



Dimensions – 53rd Edition

Ruling / Judgment under GST era:

1. M/s Las Palmas Co-operative Housing Society Limited - Maharashtra¹

Issues for Consideration	<ul style="list-style-type: none"> Whether Input Tax Credit (ITC) can be claimed of the GST paid on replacement of existing lift / elevator? If yes, whether such ITC is restricted as per section 17 of the CGST Act?
Discussion & Ruling	<p>Discussion:</p> <ul style="list-style-type: none"> The Applicant is a Co-operative Housing Society (CHS) registered under the Maharashtra CHS Act. The Applicant provides various services to its members and recovers maintenance charges. The Applicant discharges GST on these maintenance charges. The Applicant is planning to replace the existing lift / elevator in their society building, along with its structures. For this purpose, the Applicant has entered into a contract with the supplier for manufacture, supply, installation and commissioning of lift. The Applicant has approached the Authority to contend that the ITC on installation of the lift should be eligible on the basis of the following grounds: <ul style="list-style-type: none"> - Supply and installation of lift is in the nature of a 'works contract' as per section 2(119) of the CGST Act and thereby a composite supply of service in terms of clause 6 of schedule II of the CGST Act; - Lift is an 'equipment'. The term 'plant and machinery' under section 17 of the CGST Act includes 'equipment' and accordingly, the ITC restriction under section 17 is not applicable. Therefore, the ITC is eligible; The Authority observed as follows:

¹ Order no. GST-ARA-31/2019-20/B-13 dated January 22, 2020 [2020-VIL-37-AAR]



	<ul style="list-style-type: none">- The lift, after erection and installation, becomes an integral part of an immovable property i.e. building. It becomes a permanent fixture of the building itself. Reliance was placed on the Apex Court decisions in the case of Triveni Eng. Industries Ltd² and Quality Steel Tubes (P) Ltd³ and High Court decision in the case of Quality Steel Tubes (P) Ltd⁴.- As per Explanation to section 17(5) of the CGST Act, 2017 the term 'plant and machinery' excludes land, building or any other civil structure. Since after erection and installation, the lift becomes an integral part of the building, it is not covered under 'plant and machinery' <p>Ruling:</p> <p>The Applicant is not entitled to claim ITC of GST paid on replacement of existing lift / elevator.</p>
Dhruva Comments / Observations	<p>The Supreme Court in case of <i>Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu</i>⁵ had held that the activity of supply and installation of lift is a works contract transaction and cannot be regarded as sale of goods / chattel simpliciter. However, whether erection and installation of lift results in an immovable or movable property was not evaluated as in either case such transaction amounted to works contract under the erstwhile sales tax / VAT laws. Whereas, under the GST law, input tax credit shall not be eligible if the supplies are for construction of an immovable property. Thus, it requires to be examined as to whether such lifts are immovable being part of the building or whether could be regarded as plant and machinery.</p>

2. M/s Hitachi Power Europe GmbH - Uttar Pradesh⁶

Issues for Consideration	<ul style="list-style-type: none">• Whether the transaction between foreign company registered in Germany and its project office located in India is a transaction between same company or between two distinct legal entities?• If it is an intra-company transaction, then whether the salary paid to the expat employees would fall under the definition of 'Supply' or fall under clause 1 of Schedule III of CGST Act?
Discussion & Ruling	<p>Discussion:</p> <ul style="list-style-type: none">• M/s Hitachi Power Europe GmbH (Head Office) is a company incorporated under the laws of Germany and has been awarded a contract by an Indian company to supply goods and supervisory services in the State of Uttar Pradesh, Maharashtra and West Bengal. Accordingly, the Company has setup three Project Offices (PO) in these States.

² 2000 (120) ELT 273 (SC)

³ 1994 (12) TMI 75 - The Supreme Court of India

⁴ 2003 (151) ELT 499 – The High Court of Mumbai

⁵ 2014 (34) STR 641 (SC)

⁶ 2020-VIL-4-AAR



- The POs have obtained registration under the Indian Companies Act, 2013 as a foreign company and have also obtained PAN under the Income-tax Act, 1961. The PO in the state of Uttar Pradesh (Applicant) has also obtained GST registration.
- The roles and responsibilities of a PO are regulated and notified⁷ by the RBI. Further, the Expat employees -
 - work from the PO in India and their VISA is issued by mentioning the organization name of 'Hitachi Power Europe GmbH' with the address of PO in India;
 - the Applicant deducts TDS as an employer under the head 'Income under Salaries' under the Income tax Act, 1961 and issues Form 16;
 - the Head Office (Germany) makes the payment in the bank account of the employees outside India;
 - the Head Office raises a debit note on the PO to account the salary in the books of the PO. This is done to comply with the Companies Act, 2013 in India.
- The Applicant has approached the Authority to contend that no GST is payable on accounting entry made for recording the salary cost on the basis of the following:
 - The PAN has been obtained in the name of Head Office and Applicant is only an extension of foreign company and not an independent entity;
 - There is no intention to provide or receive services and hence there is no 'supply';
 - The transaction is covered under Schedule III of CGST Act, i.e. services by an employee in the course of or in relation to his employment;
 - The transaction will not qualify as 'import of services';
 - Reliance was also placed upon the advance rulings in the case of *Habufa Meubelen B.V.*⁸ and *Takko Holding GmbH*⁹.
- The Authority observed as follows:
 - Based on the several compliances being undertaken by the PO under the various Indian laws, the PO is merely an extension of the foreign company and the transaction between the Head Office and the PO is an intra company affair;
 - Based on the various facts produced in respect of the expat employees, the PO is fulfilling all the obligations as an employer and there exists an employer-employee relationship between the PO and the expat employees.

Ruling:

- The Head Office and the PO are a single business entity.
- No GST is payable by the PO on accounting of the salary paid to expat employees in the books of accounts.

⁷ Notification No. FEMA 22(R)/ 2016-RB dated March 31, 2016

⁸ 2018 (14) GSTL 596 (AAR - GST)

⁹ 2018 (19) GSTL 692 (AAR - GST)



**Dhruva
Comments /
Observations**

The instant ruling is on similar lines to judgments issued under the erstwhile Service tax regime wherein it is observed that the expats are in employment with Indian company and there is no manpower supply service rendered by the foreign company to Indian company.

3. M/s. Refex Industries Limited v. The Assistant Commissioner of CGST & Central Excise and Ors.¹⁰

**Issue for
Consideration**

Whether interest on delayed tax payments is applicable on the entire GST liability or on the cash portion post adjustment of Input Tax Credit (ITC)?

**Discussion &
Judgment**

Discussion:

- The Petitioner filed returns under the GST law belatedly for the period 2017-18. The Respondents issued communications to the Petitioner computing the delay and the consequential interest to be remitted on the tax reflected in the returns. Demand notices were issued to the banks for recovery of the interest due.
- The Petitioner objected to the notices stating that interest could only be demanded on the cash component of the tax paid since sufficient ITC balance was available with the Authorities. Aggrieved by the recovery proceedings, the Petitioner filed a Writ Petition before the Hon'ble High Court.
- The Hon'ble High Court observed as under:
 - Reliance was placed on the judgment pronounced by the Third Member in the case of *The Assistant Commissioner of CGST & Central Excise and Anr. v. Daejung Moparts Pvt. Ltd.*¹¹ wherein the matter was only remitted back to the Assessing Officer to determine the quantum of liability and the issue was not determined in a manner detrimental to the Revenue. It was also stated that interest liability should be computed considering the objection raised by the assessee even though the liability under section 50 of the CGST Act, 2017 is an automatic liability;
 - Interest liability on belated payment of tax is automatic with an intention to compensate the authorities for delayed payment of the tax due. Further, since the section 50 of the CGST Act, 2017 is specifically intended to apply to a state of deprivation cannot apply in cases where the authorities possess sufficient funds lying to the credit of an assessee. It was also observed that section 50 shall be applicable in case of belated cash payment and not on the ITC available with the authorities to the credit of the assessee;
 - The argument that ITC is liable to reversed if found to be erroneously claimed was distinguished by the Hon'ble High Court. It was observed that avilment and utilisation are two separate events, and the authorities can always reverse such erroneous claim if found untenable or not in line with the statutes;
 - The Hon'ble High Court referred to the recent insertion of proviso to section 50(1) of the CGST Act, 2017 which prescribes applicability of interest only on the cash component of the tax payable seeking to correct an anomaly prior to such insertion.

¹⁰ 2020-VIL-71-MAD - The High Court of Judicature at Madras

¹¹ 2020-VIL-67-MAD - The High Court of Judicature at Madras



Further, the proviso should be considered as clarificatory in nature with a retrospective operation;

- Reliance on the judgment pronounced by the Hon'ble Telangana High Court in the case of *Megha Engineering and Infrastructures Ltd. v. Commissioner of Central Tax and Ors*¹² was distinguished as the amendment to section 50(1) has been incorporated in the statute.

Judgment:

Interest shall only be levied on the cash component of the GST payable and not on the gross GST liability.

**Dhruva
Comments /
Observations**

In recent times, the issue of applicability of interest on belated payment of tax has seen a lot of traction lately with the CBIC issuing various directions and clarifications. The judgment notes that the proviso to section 50(1) has been inserted vide Finance (No. 2) Act, 2019 dated August 1, 2019 but the said amendment has not yet been made effective. It is worth noting that the bill incorporating amendment for payment of interest only on the cash component of the gross liability has been passed by all the States except the States of Telangana and West Bengal. Till these states also make amendments, the provision cannot be made operational. CBIC through its official twitter handle also reiterated the above but clarified that such amendment will only be '**prospective**' in nature. Interestingly, this vexed issue is pending before other High Courts and would be relevant to see how the judiciary unfolds.

¹² 2019-VIL-175-TEL - The Hon'ble High Court of Telangana



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