

1) Taxability of TDR under GST

As per the judgement in case of M/s Shrinivasa Realcon P. Ltd. vs DC-AntiEvasion Br.CGST – 173 taxmann.com-600 – Mumbai HC : TDR/ FSI as contemplated by entry 5B of Notification No.13/2017-Central Tax (Rate), dated 28-6-2017 as amended by Notification No.5/2019- Central Tax (Rate), dated 29-3-2019, cannot be related to rights which a developer derives from owner under agreement of development for constructing building for owners, in lieu of owner agreeing to permit developer to transfer certain built up units for consideration to be appropriated by developer.

- a) What could be the implications of this judgement ?
- b) Will the landowner developer not be liable to pay GST on the transfer of rights to develop the plot of land (rights arising out of land) ?
- c) What be the implications where a co-operative housing society has given Redevelopment Rights to a Developer?

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2) Assignment of Leasehold Rights :

MIDC has provided a land parcel at Ambernath on 60 years lease to a manufacturer, M/s Anand Engineering. The manufacturer has constructed factory on the same and used it for production for a period of 20 years.

Anand Engineering has transferred/assigned the leasehold rights of the land and factory for balance period of 40 years to a buyer M/s Bharat Engineering Pvt. Ltd. for a consideration of Rs. 50 Crore in April'2024. The buyer/ lessee will further pay monthly rental of Rs. 5,000/- to MIDC towards lease payments.

- a) Anand Engineering has not yet collected GST on the transaction. Is it liable to pay GST on such transaction?
- b) Will Bharat Engineering Pvt. Ltd. be eligible for ITC for the same ?
- c) Is any alternate possible re-structuring of transaction that may be done in order to avoid the impact of GST.

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3) ITC eligibility u/s 17(5)(c) and 17(5)(d) :

M/s Ambitious Pharmaceuticals Ltd is in the business of manufacturing and selling of pharmaceutical chemicals. Further, it has acquired an additional land parcel in an industrial area situated at Taloja and initiated construction of the factory. The company has decided to construct the factory on its own by purchasing steel, cement etc and engaging labour separately. Once the factory is constructed, it will outsource the plumbing, electric and painting work to different sub- contractors along with respective material. The company will be incurring huge capex cost for construction of the factory.

The company is perplexed with eligibility of ITC in respect of various transactions relating to new factory construction. Accordingly, the company has approached you in order to advise on eligibility of ITC on following transactions :

a) Architect, Legal and PMC services for construction of the factory.

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b) One time charges paid for Assignment of Lease of land for the factory.

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c) Materials purchased for the purpose of construction such as cement, steel, bricks, tools, gypsum, aluminium, etc

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d) Purchase of HVAC System for the entire factory including split AC for director cabin.

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e) Installation of passenger lift in new factory for movement of workers and staff.

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f) Plumbing work done in new factory by plumbing contractor including plumbing materials such as taps, nut, bolts, piping, etc.

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g) Electrical work done in new factory by electric contractor including electric materials such as LED's, switches, cables, tools, etc.

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4) Corporate Gaurantee :

M/s Realty Investments Ltd is a holding company, having subsidiaries in the business of Real Estate development and EPC contracting. The businesses of the subsidiaries are as under :

(1) Surya Developers Pvt. Ltd. - Acting as a builder/ developer of residential complexes and selling of residential flats. The company has opted for the new scheme of taxation for Builders with GST rate of 1%/5% without ITC

(2) Roshni Infra Pvt. Ltd. - Acting as a civil contractor who undertakes construction work for its principal such as builders/ government/ port/ railways. The company is charging 12%/18% GST with full ITC.

The holding company has provided corporate guarantee to its subsidiaries in both segments i.e. real estate and EPC companies and has paid GST as under:

Date	Subsidiary	Corp Guarantee for 3 years	GST Net Value	GST
31 st March 2021	Surya Developers	Rs. 500 Crore	NIL	NIL
	Roshni Infra	Rs. 100 Crore	Rs. 10 Lakhs	Rs. 1.8 Lakhs

31 st March 2024	Surya Developers	Rs. 600 Crore	NIL	NIL
	Roshni Infra	Rs. 200 Crore	Rs. 20 Lakhs	Rs. 3.60 Lakhs

The company seeks advice on following issues :

- Whether providing Corporate Gaurantee is a supply of service ?
- What is the position before and after insertion of clause 2 in Rule 28 w.e.f 26-10-2023 ?
- What is the impact of value of corporate gaurantee @ 1% p.a. as per said Rule ?

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5) Export of Services vs Intermediary Services :

Mr. Confused, a GST consultant, is totally confused with several queries of his clients with regard to the interpretation of the word 'intermediary' in the context of export of services. He has, after looking at documentation of various clients which inter alia deals with provision of different types of services to overseas clients, listed down certain situations as given below.

On one hand, the department wants to treat each and every service as 'intermediary' viz. as 'arranging' or 'facilitating' supply of goods or services or both, while on the other hand, the client wants to treat the services as coming under support services supplied on a Principal-to Principal basis.

The charges for the various services are generally to be billed on cost plus 'x %' basis except selling commission which is to be billed as 'x%' of sales made.

The scenarios are set out below.

Sr. No	Type of Service	Description
1	Marketing services	Marketing of products and explaining the features/specifications through personal/online meetings with proposed customers
2	Sales Commission	Procurement of orders as well as dealing with fulfilment of orders i.e. interacting with the client and the client's purchasers upto delivery, invoicing and collection.
3	Sales support services	Not involved in procurement of orders but only in fulfilment of orders.

4	Back office support Services	Payroll, invoicing, collection, accounting for the India operations of the overseas holding company
5	Call centre Services	a.Attending to pre sales queries of proposed customers. b.Attending to product complaints and queries of customers.
6	Services for Collecting and analyzing information	Market analysis, submission of reports and general advice on markets, vendor analysis, research for product procurement

7. Whether GST on Intermediary services has to be paid as CGST-SGST or IGST ?

8. What if the tax has already been paid under the wrong head?

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6) Mutuality Concept under GST

- What is the impact of the judgement of Kerala High Court in case of Indian Medical Association [173 Taxmann.com 474] on Mutuality concept under GST?
- Will it apply to periods upto 01-01-2022 only?
- Will it apply to incorporated as well as unincorporated associations ?
- Specific impact on Housing societies, Clubs, Associations like BCAS, CTC, GSTPAM?

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7) Taxability of Sales Promotion-Incentive Schemes-Discounts-Gold coins/White Goods (ITC vs Taxability in case of recipient)

Akash Electricals Pvt. Ltd. is manufacturer of electrical products. During the year to enhance/support sales it offers various target/performance completion schemes/discounts on monthly/quarterly and annual basis via circulars to its distributors/wholesalers/retailers. After completion of mentioned period in circulars it settles this either in monetary terms or through kind (like foreign tour, gold coin, mobile, laptop, etc) as per respective scheme. The following issues arise :

- i) How to distinguish between target discounts and target incentives, which are eligible for reduction in value of supply as per section 15(3) of CGST Act read with section 34(1) ? Is the term discount to be construed strictly ?
- ii) If Akash Electricals issues financial credit notes for the discounts/incentives, will the recipient of such financial CN, liable to reverse proportionate ITC as per 2nd proviso to Section 16(2) ?
- iii) Is the recipient of such financial CN liable to pay GST on the Incentive income received by it ?
- iv) In case of incentives given in kind (like foreign tour, gold coin, mobile, laptop, etc) as per respective scheme, is Akash Electricals liable to reverse ITC on the corresponding purchase of such goods/services procured by it ?
- v) If such goods in kind, like gold coin, mobile, laptop are sold to the Distributors at concessional token rate of say Rs.1000/- per product , then whether any GST implications can arise ?

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8) RCM on Foreign Bank Charges :

Honest Exports Ltd. is exporting goods to various countries across the globe. The export sales proceeds are received by it for some transactions during FY 20-21 are as under :

	USD	INR
Exports Sales	1,00,000	85,00,000
Less : Foreign Bank Charges	1,000	85,000
Amount received in CFE	99,000	84,15,000

Less : Bank Charges by Indian Bank	500	42,500
Less : Bank Charges by Indian Bank	--	7,500
Net Amount Received	98,500	83,65,000

- a) The GST Audit officers have issued Audit Observation for making payment under RCM on the Foreign Bank Charges. Are they justified ?
- b) Can the dealer pay GST under RCM and claim ITC u/s 16(4), to avoid litigation. Whether the amendments made to sec 13(3) and 31(3)(f) w.e.f. 01-11-2024 will have any impact on such claim of ITC ? Interest and penal consequences?
- c) Can the dealer claim Revenue Neutrality in such cases ?

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