



INDIRECT TAX UPDATE- JULY 2020-  
3<sup>RD</sup> ISSUE FOR JULY

**S.K.KANODIA & ASSOCIATES**  
**CHARTERED ACCOUNTANTS**

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# RECENT CASE LAWS



## RECENT CASE LAWS

**HC: No interest for delay in reflection of payment in Electronic Cash Ledger - [[TS-543-HC-2020\(GUJ\)-NT](#)]**

**Vishnu Aroma Pouching Pvt. Ltd. vs. Union Of India.**

The petitioner had duly paid off its GST Liability by utilising ITC and depositing cash into the Electronic Cash Ledger using internet banking facility; The petitioner duly **filled out the Form GSTR-3B but was unable to file the same due to system failure**; Later, when system was live, all columns of the **return showed “zero” even though the payment had been made**; The UIN relating to discharge of liability was not made in the system which operates of its own thus not fulfilling the requirement of sub-rule (2) of Rule 88 of CST Rules; The petitioner immediately informed the Department of the same and continued communicating with the Department; **The petitioner was assured of rectification through Form GSTR-2 and GSTR-3 which unfortunately was scrapped**; Only after **eighteen months the assessee was able to file their return, but the petitioner was saddled with the liability of interest @ 18% for this delay**; Gujarat HC ruled that **assessee would not be liable to pay interest on the amount which does not reflect in ECL due to glitches in the system**;

Contd...

## RECENT CASE LAWS

**HC: No interest for delay in reflection of payment in Electronic Cash Ledger -**

**Vishnu Aroma Pouching Pvt. Ltd. vs. Union Of India.**

### **SKKA COMMENTS**

**The above judgment by HC highlights the fact that the assessee cannot be penalized for system failure of the GSTTN which prevalent during the early stages of GST Implementation. The petitioner had duly paid its liability in full. The petitioner had also informed the Respondent of the issue. It would be against the principles of natural justice if an assessee is penalized for no fault of theirs. Thus there was no liability of interest on the Appellant.**

## RECENT CASE LAWS

**Telangana HC: Assesses are not obligated to pay penalty @15% before receipt of Notice under Section 74(5) of APGST Act, 2017**

**D.Rama Kotiah and Co. Versus State of Andhra Pradesh  
2020 (38) GSTL 181 (Telengana)**

**Telangana HC** sets aside order imposing penalty equivalent to the tax specified in the notice without issuing Assessment Order and SCN for penalty; Section 74(5) gives assessee an option to pay penalty @ 15% on own account and avoid penalty beyond 15%; **Recovery proceedings of penalty must be preceded by a SCN in terms of section 74(1) of the APGST Act, 2017**; It is not for the assessee to decide if penalty @ 15% should be paid or not; **The power to recover penalty equivalent to the tax amount can only be exercised after issuance of SCN:**  
Telangana HC

### **SKKA Comments**

**The above judgment of the HC once again brings a check against the arbitrary actions of the Revenue without authority of law.**

**Such actions of the Revenue should be condemned and assesseees should check for such actions of the Department as the issuance of notices have resumed.**

## RECENT CASE LAWS

**Lifts are integral part of the hotel building, ITC not available**

**Jabalpur Hotels Private Limited – Madhya Pradesh AAR [[TS-532-AAR-2020-NT](#)]**

The assessee is building a multi-storey hotel with all amenities and installed elevators which were essential for running the business. The assessee sought Ruling if ITC of lifts would be available as it were to be used in the course of furtherance of business; It would be capitalised in the Books of Accounts under the head Plant & Machinery and Depreciation would be charged on the cost less ITC; Madhya Pradesh AAR held that lifts are 'input' for Hotel buildings and ITC is blocked u/s 17(5)(d); lifts are manufactured to suit the needs of the buyer and are not sold straight out of shelves; It is a part of the building and not a separate thing; Thus falls under the exclusion from plant and machinery;

### **SKKA Comments**

**Though the judgment is only relevant to the assessee being an AAR judgment, but going by the view of the department, it is seen that the dept has taken a very restrictive view of the definition of Plant and Machinery as provided in the statute and had held lift as a part of building. In our view the same should be considered as plant and machinery for it is assembled at a place and is a totally distinctly identifiable item in nature.**

## RECENT CASE LAWS

**Citing COVID-19 pandemic, Delhi HC allows Samsonite to deposit profiteered amount in installments**

**Samsonite South Asia Pvt. Ltd. vs. UOI & Ors.**

**[\[TS-546-HC-2020\(DEL\)-NT\]](#)**

Delhi HC via video conferencing **allows Samsonite to deposit the principal profiteered amount of Rs. 22 crores** (after adjustment of Rs. 3 crores which amounts to GST) in **6 equated monthly instalments keeping in view the COVID-19 pandemic situation**; Further, **stays interest as well as penalty proceedings until further orders**; Petitioner has challenged the constitutionality and legality of National Anti-Profiteering Authority as well as Section 171 of the CGST Act and Rule 126 of CGST Rules; Considers Petitioners plea that (i) absent a methodology, the entire proceeding before NAA is in breach of natural justice which resulted in arbitrary and contradictory orders, (ii) notices have been issued in 34 similar matters which are listed on August 24, 2020 and (iii) the petitioner be allowed to deposit the aforesaid amount in instalments due to COVID-19 pandemic; **Issues notice and lists the matter on August 24, 2020 with other connected matters.**

### **SKKA Comments**

**Though the stay has been provided only against interest and penalty, the Court has stated that the tax has to be deposited in 6 instalments by the petitioner. However further relief can be availed subject to final hearing of the matter.**





ITC OF REVERSE CHARGE OF GST OF F.Y.  
2017-18 PAID IN F.Y. 2020-21 -  
AN ANALYSIS

## ITC OF RCM OF PRIOR PERIODS

During the GST Audit of FY 2017-18 and 2018-19 many assessee have paid of their RCM Liability in the current period. The question here arises that if ITC in respect of such payments can be taken in the current period. Before we jump to the analysis let us first go through the relevant provisions of law.

### **Section 16(4) of the CGST Act, 2017 states that –**

“A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year **to which such invoice or debit note pertains** or furnishing of the relevant annual return, whichever is earlier.”

### **Section 13(3) of the CGST Act, 2017 states that –**

“In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:-

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier”

### **Section 31(3)(f) of the CGST Act, 2017 states that –**

“a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both”

## ITC OF RCM OF PRIOR PERIODS

### **Rule 36(I) of the CGST Rules, 2017 states that-**

“The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;...”

### **Analysis-**

Upon taking into consideration the above stated provisions of law the following are pertinent to note:-

- That in case of reverse charge the liability to pay tax is cast upon receipt of goods and/or services;
- The condition to pay tax shifts on the recipient and is required to first pay the tax and then claim ITC;
- The Act does not differentiate between invoice and self-invoice;
- The self-invoice is the basic document for availment of ITC;

**The major issue is cast upon by section 16(4) of the CGST Act, 2017 which restricts the availment of ITC within due date of return of Sep 2020 and also the section used the word to which the invoice relates. Hence, upon consideration of the above it can be stated that ITC of RCM paid in the current period even though it relates to earlier period will be available as the self invoice would be generated in the current date and also interest is being paid by the assessee for the same reason of delay in making payment of tax, in our view. Though the issue is to be litigated, hence it is appropriate to take a call for availment of ITC after proper analysis of cost involved in such litigations also and the amount of ITC involved.**



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**THANK YOU**

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