

# **EY Tax and Regulatory Alert**

July 2023

Prepared for ACMA

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3.	<b>M/s Tata AutoComp Systems Ltd (Advance Ruling No. GUJ/GAAR/R/2023/23)- Authority for Advance Ruling Gujarat</b>	<b>M/s Tata AutoComp Systems Ltd (Advance Ruling No. GUJ/GAAR/R/2023/23)- Authority for Advance Ruling Gujarat</b>  The AAR ruled that services by the way of non-air conditioned bus transport facility provided by Transport Service Provider and deduction of amount by the applicant from the salary of the employees who are availing canteen facility provided in the factory premises, would not be construed as "supply of service" by the applicant to its employees. Also, no GST is applicable on salary deducted in lieu of notice period from the full and final settlement of the employees leaving the company without completing or serving the complete notice period specified in the appointment letter
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## **Indirect Tax**

### **Part A - Key Indirect Tax updates**

#### **Goods and Services Tax**

**This section summarizes the regulatory updates under GST for the month of July 2023**

▶ **GSTN Advisory dated 07 July 2023 regarding functionality for geocoding of principal place of business** The Goods and Service Tax Network (GSTN) has issued the functionality for geocoding of principal place of business for all the States and Union Territories.

▶ Geocoding converts an address or description of a location into geographic coordinates.

▶ This feature has been introduced to ensure the accuracy of address details in GSTN records and streamline the address location and verification process.

▶ Taxpayers can find this functionality under the Services/Registration tab in the FO portal.

▶ This is a one-time activity, and once submitted, revision in the address is not allowed. Further, the geocoding link will not be visible on the portal once the geocoding details are submitted by taxpayers.

▶ This functionality is available for normal, composition, SEZ units, SEZ developers, ISD, and casual taxpayers who are active, cancelled, and suspended.

▶ **GSTN Advisory dated 24 July 2023 regarding functionality for e-Invoice Exemption**

▶ GSTN has enabled e-Invoice Exemption Declaration functionality on the e-Invoice portal.

▶ This functionality is specifically designed for taxpayers who are by default enabled for e-

invoicing but are exempted from implementing it under the Central Goods and Services Tax (CGST) Rules, 2017. Following are the salient features of the said functionality:

▶ The e-Invoice Exemption Declaration functionality is voluntary and can be accessed at the e-Invoice portal ( [www.einvoice.gst.gov.in](http://www.einvoice.gst.gov.in))

▶ This functionality is applicable to taxpayer who are exempted from e-Invoicing as per the provisions of the CGST Rules, 2017

▶ It is important to note that any declaration made using this functionality will not change the e-Invoice enablement status of the taxpayer.

▶ The responsibility to take decision vis-à-vis exemption with reference to various Notifications issued by the Government and report on the portal is of the person.

▶ **Circular No. 192 to 199-GST all dated 17 July 2023, pursuant to recommendations of 50th GST Council Meeting:**

▶ Recently, CBIC has issued Circular No. 192 to 199-GST all dated 17 July 2023, giving effect to recommendations of 50th GST Council Meeting. The gist of said circulars is captured as follows:

▶ **Interest on wrong availment and utilization of IGST credits**

▶ As per Section 50(3) of CGST Act, 2017, where a registered person has wrongly availed and utilized input tax credit (ITC), he is required to pay interest on such ITC in accordance with Rule 88B(3) of CGST Rules, 2017.

▶ In terms of Rule 88B(3), interest is calculated on amount of ITC wrongly availed and utilized for period starting from date of utilization of such wrongly availed ITC till the date of reversal or payment of such tax.

Further, the explanation to the said rule states that wrongly availed ITC shall be construed as utilized when the balance in the electronic credit

ledger (ECL) falls below the amount of ITC wrongly availed.

- ▶ In this regard, it has been clarified that, for the purpose of calculating interest, the total ITC available in ECL under the heads of integrated tax (IGST), central tax (CGST) and state tax (SGST) should be considered for determining whether the balance in ECL has fallen below the amount of wrongly availed ITC of IGST.
- ▶ Accordingly, there will be no interest liability on wrongly availed IGST credit when the total credit balance in ECL does not fall below such wrongly availed ITC even when the IGST credit balance individually falls below such wrongly availed ITC.
- ▶ However, credit of compensation cess available in ECL cannot be taken into account while considering the balance of ECL for the purpose of calculation of interest in respect of wrongly availed and utilized IGST, CGST or SGST credit.

#### ▶ **ITC mismatch between GSTR-3B and 2A**

- ▶ Vide Circular No. 183/15/2022-GST dated 27 December 2022, guidelines were issued to deal with the difference in ITC availed in GSTR-3B as compared to that detailed in GSTR-2A for financial year (FY) 2017-18 and 2018-19 was clarified
- ▶ It is to be noted that w.e.f. 9 October 2019, Rule 36(4) was inserted to restrict ITC on invoices or debit notes, the details of which were not appearing in GSTR-2A, over and above 20%/ 10%/ 5% (as the case may be) of the credit appearing in GSTR-2A, till 31 December 2021.
- ▶ It is now clarified that since rule 36(4) came into effect only from 9 October 2019, the applicability of guidelines shall be extended to the period from 1 April 2019 to 8 October 2019.
- ▶ In respect of period from 9 October 2019 to 31 December 2021, the said guidelines shall be applicable for verification of only the additional 20%/ 10%/ 5% ITC availed by the registered person.

- ▶ The above guidelines shall apply only to the ongoing proceedings in scrutiny/ audit/ investigation, adjudication, appeal etc., and not to the completed proceedings.

#### ▶ **TCS liability in case of multiple ECO**

- ▶ In the case of Open Network for Digital Commerce (ONDC Network) or other similar arrangements, there can be multiple e-commerce operators (ECOs) involved in a single transaction. In this context, clarity was sought as to which ECO should collect tax at source (TCS) and make other compliances under Section 52.
- ▶ In this regard, it has been clarified that the compliances under Section 52, including that of TCS, is to be done by the seller-side ECO who finally releases the payment to the supplier for supplies made through it.
- ▶ In a situation where one of the ECOs itself is the supplier, TCS is to be collected by the ECO who finally releases the payment to him.

#### ▶ **Supplies made under Warranty**

Circular has addressed different scenarios of warranty replacements and has clarified on the taxability and ITC as follows:

- ▶ The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods.
- ▶ As such, where the manufacturer provides free replacement of parts and/ or repair services to the customer during the warranty period, no further GST is chargeable on such replacement of parts and/ or repair services.

Further, the manufacturer is not required to reverse ITC in respect of the said replacement parts or on the repair services provided.

- ▶ Where the distributor replaces the parts under warranty either by using his stock or by

purchasing from a third party, and recovers the cost from the manufacturer, GST would be payable by the distributor on the supply by him to the manufacturer and the manufacturer would be entitled to avail ITC of the same.

- ▶ Where the manufacturer issues parts to the distributor for replacement during the warranty period without separately charging any consideration, no GST is payable by the manufacturer. Further, ITC is not required to be reversed in such case.
- ▶ In case where the distributor replaces the parts received from manufacturer under warranty and the manufacturer issues a credit note for the same, the tax liability may be adjusted by the manufacturer, subject to the condition that the distributor has reversed the ITC availed against the parts so replaced.
- ▶ Where the distributor provides repair service under a warranty to the customer without any consideration, but charges for the same to the manufacturer, there is a supply of service by the distributor and the manufacturer is the recipient of such service.
- ▶ If a customer enters into an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.
- ▶ However, in case where a customer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider depending on the nature of the contract.

#### ▶ **Taxability of shares held in a Subsidiary Company**

- ▶ For a transaction to be treated as supply of services, there must be a "supply" as defined under Section 7 of CGST Act.

- ▶ It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry "997171" in the scheme of classification of services mentioning "the services provided by holding companies, i.e., holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest."
- ▶ Therefore, the mere activity of holding of shares of subsidiary company by the holding company per se cannot be treated as supply of services and cannot be taxed under GST.

#### ▶ **Refund related issues**

- ▶ In terms of Circular No. 135/05/2020, refund of accumulated ITC under Section 54(3) is restricted to the credit as per those invoices, the details of which are uploaded by the supplier in GSTR-1 and are reflected in the GSTR-2A of the applicant.

In view of the insertion of clause (aa) in Section 16(2) and amendment in Rule 36(4) w.e.f. 1 January 2022, for tax periods January 2022 onwards, GSTR 2A will have to be read as GSTR-2B.

- ▶ An Explanation had been inserted in Rule 89(4) to provide that the value of goods exported shall be lower of the Free-on-Board value and the value declared in tax invoice or bill of supply.

Consequently, the same value of export goods, should be included while calculating "adjusted total turnover" in the formula.

- ▶ As per Rule 96A(1) a registered person availing the option to export without payment of tax is required to furnish a bond or a Letter of Undertaking (LUT), prior to export, binding himself to pay the tax due along with applicable interest within a period of:
  - ▶ 15 days after the expiry of three months if the goods are not exported out of India.

- ▶ 15 days after expiry of one year from the date of invoice for export of service, if the payment is not realized in the specified manner.

In this regard, it has been clarified that on actual export of goods or on realization of payment in case of export of services, the exporters would be entitled to refund of unutilized ITC / tax so paid earlier. However, no refund of interest paid in compliance of Rule 96A(1) shall be admissible.

#### ▶ **Issues pertaining to e-invoice**

- ▶ Exporters can now apply for online personal hearings Government Departments or establishments/ Government agencies/ local authorities/ PSUs, which are required to deduct tax at source (TDS) as per Section 51 are liable for compulsory registration in accordance with Section 24(vi) of the CGST Act.

- ▶ Therefore, such entities registered solely for the purpose of TDS are to be treated as registered persons as per Section 2(94).

- ▶ Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for supplies made to such entities under Rule 48(4).

#### ▶ **ISD and cross charge**

- ▶ In respect of common input services procured by the head office (HO) from a third party but attributable to both, HO and branch offices (BOs), HO has an option to distribute ITC in respect of the same by following input service distributor (ISD) mechanism or by issuing tax invoices to the concerned BOs.

- ▶ It is clarified that as per the present provisions of the GST law, it is not mandatory for the HO to distribute such ITC by following ISD mechanism.

- ▶ In case of internally generated services where full ITC is available to the BOs, it is clarified that any

value declared on the invoice by HO shall be deemed to be the open market value of such services as per second proviso to Rule 28.

- ▶ Further, in such cases, if HO has not issued a tax invoice the value of such services may be deemed to be declared as Nil and shall be treated as the open market value.

- ▶ It is also clarified that the salary cost of employees of the HO is not mandatorily required to be included while computing the taxable value of internally generated services, irrespective of whether full ITC is available to the BO or not.

## Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of July 2023

- ▶ **DGFT Public Notice No. 22/2023 dated: 13 July 2023** Extension has been granted for submission of installation certificate of capital goods till 31 December 2023, provided with payment of fine of INR 10,000/- per authorization (in addition to composition fee, wherever applicable). The relaxation in procedures is available subject to following conditions:
  - ▶ The authorization have been issued under [FTP 2009-14](#) and [FTP 2015-20](#)
  - ▶ The installation certificate was obtained within prescribed period but could not be submitted to the RA within time
  - ▶ The authorization holder has given bonafide reasons for delay in submission of installation certificate to RA
  - ▶ The subject EPCG authorization is not under investigation/ adjudicated by RA/Customs authority/ any other investigating agency

## **Direct Tax**

### **This section summarizes the regulatory updates under DT for the month of July 2023**

#### **1. Finance Ministry announces various relief measures on TCS on LRS remittances and overseas tour program package (OTPP)**

##### **Background**

##### **Liberalised Remittance Scheme (LRS)**

- ▶ The Liberalised Remittance Scheme (LRS) is an exchange control facility to allow resident individuals (including minors) to draw foreign exchange to remit funds outside India up to USD250,000 per financial year (FY) for any permissible capital/current account transactions. It also includes remittances within India (e.g., gifts/loans to non-resident Indians or investment through GIFT City units).
- ▶ Prior to 16 May 2023, it excluded use of ICC towards meeting expenses while on a visit outside India. However, it included similar expenses incurred on international debit card (IDC).

##### **TCS on LRS and OTPP imposed w.e.f. 1 October 2020**

- ▶ Effective 1 October 2020, the FA 2020 imposed obligation on authorized dealers (AD) to collect tax at source (TCS) from remitters @ 5% on LRS remittances outside India in excess of INR700,000 (0.5% in case of remittance for education purposes financed by loans from qualifying financial institutions). It also imposed similar obligation on OTPP sellers to collect TCS @ 5% from buyers but without the threshold limit of INR700,000. The object of such levy was to widen and deepen the tax net.
- ▶ For this purpose, the term OTPP is defined to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.
- ▶ The relevant TCS provision gives power to CBDT to issue guidelines, with the approval of the CG, to remove difficulties arising in giving effect to the said

provision. Every such guideline issued by CBDT shall be laid before both Houses of Parliament and shall be binding on the tax authority and on the person liable to collect TCS.

- ▶ Vide Notification No. 3878 (E) dated 17 August 2022, the CG notified that TCS provisions shall not apply to a person (being a buyer) who is a non-resident (NR) for income tax purposes and who does not have a permanent establishment (PE) in India. Thus, OTPP sellers are not required to collect TCS from NR buyers who do not have a PE in India.
- ▶ The TCS is an advance payment of tax which can be set off against final tax liability and/or claimed refund while filing return of income (ROI).

##### **Enhancement and widening of TCS on LRS and OTPP by FA 2023**

- ▶ The FA 2023 made following changes effective from 1 July 2023:
  - (a) increase in TCS rate from 5% to 20% for remittances other than for education/medical purposes
  - (b) removal of threshold of INR700,000 for remittances other than for education/medical purposes
  - (c) extension of TCS to LRS remittances within India.

- ▶ While moving the amendments to Finance Bill 2023, the finance minister clarified that the Reserve Bank of India (RBI) was requested to look into the non-inclusion of payments for foreign tours through a credit card under LRS to bring credit card payments for foreign tours within the ambit of LRS and TCS thereon.

##### **Inclusion of ICC expenses within LRS**

- ▶ On 16 May 2023, the RBI issued the Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023 (FEMA (CAT) Rules) to include use of ICC towards meeting expenses while on a visit outside India



within LRS. The Finance Ministry also issued clarifications on 18 May 2023 on this issue. However, as a measure of relief for small transactions and to avoid any procedural ambiguity, the Finance Ministry issued a further Press Release on 19 May 2023 announcing exclusion of ICC/IDC transactions up to INR700,000 from LRS.

▶ The key points/clarifications issued by the Finance Ministry were as follows:

▶ ICC transactions, while on visit outside India, are brought under LRS to bring parity with IDC transactions which were already covered under LRS.

▶ The lower TCS rate of 5% will apply for travel and incidental expenses related to education and medical treatment for which a detailed clarification will be issued separately

▶ Expenditure incurred on business visits by employees outside India are not covered by LRS and, hence, may be permitted by the AD without any limit, subject to verifying the bonafides.

▶ Even earlier, all current account transactions undertaken on ICC in India were covered by LRS and there is no change in this position. However, due to the FA 2023 amendments, such transactions will also be subject to TCS from 1 July 2023.

▶ Any payments by an individual using their ICC/IDC up to INR700,000 per FY will be excluded from LRS limits through necessary changes to FEMA (CAT) Rules and hence, will not attract any TCS. Existing beneficial TCS treatment for education and health payments will also be continued.

#### **Object of enhancement/expansion of TCS on LRS**

▶ As per the clarifications provided by Finance Ministry, during FY 2021-22, Indian residents remitted USD19.61 billion under LRS route

rising from USD12.68 billion in FY 2020-21. In FY 2022-23, it rose to more than USD24 billion of which overseas travel accounted for more than half.

▶ The Finance Ministry also clarified that the main reason for enhancement of TCS rate from 5% to 20% on LRS is that instances have come to notice where LRS payments are disproportionately high when compared to the disclosed incomes.

#### **Representations by stakeholders**

▶ Different stakeholders involved in LRS and OTPP made several representations to the Finance Ministry to roll back or dilute the scope of TCS on LRS and OTPP and/or provide clarifications on implementation issues.

▶ The ADs sought more time to change their information technology (IT) systems to implement the changes.

▶ The Indian sellers of OTPP represented that a steep 20% TCS on OTPP without any threshold limit will be detrimental to their business since the resident buyers will either directly book overseas travel tickets, hotels, etc. on standalone basis or book OTPP with foreign tour operators.

#### **Press Release dated 28 June 2023 announcing relief measures**

▶ In deference to the representations by various stakeholders, the Finance Ministry issued Press Release on 28 June 2023 announcing the decision to make following changes in TCS on LRS and OTPP:

##### **1. Restoration of threshold of INR700,000**

▶ There will be no change in TCS rate for all purposes under LRS and for OTPP, regardless of mode of payment, for amounts up to INR700,000 per individual per annum.

- ▶ Thus, for first LRS up to INR700,000, there shall be no TCS. Beyond this threshold, TCS shall apply as follows:

(a) 0.5% if remittance for education is financed by education loan

(b) 5% in case of remittance for education (other than (a) above)/medical treatment

(c) 20% for others

- ▶ However, for purchase of OTPP, TCS shall continue to apply @ 5% for the first INR700,000 per annum and 20% rate will apply for expenditure above this limit.

## **2. Restoration of exclusion of ICC transactions from LRS**

- ▶ To give adequate time to banks and credit card networks to put in place requisite IT based solutions, the CG has decided to postpone the inclusion of ICC transactions while being overseas, within LRS. This means that such transactions will not be counted as LRS and, hence, not attract TCS. Accordingly, the Press Release dated 19 May 2023 announcing exclusion from LRS of such transactions on ICC/IDC up to amount of INR700,000 also stands superseded. In other words, the position prevailing prior to 16 May 2023 is restored.

## **3. Deferral of effective date of higher TCS from 1 July 2023 to 1 October 2023**

- ▶ The increased TCS rate of 20% which was to come into effect from 1 July 2023 shall now come into effect from 1 October 2023 with modifications as indicated above. Till 30 September 2023, earlier TCS rates which prevailed prior to FA 2023 amendment shall continue to apply.
- ▶ The Press Release also provides the following table summarizing the old and new TCS rates as follows:

(1) Nature of payment	(2) Earlier rate before FA 2023 amendment –Applicable till 30 September 2023	(3) New rate w.e.f. 1 October 2023
LRS for education financed by loan	<ul style="list-style-type: none"> <li>▶ NIL up to INR700,000</li> <li>▶ 0.5% above INR700,000</li> </ul>	<ul style="list-style-type: none"> <li>▶ NIL up to INR700,000</li> <li>▶ 0.5% above INR700,000</li> </ul>
LRS for medical treatment/education (other than financed by loan)	<ul style="list-style-type: none"> <li>▶ NIL up to INR700,000</li> <li>▶ 0.5% above INR700,000</li> </ul>	<ul style="list-style-type: none"> <li>▶ NIL up to INR700,000</li> <li>▶ 5% above INR700,000</li> </ul>
LRS for other purposes	<ul style="list-style-type: none"> <li>▶ NIL up to INR700,000</li> <li>▶ 5% above INR700,000</li> </ul>	<ul style="list-style-type: none"> <li>▶ NIL up to INR700,000</li> <li>▶ 20% above INR700,000</li> </ul>
Purchase of OTP	<ul style="list-style-type: none"> <li>▶ 5% (without threshold)</li> </ul>	<ul style="list-style-type: none"> <li>▶ 5% till INR700,000</li> <li>▶ 20% thereafter</li> </ul>

- ▶ The Press Release also stated that necessary legislative changes/notifications and clarifications shall be proposed/issued in due course.

**CBDT Circular No. 10 dated 30 June 2023 providing guidelines for removal of difficulties**

► To remove difficulties in giving effect to provisions of TCS on LRS and OTPP, as announced in Press Release dated 28 June 2023, the CBDT has issued following guidelines with the approval of the CG:

1. No TCS shall be applicable on expenditure incurred through ICC while being overseas till further order.

2. The threshold of INR700,000 is a combined threshold for applicability of TCS on LRS irrespective of the purpose of remittance. Such was the position prior to FA 2023 amendment which will prevail till 30 September 2023.

Illustratively, a remittance of INR700,000 under LRS is made in a FY for education purpose and other remittance in the same FY of INR700,000 is made for medical treatment and INR700,000 for other purposes. In such case, first remittance of INR700,000 shall not be liable for TCS. However, subsequent remittance of INR1,400,000 under LRS shall be liable for TCS in accordance with applicable TCS rates as per the table provided in Press Release (refer preceding para).

3. The threshold of INR700,000 is for whole of FY 2023-24. If this threshold has already been exhausted, all subsequent remittances under LRS, whether in the first half or second half of FY 2023-24, would be liable for TCS at applicable rate. ►

4. The threshold of INR700,000 is qua remitter and not qua AD. Since the facility to provide real time update of LRS remittance is still under development by RBI, it is clarified that the details of earlier LRS remittances by the remitter during the FY may be

taken by the AD through an undertaking at the time of remittance. If the AD correctly collects TCS based on information given in this undertaking, the AD will not be treated as “assessee-in-default”. However, for any false information in the undertaking, appropriate action may be taken against the remitter under the ITL. It is further clarified that the same methodology of taking undertaking from the buyer of OTPP may be followed by the seller of such OTPP.

5. The thresholds of INR700,000 apply independently for LRS and OTPP. For LRS, the threshold of INR700,000 applies to make TCS applicable. For OTPP, the threshold of INR700,000 applies to determine the applicable TCS rate as 5% or 20%.

6. In case of purchase of OTPP from a foreign tour operator for which money is remitted under LRS, the TCS provision for purchase of OTPP shall apply and not TCS provision for LRS remittance. Since the threshold of INR700,000 for NIL TCS does not apply for OTPP, TCS is applicable and TCS is required to be collected by the seller. Illustratively, if remittance under LRS for purchase of OTPP from a foreign tour operator is INR300,000 and there is no other remittance under LRS or for OTPP during the FY, the TCS shall be required to be collected at 5% and should be made by the seller.

7. As per RBI clarification, remittance for the purposes of medical treatment shall include:

(i) Remittance for purchase of tickets of the person to be treated medically overseas (and his/her attendant) for commuting between India and the overseas destination;

(ii) His/her medical expense; and

(iii) Other day to day expenses required for such purpose

► As per RBI clarification, Code S0304 (under the Purpose Group Name “Travel”) in RBI Master Direction for LRS, pertains to travel for medical treatment and covers the transactions which are related to health services acquired by residents travelling abroad for medical reasons, which includes medical services, other healthcare, food, accommodation and local transport transactions.

► In addition, Code S1108 (under the Purpose Group Name “Personal, Cultural & Recreational services”) covers transactions for health services rendered remotely or on-site (that is no travel by service recipient is involved). This covers services from hospitals, doctors, nurses, paramedical and similar services etc.

- ▶ TCS provision for medical treatment would apply when remittance is under Code S0304 or S1108.
- ▶ Similarly, remittance for purpose of education shall include:
  - (iv) Remittance for purchase of tickets of the person undertaking study overseas for commuting between India and the overseas destination;
  - (v) The tuition and other fees to be paid to educational institute; and
  - (vi) Other day to day expenses required for undertaking such study
- ▶ As per RBI clarification, Code S0305 (under the Purpose Group Name "Travel") in RBI Master Direction for LRS, pertains to travel for education (including fees, hostel expenses etc.) and covers education related services such as tuition, food, accommodation, local transport and health services acquired by resident students while residing overseas.
- ▶ In addition, Code S1107 (under the Purpose Group Name "Personal, Cultural & Recreational services") covers transactions for education (e.g., fees for correspondence courses abroad) where the person receiving education does not travel overseas.
- ▶ TCS provision for education would apply when remittance is under Code S0305 or S1107.

8. Considering the definition of OTPP, it is clarified that purchase of only international travel ticket or purchase of only hotel accommodation, by itself is not covered within the definition of OTPP. To qualify as OTPP, the package should include at least two of the following:

- (i) International travel ticket,
- (ii) Hotel accommodation (with or without food)/boarding/lodging,
- (iii) Any other expenditure of similar nature or in relation thereto

## ▶ **Part B- Case Laws**

### **Goods and Service Tax**

#### **1. M/s Om Trading v. State of Gujarat (R/ Special Civil Application No. 8990 of 2023)**

**Subject Matter:** The Hon'ble High Court held that the SCN and cancellation order are invalid because it did not provide sufficient details, did not provide any reasons to the taxpayers and lacked clarity.

#### **Background and Facts of the case**

- ▶ M/s. Om Trading ("Petitioner") is engaged in the business of trading in base oil and they are duly registered under the Goods and Services Tax Act, 2017.
- ▶ The Petitioner used to deal in purchase and sale of goods in normal course of business and all the transactions were duly reflecting in GST returns, however Petitioner received show cause notice (SCN) from the department alleging that the GST registration was obtained by fraud, wilful misstatement, or suppression of facts. Subsequently, the order for cancellation of registration was issued by the department.

#### **Discussion and Findings of the Case**

- ▶ The Petitioner submitted that they were not logging onto the GST portal for tracking the notices. Also, they did not receive any documents in support of the notice issued.
- ▶ Reliance was placed upon the case of Aggrawal Dyeing and Printing Works Vs. State of Gujarat & Ors passed in Special Civil Application No. 18860 of 2021 decided on 24.02.2022 and allied matters.
- ▶ The HC held that the SCN and cancellation order are invalid because it did not provide sufficient details, did not provide any reasons to the taxpayers and lacked clarity.

### **Judgement**

- ▶ The HC quashed and set aside both the SCN and the cancellation order and directed the authorities to issue a fresh SCN with detailed reasons and restore the taxpayer's registration.

#### **2. M/s. Vedmutha Electricals India Private Limited (AAR No. 05/AP/GST/2023 dated 26 May 2023)- Authority For Advance Ruling Andhra Pradesh**

**Subject Matter:** The Authority for Advance Ruling (AAR) ruled that a taxpayer is eligible to claim full credit for GST charged in the tax invoice, even if the supplier later issues a commercial/financial credit note for part of the invoice.

#### **Background and Facts of the case**

- ▶ M/s. Vedmutha Electricals India Private Limited hereinafter referred to as "the Applicant" or is engaged in business of supply of various electronic items and is registered under the Andhra Pradesh Goods and Services Tax Act, 2017.
- ▶ The Applicant purchased various electronic items from the Suppliers and paid the consideration to them. Further, Suppliers reported the relevant sales in their GSTR-1 and GSTR-3B along with payment of GST liability.
- ▶ The applicant has received various incentives, in the nature of "discounts" from its supplier, viz. Turnover Discount, Quantity Discount, Cash Discounts, Additional Scheme Discounts, all these discounts are in the form of after sales discounts.
- ▶ For the above-mentioned discounts, the supplier has raised financial/ commercial credit note without GST for accounting purpose only and doesn't reduce the output tax liability in relation to such commercial credit notes.
- ▶ In this regard, the Applicant sought advance ruling on the following questions:

- 1) *Whether the applicant is duly eligible to take full credit of GST Charge in Tax invoice issued by supplier and GST was paid by such supplier to government even though later commercial/ financial credit note is issued for part amount of invoice?*
- 2) *Whether the applicant is required to reverse the ITC proportionately to the extent of financial/ commercial credit note issued by supplier.*

### **Discussions and findings of the case**

- ▶ The Applicant submitted that all the conditions as prescribed under Section 16 of the Central Goods and Services Tax ('CGST') Act, 2017 for claiming the input tax credit has been fulfilled.
- ▶ The Applicant further submitted that the discounts are not recorded in the invoice issued in respect of such supply. Therefore, when discounts are offered after the supply has been affected, it must be established in terms of an agreement entered into at or before the time of such supply.
- ▶ The Applicant further submitted that conjoint reading of Section 15 and 16 of CGST Act, 2017 leads to a conclusion that Applicant is eligible to take full ITC charged on the supply of goods or services or both.
- ▶ The AAR clarified that there is no need to reverse the ITC proportionately to the extent of the financial/commercial credit note, as long as the taxpayer pays the full value of the supply.
- ▶ However, AAR highlighted that the taxpayers shall not use financial credit notes as a means to transfer ITC fraudulently to taxpayers.

### **Ruling**

- ▶ The AAR ruled that a taxpayer is eligible to claim full credit for GST charged in the tax invoice, even if the supplier later issues a commercial/financial credit note for part of the invoice.

### **3. M/s Tata AutoComp Systems Ltd (Advance Ruling No. GUJ/GAAR/R/2023/23)- Authority for Advance Ruling Gujarat**

**Subject Matter:** The AAR ruled that services by the way of non-air conditioned bus transport facility provided by Transport Service Provider and deduction of amount by the applicant from the salary of the employees who are availing canteen facility provided in the factory premises, would not be construed as "supply of service" by the applicant to its employees. Also, no GST is applicable on salary deducted in lieu of notice period from the full and final settlement of the employees leaving the company without completing or serving the complete notice period specified in the appointment letter.

### **Background and Facts of the case**

- ▶ M/s Tata AutoComp Systems Ltd hereinafter referred as "the Applicant" is engaged in the manufacture, sale and trading of automotive parts and provides products and services to the Indian and global automotive OEMs as well as other Tier 1 suppliers.
- ▶ The Applicant has engaged Canteen Service Provider ("CSP") and Transport Service Provider ("TSP") who provide food and transportation facilities to the applicant's employees.
- ▶ The said canteen facility is provided at a nominal rate in the course of employment in pursuance of the Factory Act and restricted to employees of the Company.
- ▶ Applicant has further entered into a contract with TSP to provide transportation facility to its employees between the factory premises & the residence in non-air conditioned buses having capacity of more than 13 persons. This facility is offered only to employees of the Company.
- ▶ Further, the Applicant deducts an amount equivalent to salary for the tenure of notice period not served as a compensation for the breach of the terms of the employment agreement by the employees in accordance with the appointment letter. The said amount is deducted to discourage the employees from serving a shorter period

▶ In this regard, the Applicant sought advance ruling on the following questions:

1.a *Whether the deduction of nominal amount by the applicant from the salary of the employees who are availing facility of food provided in the factory premises would be considered as a 'supply of service' by the applicant under the provisions of section 7 of CGST & GGST?*

1.b *In case answer to above is yes, whether GST is applicable on the nominal amount to be deducted from the salaries of employees?*

1.c *Whether ITC is available to the applicant on GST charged by the CSP for providing the catering services?*

2.a *Whether the services by the way of non air conditioner bus transportation facility provided by transport service providers would be construed as 'supply' of service' by the applicant to its employees under the provisions of section 7 of CGST and GGST?*

2.b *Whether ITC is available to the applicant on GST charged by the transport service providers for providing the non air conditioned bus transportation services?*

3. *Whether GST is applicable on salary deducted in lieu of notice period from the full and final settlement of the employees leaving the company without completing or serving the complete notice period as specified in the appointment letter?*

### **Discussions and Findings of the Case**

▶ In respect to Canteen Facility, the Applicant submitted as follows:

▶ The Applicant is mandated vide section 46 of the Factories Act, 1948 to provide canteen

facility to its employees within the factory premises;

▶ In accordance with Circular No. 172/04/2022-GST dated 6 July 2022, it was clarified that perquisites provided by the 'employer' to the 'employee' in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee;

▶ Further, the aforesaid circular also clarified that the proviso after Section 17(5)(b)(iii) of the CGST Act is applicable to the whole of Section 17(5)(b) of the CGST Act, 2017.

▶ The Applicant made the below mentioned contentions in relation to Transport Facility provided to Employees:

▶ The Applicant contented that since they are situated in a remote location outside city limits where transport is scarce, for the convenience and safety of employees to reach/leave the factory & ensure that there is no disruption to business they have engaged contractual TSP to provide transportation services to its employees;

▶ As mentioned in the aforesaid circular, it is clarified that perquisites provided by the 'employer' to the 'employee' in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST;

▶ The AAR observed that at factually there is no dispute basis the sample copy of the employment agreement and a copy of Canteen and Transport policy of Tata AutoComp Systems Ltd shared by the Company. 4. Further, as per the agreement entered with TSP, it was noted that the buses hired are having a capacity of more than 13 seats.

▶ In relation to notice pay recovery, the Applicant was of the view that deduction of the amount equivalent to salary for the tenure of notice period not served as a compensation for the breach of the terms of the employment agreement by the employees in



accordance with the appointment letter is not leviable to GST.

- ▶ The AAR observed that said issue of notice pay recovery was clarified by CBIC vide Circular no.178/10/2022-GST dated 3 August 2022, wherein it was clarified that the amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

### **Ruling**

- ▶ The AAR held that the deduction made by the applicant from the employees who are availing food in the factory would not be considered as a “supply” under the provisions of section 7 of the CGST Act, 2017.
- ▶ Further, with respect to ITC availability to the Company on GST charged by the CSP for providing the catering services, it was held that ITC will be available to the Company in respect of food and beverages as canteen facility is obligatorily to be provided under the Factories Act, 1948 as far as provision of canteen service for employees other than contract employees is concerned and it will be restricted to the extent of cost borne by the Applicant only.
- ▶ The services by the way of non air conditioned bus transport facility provided by TSPs would not be construed as “supply of service” by the Applicant to its employees under the provisions of Section 7 of CGST Act, 2017.
- ▶ It was further held that ITC is available to the Applicant on GST charged by the TSPs for providing the non air conditioned bus transport services however subject to the condition that the buses hired are more than 13 seater. ITC on the above is restricted to the extent of the cost borne by the applicant for providing transportation services to its employees.
- ▶ It was held that no GST is applicable on salary deducted in lieu of notice period from the full and final settlement of the employees leaving the company without completing or serving the complete notice period as specified in the appointment letter.

### **4. M/s Jyothi Ratna Anumolu (TS-314-HC(AP)-2023-GST)**

**Subject Matter:** The Hon’ble High Court condoned the delay in filing appeal against the refund rejection order passed by the adjudicating authorities

### **Background and Facts of the case**

- ▶ M/s Jyothi Ratna Anumolu hereinafter referred as ‘the Petitioner’ has filed an appeal against the order passed by the authorities wherein ITC has been disallowed by wrongly assessing the tax due for the period 2018-19.
- ▶ The appeal was rejected due to the technical ground that the same has been filed with uncondonable delay of 120 days.
- ▶ Thereafter, the petitioner has filed writ application and requested to condone the delay as the Appellate Tribunal has not been yet been constituted.

### **Discussions and findings of the case**

- ▶ The Hon’ble High Court has considered the contentions of the Company to condone the delay in filing appeal against the refund rejection order passed by the authorities.

The delay has been condoned in the similar matter by this Court due to non-constitution of the Appellate Tribunal under the provisions of Andhra Pradesh Goods & Services Tax Act, 2017 in the Writ Petition No. 9608 of 2023.

### **Judgement**

- ▶ The Hon’ble High Court has condoned the delay of 120 days in filing appeal in view of the fact that the Appellate Tribunal has not been constituted under the provisions of the Act and direction has been given to appellate authority for considering the Appeal filed by the Company.

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