



Dimensions – 58th Edition

Judgment under Pre-GST era

*M/s Universal Engineering Works v. The Assistant Commissioner*¹

Issue

Whether Petitioner was liable to reverse the input tax credit (ITC) for inter-state sales effected under section 8(1) of the Central Sales Tax Act (CST Act)?

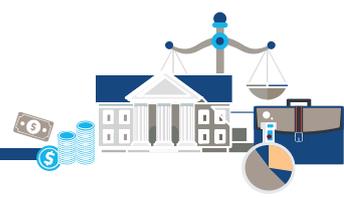
Discussion

- The Petitioner purchases inputs locally and uses it for manufacturing or processing of goods liable to tax both under Tamil Nadu VAT Act, 2006 (TNVAT Act) and CST Act.
- A notice was issued by the Respondent for reversal of ITC @ 3% under 19(2)(v) of the TNVAT Act for the year 2013-2014, in respect of sale of finished goods under Section 8(1) of CST Act i.e. inter-state sale at concessional rate.
- However, since no reply for the above notice was filed, the Respondent confirmed the reversal of the impugned ITC.

- Aggrieved by the said order, the Petitioner filed a Writ Petition before the Hon'ble High Court. The Petitioner submitted as follows:
 - Proviso to the section 19(2)(v) of the TNVAT Act is not attracted for sale of manufactured or processed goods in course of interstate trade or commerce;
 - Reliance was placed upon decision rendered in case of *Everest Industries Ltd. v. the State of Tamil Nadu and another*².
- The Hon'ble High Court observed as follows:
 - The proviso to restrict the ITC was inserted w.e.f. November 8, 2013 and was partly in force during 2013-2014 i.e. period of dispute.
 - Further, the said proviso was deleted pursuant to the Budget Speech of 2105-16 in order to make manufacturing industries in Tamil Nadu more competitive with their counterparts in the neighbouring States.
 - A plain reading of the section 19(2)(v) of the TNVAT Act reflects that the restriction was for dealers who purchased the goods at a higher rate of tax to accumulate ITC and sell the same goods as such in the course of inter-state sales

¹ 2020-VIL-135-MAD – The High Court of Judicature at Madras

² 2017-VIL-124-MAD dated February 06, 2017.



at lower rate of tax. The Court also concurred with the reliance placed by the Petitioner upon the decision rendered in case of *Everest Industries Ltd. (supra)*

- Restriction on ITC inserted vide proviso to section 19(2)(v) of the TNVAT Act shall not be applicable as it never intended to include manufacturer dealers within its ambit.

Judgment

The Hon'ble High Court quashed the impugned order and referred the matter back to the Respondent to pass a fresh order.

Dhruva Comments

Similar restrictions on ITC had been in existence in several States during the pre-GST regime wherein retention ratios were computed for inter-state branch transfers. The instant decision rightly differentiates between a trader and a manufacturing dealer allowing full ITC to the manufacturing dealer who pays tax on the value addition on the inputs procured.

Ruling under GST era

***M/s Tarun Realtors Pvt Ltd – Karnataka Appellate Authority*³**

Issue

Whether input tax credit (ITC) can be claimed on various goods and services which are installed or used in a shopping mall, the units of which would be leased / rented out?

Discussion

- The Appellant is developing a shopping mall, the units of which would be leased / rented out.
- The Appellant procured various goods and services for installation of Chillers, Air Handling Unit (AHU), Lift, Escalator, Travellator, Water and Sewage Treatment Plant, High-speed Diesel yard (HSD) Mechanical Car Park and Indoor / Outdoor Surveillance System (CCTV), DG sets,

Transformers, Electrical wiring and fixture, Public Health Engineering (PHE), Fire-fighting and water-management pump system, on which GST had been paid by the Appellant.

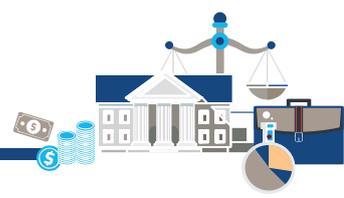
- The Appellant had approached the Authority for Advance Ruling to contend that the ITC on such goods / services were eligible to them. However, the Authority vide its order⁴, had rejected the claim by treating them as blocked credits under section 17(5) of CGST Act, 2017.
- The Appellant appealed against the said order before the Appellate Authority and contended as follows:
 - Section 17(5)(d) of CGST Act, 2017 allows the credit on 'plant or machinery', whereas the explanation to section 17(5) defines the term 'plant and machinery'. Accordingly, the various goods classify as 'plant' or 'machinery'. In this respect, reliance was placed upon the dictionary meanings of the word 'plant' and 'machinery';
 - Reliance was also placed upon various judicial rulings of the pre-GST regime including *CCEX. Vishakapatnam v. Sai Samhita Storages Pvt Ltd*⁵;
 - Reliance was also placed on the judgment pronounced by Hon'ble Orissa High Court in case of *Safari Retreats Pvt Ltd & others v. Chief Commissioner of CGST & others*⁶, wherein the ITC was allowed on goods and services used in the construction of building which was let out;
 - The installations are recorded in the books of account under separate heads as per Indian Accounting Standards and are distinct from land and building.
- The Appellate Authority observed as follows:
 - There is no hard and fast rule to determine meaning of the word 'or' and its meaning is extracted in terms of context for which it is used. Thus, the word 'or' in section 17(5)(d) of the CGST Act, 2017 can be used as 'and', since it

³ Order no. KAR/AAAR-14//2019-20 dated February 06, 2020 [2020-VIL-17-AAAR]

⁴ Order No KAR/ ADRG 103/ 2019 dated September 30, 2019 [2019-VIL-383-AAR]

⁵ 2011 (2) TMI 400

⁶ W.P.(C) No. 20463 of 2018.



gives effect to the intention of legislature to allow ITC on plant or / and machinery;

- In respect of goods viz. Chiller, AHU, CCTV, electrical wiring and fixtures, PHE, Fire-fighting and water management pump system, the Appellant has not submitted any information as to how they are embedded to earth, since to qualify as plant and machinery they have to be fixed to earth by foundation or structural support. Accordingly, they are not plant and machinery but procured for construction of property;
- In respect of lifts, travellers and escalators, the installation is being done by a vendor and not by the Appellant. Such vendor would not be hit by restriction under section 17(5)(d) of the CGST Act, 2017 as it qualifies as a plant and machinery for the vendor and not the Appellant;
- Similarly, in the case for supply and installation of car parking system, fabrication, supply and installation of the HSD yard, the ITC shall not be admissible as the construction is not done by Appellant;
- The water and sewage treatment plant form part of civil structures which are specifically excluded from the definition of plant and machinery. Similarly, DG sets and transformers are procured as independent items but after installation becomes part of the civil structure of the immovable property. Hence no credit pertaining to said inward supply can be availed;
- The judgment of *Safari Retreats (supra)* has been appealed before the Hon'ble Supreme Court and has not attained finality and the same does not have persuasive value.

Ruling

The Appellant is not eligible to claim the ITC.

Dhruva Comments

The eligibility of ITC on goods and services used for construction services has been a subject matter of dispute since the pre-GST regime. The exception

granted under the GST regime with respect to the eligibility of such ITC on '*plant or / and machinery*' has now started another round of litigations as to what qualifies as '*plant or / and machinery*'.

The restriction under section 17(5)(d) of the CGST Act, 2017 is for construction of an immovable property. The Appellate Authority has erred to consider whether the present goods, in specific CCTV, fire-fighting system, DG sets and transformers Can be said to be used for construction purposes.

In a similar ruling in the case of *M/s Konkan LNG Pvt Ltd⁷*, before the Maharashtra Appellate Authority, there was a dispute as to whether the construction of break water wall could be regarded as plant and machinery. The claim was rejected by treating it as a civil structure.

Interestingly, in the case of *Vikram Traders⁸*, the appellant being engaged in the business of renting of immovable property had sought advance ruling on eligibility of claim input tax credit on inward supplies for construction, repair and maintenance, alterations etc. The Authority had rejected the application on the ground that the judgment of *Safari Retreats (supra)* was pending before the Hon'ble Supreme Court and thus the issue remains sub judice.

Circulars under GST

Standard Operating Procedure (SOP) for verification of exporters selected for refund of IGST⁹

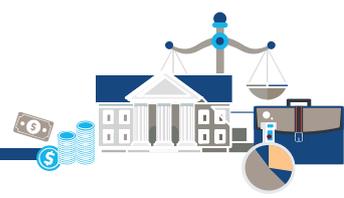
- CBIC vide a circular¹⁰ had clarified the SOP to be followed in respect of the exporter of goods who are selected for verification, to determine the eligibility of the refund claims filed by them. These exporters are required to submit the details in the specified format and the verification should be completed within the prescribed timelines (i.e. 14 days plus additional 7 days)
- The Maharashtra Government has now issued a circular to state that if the refund claim remains pending for more than one month from submission

⁷ MAH/AAAR/SS-RJ/14/2019-20 dated November 6, 2019 [2020-VIL-16-AAAR]

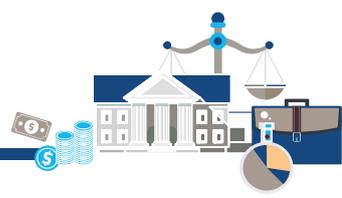
⁸ Order no. KAR/ADRG 08/2020 dated March 10, 2020 [2020-VIL-71-AAR]

⁹ Circular no 05T of 2020 dated March 19, 2020

¹⁰ Circular no. 131/1/2020-GST dated January 23, 2020



of the data, then the exporter can write a grievance to Additional Commissioner of State Tax-VAT 2, Mumbai by sending an email on adlgst2mazgaon@gmail.com and provide all the relevant data like GSTIN, IEC, Shipping Bill No., Port of Export and Jurisdictional Officer where the details in prescribed format had been submitted etc. Thereafter, the grievances would be examined by the Additional Commissioner of State Tax for resolution.





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