seeks to extend the due date for furnishing FORM GSTR-1 for taxpayers having aggregate turnover more than Rs. 1.5 crores for the month of March, 2019 from 11.04.2019 to 13.04.2019	17/2019-Central Tax, dt. 10-04-2019
7.	GST exemption on the upfront amount payable in instalments for long term lease of plots, under Notification No. 12/2017, Central Tax (Rate), S.No. 41, dated 28.06.2017.	101/2019-Circular no, dt.30-04-2019
8.	GST Applicability on Seed Certification Tags.	100/2019- Circular no, dt. 30-04-2019
9.	Seeks to clarify the extension in time under sub-section (1) of section 30 of the Act to provide a onetime opportunity to apply for revocation of cancellation of registration on or before the 22nd July, 2019 for the specified class of persons for whom cancellation order has been passed up to 31st March, 2019.	99/2019 -Circular no, dt. 23-04-2019
10.	Seeks to clarify the manner of utilization of input tax credit post insertion of the rule 88A of the CGST Rules.	98/2019-Circular no, dt. 23-04-2019
11.	Circular clarifying issues regarding exercise of option to pay tax under notification No. 2/2019- CT(R) dt 07.03.2019 issued.	97/2019-Circular no, dt. 05-04-2019
12.	Seeks to extend the time limit for filing an application for revocation of cancellation of registration for specified taxpayers.	Order No. 5/2019 - Central Tax-dt. 23-04-2019

DUE DATES OF GST FOR THE MONTH OF MAY 2019

MAY							2019
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
			1	2	3	4	
5	6	7	8	9	10 *GSTR-7 & GSTR-8	11 *GSTR-1	
12	13 *GSTR-6	14	15	16	17	18	
19	20 *GSTR-3B/5/5A	21	22	23	24	25	
26	27	28	29	30	31		
*Monthly return for taxpayer with Annual turnover more than Rs.1.50 Crores or Taxpayer who has opted Monthly return option.							

Disclaimer:

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