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THE NEWSLETTER

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UPDATE YOURSELF

Application Seeking Interim Measures Maintainable Even After the Passing of Arbitral Award but Before its Execution

The Division Bench of the Hon'ble Kerala High Court ("**Court**") presided over by Hon'ble Justice V. Chitambaresh and Justice R. Narayana Pisharadi in **M. Ashraf *vs.* Kasim. V.K. [Arb. App. No. 53/2018]**, while deciding upon the issue of maintainability of interim relief applications filed under Section 17 and Section 9 of the Arbitration and Conciliation Act, 1996 ("**Act**") held that the court has the power to entertain an application filed under Section 9(1) of the Act even after the constitution of the arbitral tribunal unless the court finds that in circumstances of the case, the party has got efficacious remedy under Section 17 of the Act. The question raised in the instant matter was whether by virtue of Section 19(3) of the Act, once the arbitral tribunal has been constituted, the court is not empowered to entertain an application made in Section 9(1) of the Act, unless the Court finds that circumstances exist which may not render the efficacious remedy provided under Section 17 of the Act. Section 9 of the Act provides for interim measures of protection that can be filed before the principal civil court of original jurisdiction any time before, during or after the conclusion of arbitral proceedings but before the passing of the award. Similarly, application under Section 17 of the Act provides for similar remedy but the same is made available before the arbitral tribunal so constituted to adjudicate the dispute between the parties. The Court upon examining the controversy and the law observed as under:

"Even after the amendment of the Act by incorporation of Section 9(3), the Court is not denuded of the power to grant interim relief under Section 9(1) of the Act. What is provided under Section 9(3) of the Act is that, after the constitution of the Arbitral Tribunal, the Court shall not entertain an application under Section 9(1) of the Act unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious. Normally, the Court shall not entertain an application under Section 9(1) of the Act after constitution of the Arbitral Tribunal. But the Court has the power to entertain an application under Section 9(1) of the Act even after the constitution of the Arbitral Tribunal. But the Court has the power to entertain an application under Section 9 (1) of the Act even after the constitution of the Arbitral Tribunal unless the Court finds that in the circumstances of the case the party has got efficacious remedy under Section 17 of the Act. An application for interim relief under Section 9 (1) of the Act shall be entertained and examined on merits, once the Court finds that circumstances exist, which may not render the remedy provided under Section 17 of the Act efficacious."

NAA Penalized Macdonald's Franchisee for Anti-Profiteering

The National Anti-Profiteering Authority ("***NAA***") constituted under Central Goods and Services Tax Act, 2017 ("***CGST Act***"); in the matter of **Ravi Charaya vs. M/s Hardcastle Restaurants Pvt. Ltd. [Case No. 14/2018 decided on 16.11.2018]** directed M/s Hardcastle Restaurants Pvt. Ltd. ("***Respondent***") to reduce its price and deposit the amount of Rs. 7,49,27,786/- in the

ratio of 50:50 in the Central or the State Consumer Welfare Funds. In the said case, the Central Government *vide* Notification No. 26/2017-Central Tax (Rate) dated 14.11.2017 has reduced the rate of GST being charged on the Restaurant Services from 18% to 5% w.e.f. 15.11.2017 with the condition that the suppliers of these services would not be able to obtain benefit of ITC with effect from the above date. As per Section 171 of the CGST Act, any reduction in the rate of tax on any supply of goods or services shall be passed on to the recipient by way of commensurate reduction in prices. Since there has been a reduction in the rate of tax in respect of the above services as per the Notification dated 14.11.2017, the benefit of reduction was required to be passed on to the consumers along-with the benefit of Input tax credit availed by the supplier for the period between 01.07.2017 to 14.11.2017. Although the Respondent charged the reduced rate of taxes from the date, the Notification dated 14.11.2017, became effective, however, there was increase in the base price of the product which resulted into no commensurate reduction in the price and thereby no benefit was actually passed on to the Consumer. Taking into account the increase in the base price of the product, NAA directed the Respondent to reduce the prices and deposit the amount of profiteering lying with the Respondent on account of denial of benefit due to reduction in the rate of tax and the benefit of ITC availed by the Respondent which was required to be passes on to the customers. The said amount is inclusive of the extra GST which the Respondent had forced the customers to pay due to wrong increase in basic prices.

Food Supply to Employees of Unit in SEZ is Not Zero-Rated Supply: AAAR

The Appellate Authority for Advance Ruling (***'AAAR'***) in the appeal of Merit Hospitality Services Pvt. Ltd. (***'Appellant'***) [Order No. MAH/AAAR/SS-RJ/12/2018-19 dated 01.11.2018], who was registered as an 'outdoor caterer' and was in the business of supply of food or drinks held that the services of supplying food to the employees of the unit located in the SEZ is not covered under the zero rated supplies in terms of Section 16(1)(b) of the Integrated Goods and Services Act, 2017 (***'IGST Act'***). As per the facts of the ruling, the Appellant had previously approached the Authority for Advance Ruling (***'AAR'***) with four issues. The first three queries were answered in the negative by the AAR, while the fourth was partly unanswered. The appellant challenged the ruling on the fourth issue i.e. '*if there is supply of food based on a contract with a company located in an SEZ, can the Appellant claim that since the food is supplied directly to the SEZ area, no GST is applicable? Alternatively, can it be claimed that the Appellant is running a canteen or a restaurant in an SEZ area, no GST will be applicable?*' before the Appellate Authority. The argument of the Appellant was based on the ground that if a SEZ or a developer of SEZ are the recipients of a supply, the registered person making such supply is allowed to do so without payment of IGST, as per Section 16(3) of the IGST Act. The AAAR discussed the scope of 'zero-rated supply' under the IGST Act and concluded that since the Appellant was making the supply to employees of a unit located in a SEZ, it cannot be said that a supply is being made either to a SEZ or to a developer of SEZ. It was also observed that since food was being prepared in the Appellant's kitchen and then distributed to various companies at different locations, it could also not be called a 'restaurant'.

Scope of Principal and Del-Credere Agent (*"DCA"*) Relationship in GST

Over a period it is observed that there is no clarity with respect to valuation of supplies from Principal to recipient (buyer), where payment for such supply is made by the recipient through loan provided by DCA to the recipient or by the DCA himself. In order to clarify such issues, the Central government issued ***Circular No. 73/47/2018-GST dated 05.11.2018*** which provides as under:

It is a type of principal-agent relationship wherein the agent acts not only as a salesperson or broker for the principal, but also as a guarantor of credit extended to the buyer.

Where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer and

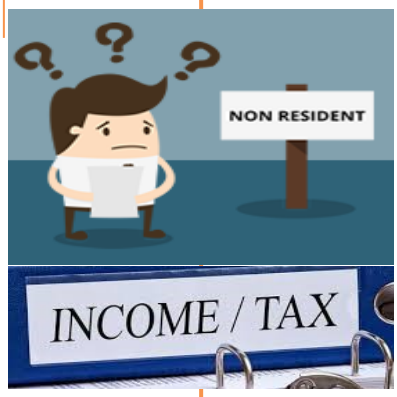
The commission paid to the DCA may be higher than that paid to a normal agent.

Sl. No.	Issue	Clarification
1	Whether DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?	If the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent. If the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.
2	Whether short-term loan extended by DCA to the recipient (buyer), for which interest is charged by DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?	It is clarified that in cases where the DCA is not an agent, the short-term transaction-based loan being provided by DCA to the buyer is a supply of service by the DCA, which is exempted by Sr No. 27 of **Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017**. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.
3	Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest from the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?	It is clarified that in cases where the DCA is an agent, the temporary short-term transaction-based credit being provided by DCA to the buyer do not retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per Section 15(2)(d) of the CGST Act.

Non-Residents are Not Required to Disclose their Foreign Bank Accounts and Assets to Indian Income Tax Authorities

In the case of **DCIT, Mumbai vs. Shri Hemant Mansukhlal Pandya I.T.A No.4679/Mum/2016 decided on 16.11.2018,** the Hon'ble ITAT, Mumbai bench **("Tribunal")** held that non-residents are not required to disclose details of their foreign bank accounts and assets to the Indian Income Tax Department. The brief facts of the case are that income of the Assessee was reassessed u/s 148/147 of the Income Tax Act, 1961 ("**IT Act**"). The reassessment was opened on the basis of information received by the Indian Government from the French Government under DTAA. The information was that some Indian nationals and residents have foreign bank accounts in HSBC Private Bank, Geneva which were not disclosed to the Indian tax department. Accordingly, notices were issued to the Assessee and in response to the notices, the Assessee filed his reply stating that he is regularly filing his Income Tax Return in India in the status of non-resident disclosing income accrued or arising in India. The Assessee submitted that the information which the Assessing Officer is using for reopening his assessment is related to 'residents' and not to non-residents. The Ld. CIT(A) rejected the arguments of the Assessee and relied only upon the information received by the Department and made the impugned additions. The Assessee challenged

the CIT(A) Order before the Tribunal. The Tribunal noted that no amounts was transferred from the Assessee's bank account in India to any other bank accounts maintained by the Assessee including HSBC Private Bank, Geneva. Further, it was not denied by the AO that Assessee was a non-resident. The Tribunal further noticed that the provisions of the Black Money (undisclosed foreign income and assets) and Imposition of Tax Act, 2015 ("***BM Act***") are applicable only to the residents. As per Section 2(2) of the BM Act, an Assessee means a person being a resident other than not ordinarily resident in India within the meaning of Section 6(6) of the IT Act by whom tax in respect of undisclosed foreign income and assets or any other sum of money is payable under BM Act and includes, every person who is deemed to be an Assessee in default under BM Act. Even, the FAQs to the BM Act clarify that if a person, while he is a non-resident acquires or makes a foreign asset out of income which is not chargeable to tax in India, such asset shall not be an undisclosed asset under the IT Act. Hence, on the basis of these observations, the Hon'ble Tribunal held that the Assessee being a non-resident is not required to disclose his foreign bank accounts and assets to the Indian Income Tax Department.



National Financial Reporting Authority Rules, 2018 Notified

The Central Government *vide* **Notification No. G.S.R. 1111(E) dated 13.11.2018** has notified the National Financial Reporting Authority Rules, 2018 ("**Rules**"). The National Financial Reporting Authority ("**NFRA**") shall monitor & enforce compliance with accounting & auditing standards and will oversee the quality of service provided by the auditors of the Companies or body corporate and may carry out the investigation of such auditors.The Rules provide an extensive list of Companies which will be monitored by NFRA:

1) Companies whose securities are listed on any recognized stock exchange whether in India or outside India.
2) Unlisted public companies having paid-up capital: Rs. 500 Crore or more; or annual turnover: Rs. 1000 Crore or more; or having in aggregate outstanding loans, debentures and deposits of at least Rs. 500 Crore as on 31st March of immediately preceding financial year.
3) Companies or body corporate engaged in the business of insurance, banking, generation or supply of electricity.
4) Companies or body corporate governed by any Special Act.
5) Body corporate incorporated by any Act as Central Government may by notification specify in this behalf.
6) A foreign subsidiary or associate body corporate of a company incorporated in India whose income or net worth exceeds 20% of the consolidated income or net worth of the company or body corporate as stated in clause 1 to 5 above.

As a matter of compliance, the entities other than the companies covered by the Rules are required to file Form NFRA-1 informing the particulars of the auditors to the authority within 30 days of the date of notification of the Rules. Now, bodies corporate other than the companies (as defined under Companies Act, 2013) are required to file Form NFRA-1 within 15 days of appointment of auditor informing the details pertaining to the auditor so appointed. The NFRA shall maintain the particulars of auditors appointed in the companies and bodies corporate. The NFRA shall invite recommendations from the Institute of Chartered Accountants of India regarding new accounting or auditing standards or amendments to the existing standards. Any company or its officer or auditor or any other person who contravenes any provision of the Rules shall be punishable with fine which may extend to Rs. 10,000, and where the contravention is a continuing one, with a further fine which may extend to Rs. 1,000 for every day after the first during which the contravention continues.

Conversion of Company to LLP Involves "Transfer" of Assets: ITAT

The Hon'ble Mumbai bench of the Income Tax Appellate Tribunal ("**ITAT**") in the case of ***ACIT vs. M/s Celerity Power LLP*** **[ITA No. 3637/Mum/2015 decided on 16.11.2018]** held that conversion of a private limited company into LLP is covered by the definition of 'transfer' and if the conditions u/s 47(xiiib) of the Income-tax Act, 1961 ("**Act**") are not satisfied, then the transaction is chargeable to 'capital gains' u/s 45 of the Act. The companies which satisfied the conditions of Section 47(xiiib) of the Act were specifically excluded from the definition of the term "transfer" under the Act. However, the companies that did not fulfil the conditions generally took resort to an earlier Bombay High Court decision in the case of **Texspin Engg 263 ITR 345 (Bom)** wherein it was held that the conversion of a partnership firm into company does not amount to 'transfer'. This ITAT decision has distinguished the aforesaid Bombay HC judgement on facts by observing that in the case of succession of a firm by a company under the statutory provisions of Part-IX of the Companies Act 1956 involves statutory vesting of all assets and liabilities. However, in context of conversion of a private limited company to LLP in accordance with Chapter X of the Limited Liability Partnership Act, 2008 ("**LLP Act**") and the Third Schedule, the Hon'ble ITAT gathered that it involves transfer of the property, assets etc. and not just vesting of assets and concluded that conversion of a company into a LLP is differently placed as in comparison to succession of a partnership firm by a company under Part IX of the Companies Act, 1956. Thus, in case of conversion of the company into LLP, "transfer" of capital assets was involved. As the conditions specified in Section 47 (xiiib) of the Act were not satisfied in the instant case and the Texspin judgment (supra) was distinguished by the Hon'ble ITAT, conversion of company to LLP was chargeable to tax as capital gains. Further, it was held that the entire undertaking of the erstwhile company got vested into the LLP, therefore, no separate cost other than the "book value' was attributable to the individual assets and liabilities hence such book value' could only be regarded as the full value of consideration for the purpose of computation of capital gains' u/s 48 of the Act which resulted in NIL capital gain.

In addition to the aforesaid, the following are the significant aspects of the said ruling:

1) The claim of carry forward of accumulated losses & unabsorbed depreciation of the company on non-fulfilment of conditions u/s 47(xiiib) on argument of superseding effect of Section 58 (4) of the LLP Act was not accepted by the Hon'ble ITAT. The ITAT concurred with the view taken by the CIT(A) that Section 58(4) of the LLP Act is only in context of the tangible and intangible property, interests, rights etc., and has nothing to do with the carry forward of losses, which is the creature of a specific statute in the form of the Act and held that Sec. 72A(6A) of the Act which entitles a LLP to carry forward the losses of the erstwhile company is in clear and loud terms preconditioned by a statutory requirement that the assessee should have complied with the conditions of the proviso to clause (xiiib) of section 47.
2) Another significant aspect of the Tribunal ruling is that by virtue of Section 170 of the Act, any tax that had escaped in the hands of the company would now be levied on the LLP, which is construed as the successor.
3) The ITAT also held that the deduction u/s 80IA of the Act available to the erstwhile company would be available for the residual term to the new LLP as the benefit of deduction under Sec. 80-IA was attached to the "undertaking" and not to its owner assessee, thus as long as the identity of the undertaking remained as such, the claim of deduction under the said statutory provision would be available. Further, the embargo made available on the statute by sub-section (12A) of Sec. 80IA, which restricted the entitlement of the successor company towards claim of deduction was applicable only in the case of an amalgamation or demerger and not in a case of conversion of company to LLP.

QUICK TAKEAWAYS

- In the case of ***MAJ Hospital v. DCIT [2018] 100 taxmann.com 1 (Cochin Tribunal) decided on 12.11.2018***, it was held that in case where a nursing school was located within hospital's premises and students of nursing school got training in such hospital then it can be said that activities of running hospital and nursing school were intricately connected and dependent on each other and thus shall be considered as inseparable activity. Therefore, both are entitled to exemption under section 11(1) of the Income-tax Act, 1961.
- In the case of ***DCIT v. Qx Kpo Services (P.) Ltd. [2018] 99 taxmann.com 301 (SC) decided on 02.11.2018,*** the Apex Court dismissed SLP against High Court ruling that where, during scrutiny assessment if AO raised several queries asking assessee to justify its claim of deduction u/s 10B of the Income-tax Act, 1961 and after considering assessee's reply, the AO allowed deduction under the said section then he could not reopen the assessment to examine another facet of said claim.
- In the case of ***DCIT v. Orient News Prints Ltd. [2018] 100 taxmann.com 69 (SC) dated 02.11.2018***, the Apex Court dismissed SLP against High Court ruling that where in order to prove genuineness of share transactions, assessee brought on record all relevant facts such as names, address and PAN of share applicants then it was duty of Assessing Officer to obtain separate confirmation from concerned parties, if required. In case where he failed to do so, then on the said ground he could not reopen assessment.
- The Hon'ble Delhi High Court in the case of ***Rajeev Behl vs. State and Ors. [W.P.(C) 12294/2018, decided on 16.11.2018]*** has held that a parent can seek eviction of his children and legal heirs from any type of property, on grounds of non-maintenance and ill-treatment.
- In the case of ***Simplex Infrastructures and Others vs. State Of U.P. & Another [Application No. 14785 of 2015, decided on 27.11.2018]*** the Hon'ble High Court of Allahabad held that the investigation cannot be regarded as a proceeding pending against the accused so as to invoke Section 482 of the Criminal Procedure Code, 1973 and thus, dismissed the petition filed by the accused challenging an order of Magistrate.
- In the case of ***Anand vs. the State of Karnataka [Writ Petition No. 107361/2018, decided on 14.11.2018],*** the Hon'ble Karnataka High Court recently denied relief to a student who had failed to complete his three-year LL.B Course within the prescribed period of seven years.
- In the case of ***Saji s. v. Commissioner, State GST Department Tax Tower, Thiruvananthapuram [2018] 99 taxmann.com 218 (Kerala) dated 12.11.2018*** the Hon'ble High Court held that where goods of assessee-consignee were detained in transit and consignor remitted amount under 'SGST' instead of IGST, competent authority should allow assessee's request for adjustment of amount remitted under 'SGST' for IGST.
- The President of India has given its consent to the **Companies (Amendment) Ordinance, 2018 ("Ordinance")** on November 2, 2018 which has made certain amendments to the Companies Act, 2013. The said Ordinance has brought major amendments in relation to the penalty for contravention and enlarging the jurisdiction of Regional Director by enhancing its pecuniary limits.
- With a view to operationalize the Union Budget announcement for 2018-19, which, inter-alia, stated 'SEBI will also consider mandating, beginning with large entities, to meet about one-fourth of their financing needs from the debt market', SEBI introduced the guidelines on 'Fund raising by issuance of Debt Securities by Large Entities' vide its **circular SEBI/HO/DDHS/CIR/P/2018/144** dated November 26, 2018.
- Regulation 40 and Schedule VII of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 prescribed requirements for transfer of securities in physical mode. Accordingly, SEBI vide its **circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/139** dated November 6, 2018, introduced 'Standardised norms for transfer of securities in physical mode'.

KNOWLEDGE CENTRE

MCQs on Companies Act, 2013 ("Act")

Q1: Minimum number of director(s) required in a One Person Company?

a. One
b. Not required
c. Two
d. Three

Q2: Within how many days of incorporation, a company should have registered office?

a. 10 days
c. 15 days
b. 20 days
d. 30 days

Q3: What is the maximum number of members, a private company may have?

a. 50
c. 30
c. 200
d. 100

Q4: Can a company issue securities on discount?

a. Yes
b. No
c. At the discretion of company
d. Only in sweat equity shares

Q5: Can a director be appointed without having Director Identification Number?

a. Yes in all companies
b. No
c. Only in private company
d. Only in public company

Q6: Maximum number of directorship(s), a person may have?

a. 10 companies
b. 5 companies
c. 15 companies
d. 20 companies

Q7: Special resolution by members is required to be filed in which form?

a. MGT-7
b. SH-7
c. MGT-14
d. DIR-12

Q8: Can a company give interest free loan?

a. No
b. Yes
c. Private company can give
d. Public company can give

Q9: Which type of company is mandatorily required to appoint a company secretary?

a. Every listed company
b. Every public company
c. Every private company
d. All companies

Q10: Issue of securities through preferential allotment can be made to?

a. Any person
b. Only to shareholders
c. Only to directors
d. Only to employees

Ans: 1-a, 2-d, 3-c, 4-d, 5-b, 6-d, 7-c, 8- a, 9-a, 10-a.

EDITORIAL

GST Implication on 99 Years Lease of Land

- By Prateek Sharma, Chartered Accountant

Taxability of Lease of land/plots was a debatable issue during the service tax regime and was decided by courts to be leviable to service tax irrespective the period of the lease. Thus, it is pertinent to understand the taxability of lease of land under the GST regime.

Leviability of GST on Lease Charges

GST is leviable on supply of goods or services. Thus, it is pertinent to understand the term 'supply'. Section 7(1)(a) of the CGST Act provides that all forms of supply of goods or services or both such as lease made or agreed to be made for a consideration by a person in the course or furtherance of business. Further, Section 7(1)(d) of the CGST Act provides activities to be treated as supply of goods or supply of services as referred to in Schedule II of the CGST Act wherein Entry 2(a) provides that any lease to occupy land is a supply of services. Thus, here it can be construed that lease of land is treated as supply of services as per Section 7 of the CGST Act and GST is payable on the lease of land. The leviability of GST on lease of plots is also affirmed by the Hon'ble Bombay High Court in the case of *Builders Association of Navi Mumbai [Writ Petition No. 12194 of 2017]*. In said case the petitioner challenged the levy of GST on the one-time lease premium while letting plots of land on lease basis. In this regard, the Hon'ble Bombay High Court held that the demand for payment of GST is in accordance with the law.

Further, it is possible that lease period has been started before the implementation of GST. In that case as per Section 174 of the CGST Act, if any service tax is due before the implementation of GST i.e. 01.07.2017, the same can be legally recovered even when the Service Tax Law is not in force. In this regard, transitional provisions are provided under the CGST Act which provides clarity regarding treatment of transactions which are spread over both service tax and GST regime. As per Section 142(11)(b) of the CGST Act, notwithstanding anything contained in Section 13 of the CGST Act, no tax shall be payable on services under the CGST Act to the extent the tax was leviable on the said services under the Finance Act. Thus, to the extent service tax is leviable on any services, then, to that extent, no GST shall be payable on such services. The extent of leviablity of service tax on total consideration will be to the extent that point of taxation has arisen under the service tax regime. Hence, after ascertaining the point of taxation for the lease of plots, to the extent point of taxation arises before 01.07.2017, service tax is leviable.

Time of Supply

Time of Supply is important to ascertain as the liability to pay tax arise at the time of supply. As per Section 13 of the CGST Act, the time of supply of services shall be the date of issue of the invoice by the supplier or the date of receipt of payment, whichever is earlier, if the invoice is issued within the period prescribed under Section 31(2) of the CGST Act i.e. within a period of 30 days from the date of the supply of service. However, it is pertinent to mention that as per Section 31(5) of the CGST Act in case of continuous supply of services (the services which are provided continuously under a contract for a period exceeding three months with periodic payment obligations) the invoice has to be issued on or before the due dates of payment specified under contract. Thus, here there is anomaly that whether in case of continuous supply of services the time limit of invoice for the purpose of Section 13 (2)(a) and (b) of the CGST Act has to be checked as per Section 31 (2) of the CGST Act or Section 31(5) of the CGST Act. To remove this anomaly, amendment vide CGST Amendment Act, 2018 has been proposed which is still pending to come into force. As a result of the amendment, the time limit under Section 13(2)(a) and (b) of the CGST Act would be as per Section 31 of the CGST Act instead of Section 31(2) of the CGST Act. Thus, in case of time of supply of services, the time limit of invoice for the purpose of Section 13 (2)(a) and (b) of the CGST Act

would be checked as per Section 31(5) of the CGST Act. Therefore, here it can be construed that, in case of continuous supply of services, the time of supply of services shall be the date of issue of invoice issued during the continuous supply of service or the date of receipt of payment, whichever is earlier if the invoice is issued on or before the due dates of payment. However, if the invoice is not issued on or before the due date of payment, the time of supply shall be the date of provision of service or the date of receipt of payment, whichever is earlier.

Determination of Taxable Value of Lease Charges

Taxable value is ascertained as per Section 15 of the CGST Act. As per Section 15(1) of the CGST Act value of a supply of service shall be the transaction value, which is the price actually paid or payable for the said supply of services where the supplier and recipient are not related, and the price is the sole consideration for the supply. Thus, Lease Charges for granting the lease as the price to be payable for the lease service. Further, any interest charged for delayed payment of instalment shall also be includible in the Lease Charges for charging GST as per Section 15(2)(d) of the CGST Act. Hence, value of taxable supply shall be the Lease Charges including the applicable interest.

Input Tax Credit Eligibility to the Lessee

Input tax credit is eligible as per Section 16(1) of the CGST Act. As per Section 16 of the CGST Act every registered person shall be entitled to take credit of input tax charged on any supply of services which are used or intended to be used in the course or furtherance of business. However, the said credit is subject to the conditions specified under Section 16(2) of the CGST Act. The major condition to be fulfilled by the recipient for availing the input tax credit viz. *'he has received the goods or services or both'*. Thus, the recipient should have received the services before availing the credit. In the case of 99 years lease, the lease service is spread over 99 years, the service will be received at the end of the 99 years. Therefore, the input tax credit shall be deferred to the end of 99 years due to this condition. Here it is pertinent to mention that this arbitrary condition can be suitably challenged by way of a writ petition. Further, Section 17(5) of the CGST Act also blocks the availment of input tax credit on the goods or services mentioned therein. As per said blocked credits, input tax credit on goods or services used in the construction of an immovable property is blocked. Thus, if the services are availed for construction of an immovable property, input tax credit paid on such services shall be blocked. Thus, it is common that after taking plot on lease the lessee constructs building or factory as per the desired business plan on the leased plot. Thus, in those cases it can be alleged that the leasing service has been availed for construction of building or factory as the case may be and no input tax credit is available. However, in my view it can be suitably argued that leasing of plot is not done for construction of building or factory, instead it is leased for carry out business in the Food Park. It can also be argued that the blocked credits are only for the goods or services that are used in construction of the building or factory and the leased plot is not used in construction of immovable property. Hence, input tax credit on lease of plots can be availed by the lessee.

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