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Debatable issues under GST

Supply

Registrations

Valuation

Place of Supply

ITC

Refunds



Documents

Returns

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Classification

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Part 1

**Common
Mistakes**



Part 2

**Interpretation
of Law is a Art
and not science?**

Transitional
Credit

ITC on
construction
of immovable
property

Directors
remuneration

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Part 1

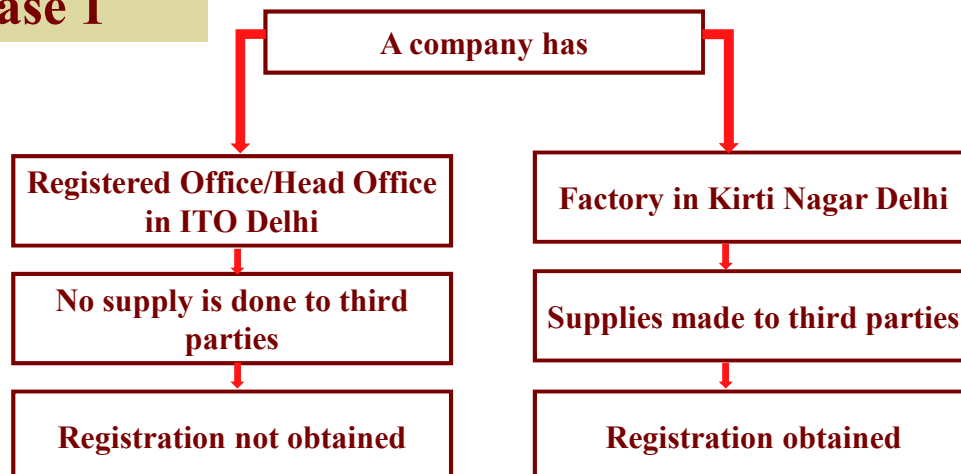
Common Mistakes

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i. Registration not obtained for “registered offices” or “head offices”

Case 1

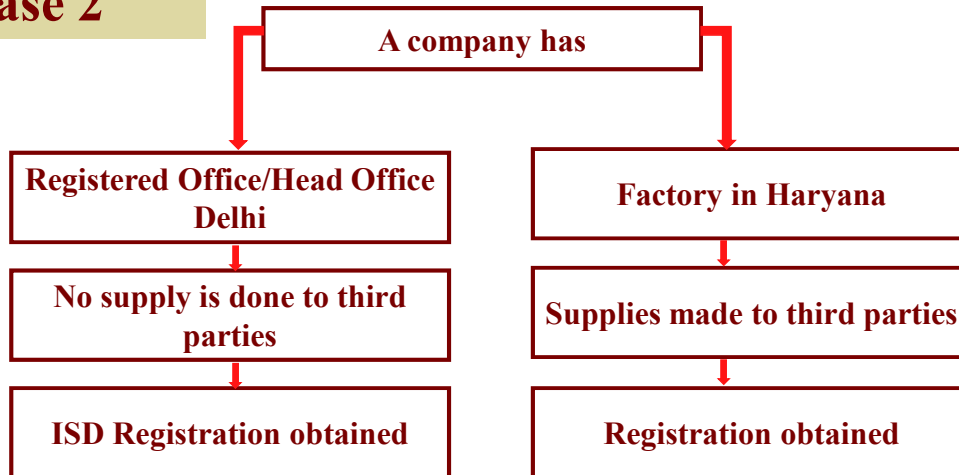


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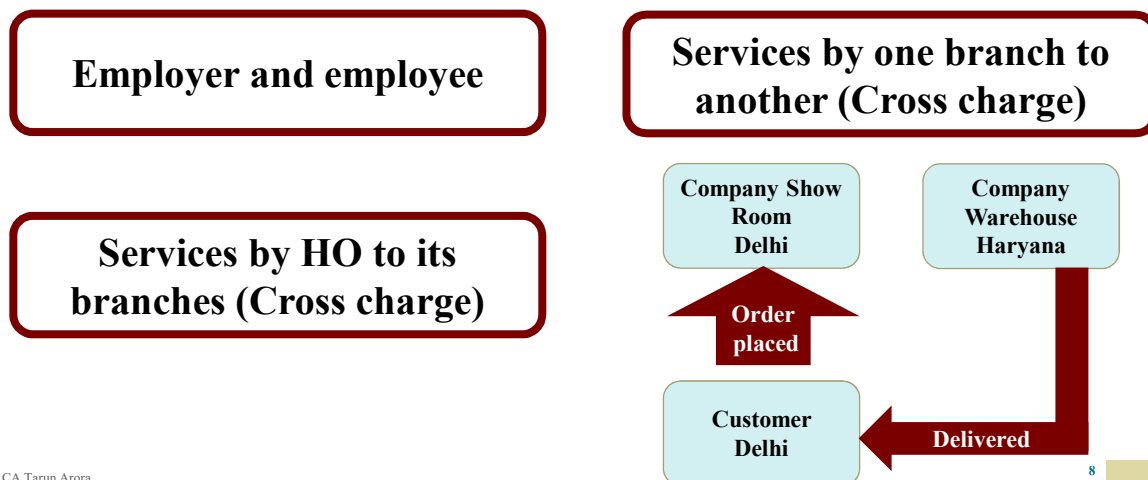
Case 2



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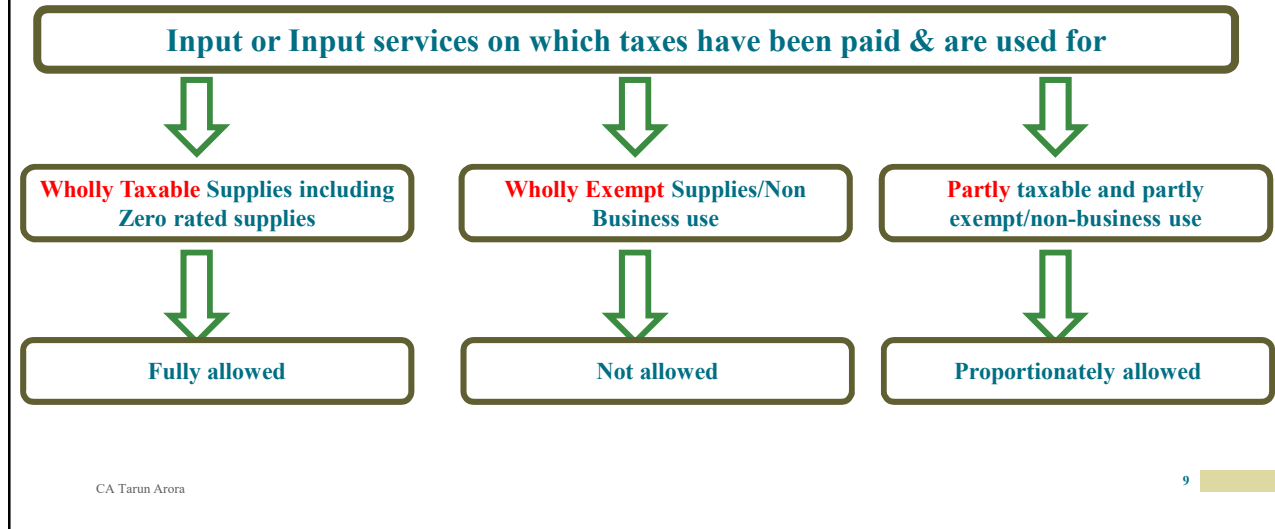
ii. Related party transactions not being identified including that of cross charge



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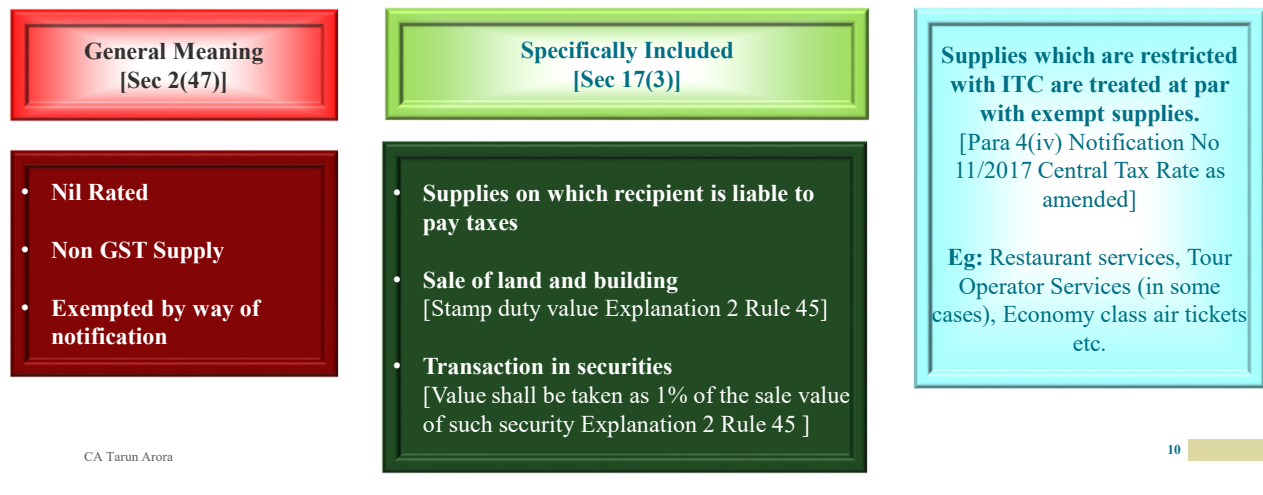
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iii. Reversal of ITC on account of exempt supplies not being done [Rule 42 and Rule 43 not being applied]

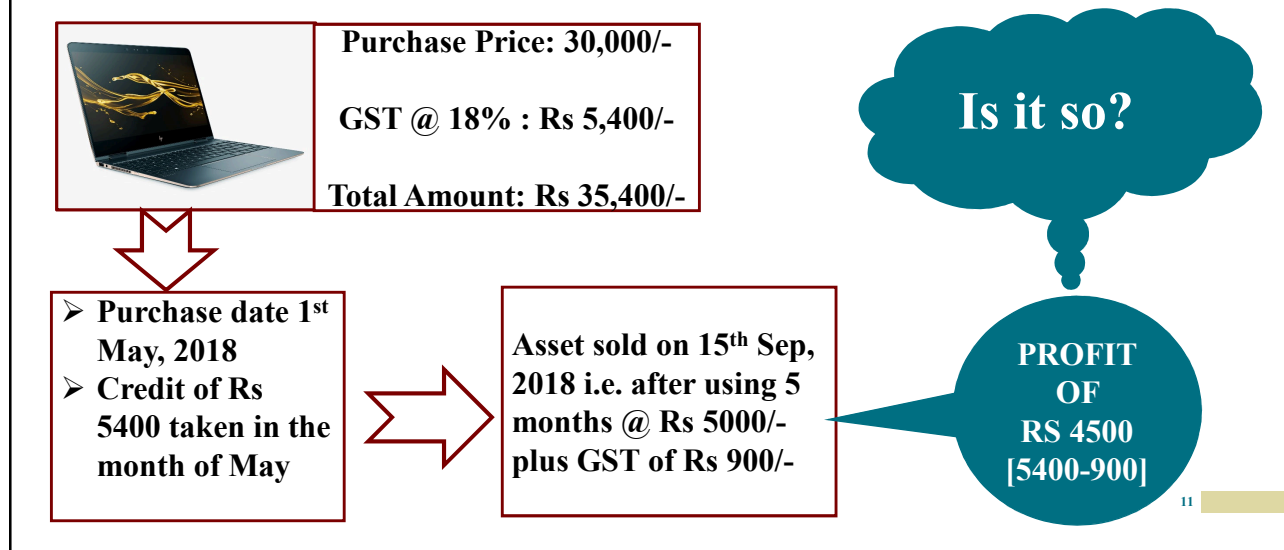


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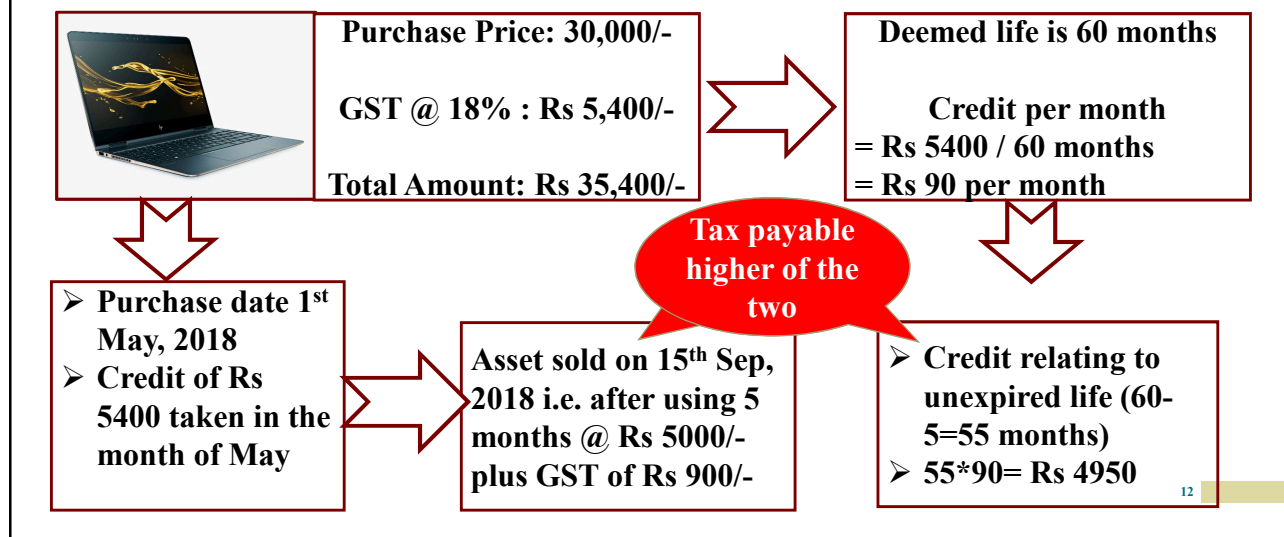
Value of exempt supply for Rule 42 and Rule 43



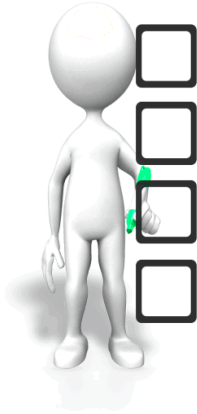
iv. Treatment at the time of disposal of capital goods



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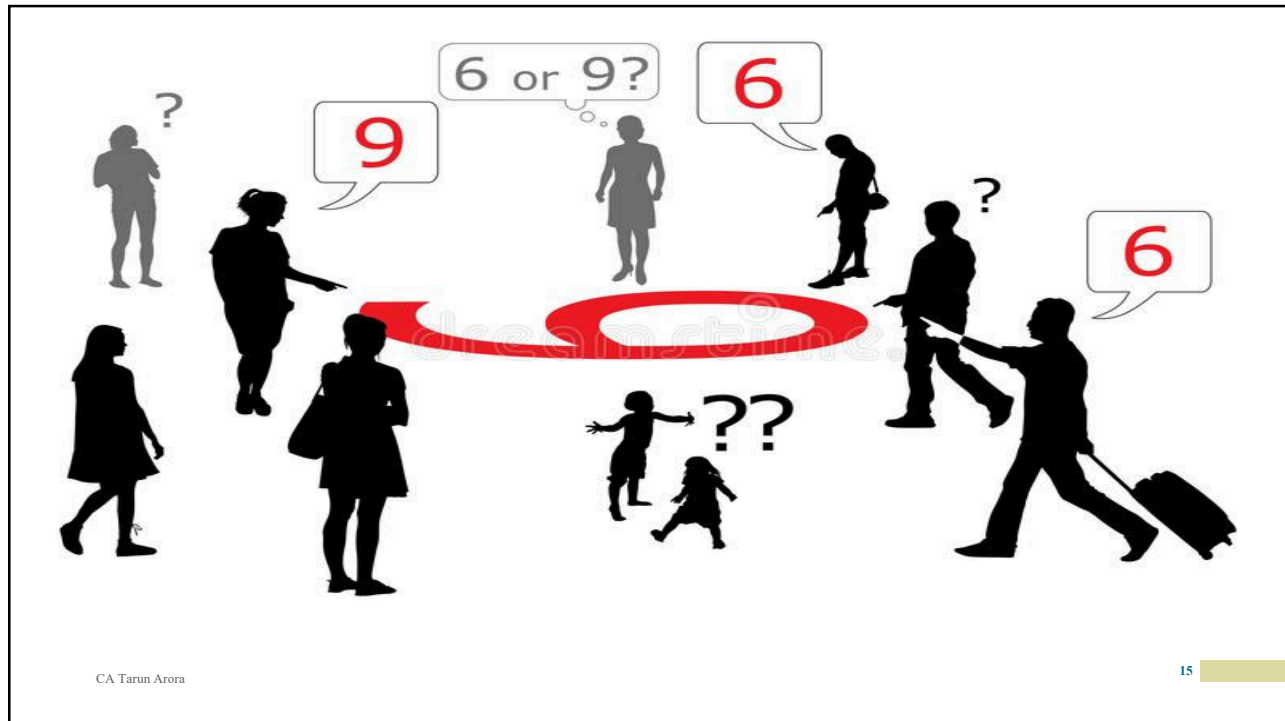
v. Other common mistakes



1. Documents, accounts and records not properly maintained.
2. Reversal of ITC for non-payment to supplier.
3. Not paying GST on receipt of advance of services.
4. RCM liabilities not being discharged properly
5. Tax is payable on suppliers providing intermediary services

Part 2

**Interpretation of Law is an Art
and not science?**



Case 1

ITC on construction of immovable properties



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Ineligible Credits

Input Tax Credit shall not be available in respect of the following, namely:

Sec 17(5)(c)

Works contract services when supplied for

except where it is an input service for further supply of works contract service



Construction of an immovable property (other than plant & machinery)

Sec 17(5)(d)

Goods or services or both received for

on his own account including when such goods or services or both are used in the course or furtherance of business

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Safari Retreats (P) Ltd vs Chief Commissioner of CGST

Honorable High Court of Orissa

Facts of the Case

1. Petitioners are mainly carrying on business activity of constructing shopping malls for the purpose of letting out of the same.
2. Huge quantities of inputs, input services and capital goods are purchased for the construction these malls.
3. After completion of one of the mall the tenants approached the revenue authorities to check whether ITC can be used for payment of output tax, payable on rental income from letting out of the shops in mall.
4. The revenue authorities referred to Sec 17(5)(d) and said ITC was not available.

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Safari Retreats (P) Ltd vs Chief Commissioner of CGST

Honorable High Court of Orissa

Observation and Judgment

1. The very purpose of the Act is to make the uniform provision for levy collection of tax, intra state supply of goods and services both central or State and to prevent multi taxation. [Para 19]
2. While considering the provisions of Section 17(5)(d), the narrow construction of interpretation put forward by the Department is frustrating the very objective of the Act. [Para 19].
3. If the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST, which is required to pay under Section 17(5)(d) of the CGST Act. [Para 20]

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Case 2

ITC on Directors Remuneration

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Remuneration paid to directors attracts GST

Advance Ruling Authority Rajasthan

in the case of Clay Crafts India Pvt. Ltd

vide advance ruling no. RAJ/AAR/2019-20/33 dated 20-02-2020

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Extract of Notification No 13/2017 CT Rate

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
6	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.

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Extract of Schedule III

SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS
NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.

Charge under GST – Sec 9

Supply of goods or services or both

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Understanding the phrase

“Services supplied by a director of a company or a body corporate to the said company or the body corporate.”

1. Mr. Mukesh Ambani is using Jio number and is paying charges for the same. Whether the above service by Jio company is service to a director or service to a consumer?
2. Indane CEO uses Indane cylinders for his household purposes in this case whether the transaction by Indane is supply to a director or supply to a consumer?
3. Mr. A is owner of a big commercial space, assuming it has 10 offices and he has let out 10 offices to different companies and one of the office is given to a company in which he is a Director. Whether in this case it is a supply by a Landlord to a company or Director to a company?
4. Mr. X a CA of a company has reached the level of CFO and now to give him a promotion he was inducted in the board of directors and his role has not changed whether merely because he is Director now will he not be considered as an employee of the company.

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Summarized conclusion of **presenter** only

- A. No GST on salary to any person including director (except non-executive director) (Sec 9 read with Sec 7 and Schedule 3)
- B. Forward charge in case director is providing any service in the capacity other than director.
- C. RCM on all amount paid to director except A and B above paid to him which is in relation to his directorship example sitting fees, professional charges for professional director and like items.

Similar view has been taken by Advance Ruling Authority Karnataka in the case of Anil Kumar Agarwal

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Case 3

Issue of Transitional Credits

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Honorable Delhi High Court in the case of Brand Equity & Others

Four major observations

- (a) **Technical difficulty is a very broad term** and shall include difficulty at the end of the taxpayer also.
- (b) **Sec 140(1) does not provide any time limit** for claiming transitional credits, accordingly time limit prescribed in **Rule 117 is only directory**.
- (c) **Transitional Credits are vested property of the assessee under Article 300A of the Constitution and Rule 117** which is merely procedural and directory cannot take away the vested property.
- (d) Also the **right to avail vested credits cannot be in perpetuity** and limitations as per The Limitation Act, 1963 would apply.

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Amendment in Sec 140

- **Sec 128 of the Finance Act, 2020 is made applicable by notification no 43/2020 CGST Non Rate dated 16th May, 2020.**
- **The amendment provides adding the words “within such time and” in Sec 140 of the CGST Act, 2017.**
- **Finance Act, 2020 has provided that the amendment shall be retrospective wef 1st July, 2020.**
- **Objective - To ensure time limit in Rule 117 has an enabling provision.**

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What after amendment in Sec 140

Case 1: Credit claimed under a High Court order, wherein the benefit was granted due to technical glitches on the GST portal.

Case 2: Credit claimed under a High Court order, wherein the benefit was granted due to Rule 117 being ultra vires the Act.

Case 4

Other important issues

Other important issues

1. **What is the fate of amendments-**
 - **Change in time period of refund applications pertaining to inverted duty structure**
 - **Interest payments**
 - **And many more**
2. **Whether tax paid in other states is eligible ITC in home state?**
3. **Whether credit of Medical and Health Insurance post corona?**
4. **Whether credit of expenses on CSR activities or Corona Activities available?**

Part 3

Other Important/interesting judgments/rulings

HONORABLE JHARKHAND HIGH COURT

IN THE CASE OF

Mahadeo Construction Co. v. Union of India

Issue dealt- Recovery of Interest amount by enforcing Sec 79 without adjudication

Hon' Jharkhand HC Mahadeo - Construction Co. v. Union of India Issue dealt- Recovery of Interest amount by enforcing Sec 79 without adjudication

Crux

No recovery proceeding of interest amount under Sec 79 without its adjudication.

Whether **interest is automatic**?

- Interest is automatic but it requires arithmetical calculation (referred Sec 50(2) and Sec 50(3)). If amount is disputed adjudication is must
- Referred to Hon' Madras HC judgement in the case of Daejung Moparts Pvt. Ltd.

Meaning of the term used Sec 73/74 - **tax not paid**

Tax not paid includes tax not paid within the stipulated time period. Also referred to its judgement in case of **Godavari Commodities Limited.**

Meaning of the term used Sec 79 – **amount payable**

Even though interest is automatic but if the assessee has disputed the amount or its levy the amount is not payable until adjudicated.

AUTHORITY FOR ADVANCE RULING - WEST BENGAL**IN THE CASE OF****OPTM HEALTH CARE (P.) LTD****Issue dealt- Exemption under healthcare services****AAR - OPTM HEALTH CARE (P.) LTD****Issue dealt- Exemption under healthcare services**Facts of the
CaseApplicant provides Phytotherapy to cure osteoarthritis
and disorders of similar nature.

Question asked

Whether the supply made is covered under Health Care
services ie. s.no 74 of 12/2017 CT Rate (Exemption
Notification)Applicant
submissionIt's a health care treatment through ayurvedic medicines
and accordingly covered under s.no 74 of exemption
notification.

AAR - OPTM HEALTH CARE (P.) LTD

Issue dealt- Exemption under healthcare services

Authority Findings

Extracts of Para 4.6 If the preparations applied are manufactured exclusively in accordance with the formulae described in any authoritative book of Ayurveda specified in the First Schedule of the Drugs and Cosmetics Act, 1940, for use in the diagnose, treatment, mitigation or prevention of specific disease or disorder, they can be called ayurvedic medicine [refer to section 3 (9) of Drugs and Cosmetics Act, 1940] and the treatment provided may be considered a recognised system of medicine in India.

Extracts from Para 4.7 The Applicant's submissions do not clarify or claim that-

- its plant-based preparations are manufactured exclusively in accordance with the formulae
- the persons administering the plant-based preparations are 'authorised medical practitioners' in Ayurveda within the meaning of Para No. 2 (k) of the Exemption Notification.
- these persons possess the medical qualification included in the Second Schedule of the Indian Medicine Central Council Act, 1970 and registered under the said Act as medical practitioners.

Authority Ruling

The Applicant's supply is not exempt under Entry No. 74 of the Exemption Notification.

AAR - OPTM HEALTH CARE (P.) LTD

Issue dealt- Exemption under healthcare services

Extract of Notification 12/2017 CT Rate

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
74	Heading 9993	Services by way of—		
(a)		health care services by a clinical establishment, an authorised medical practitioner or para-medics;		
(b)		services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.	Nil	Nil

"clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

"health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

"authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

AUTHORITY FOR ADVANCE RULING - KARNATAKA

IN THE CASE OF

T & D Electricals

Issue dealt- Registration for Works contractor

AAR - T & D Electricals

Issue dealt- Registration in case of works contractors

Questions asked

1. Whether separate registration is required in Karnataka state ? If yes, whether agreement would suffice as address proof since nothing else is with the assessee and service recipient will not provide any other proof?
2. If registration is not required in Karnataka state and if we purchase goods from dealer of Rajasthan and want to ship goods directly from the premises of dealer of Rajasthan to township at Karnataka then whether CGST & SGST would be charged from us or IGST by the dealer of Rajasthan ?

If registration is not required in Karnataka state and if we purchase goods from dealer of Karnataka to use the goods at township at Karnataka then whether IGST would be charged from us or CGST & SGST by the dealer of Karnataka?
3. What documents would be required with transporter to transit/ship material at Karnataka site from dealer/supplier of Rajasthan and in case of dealer/supplier is of Karnataka. Advance ruling may kindly be issued in case of registration is required or not required in both the situation?

Ruling

Not required

Said available through bill to ship to model

Not applicable

Part 4

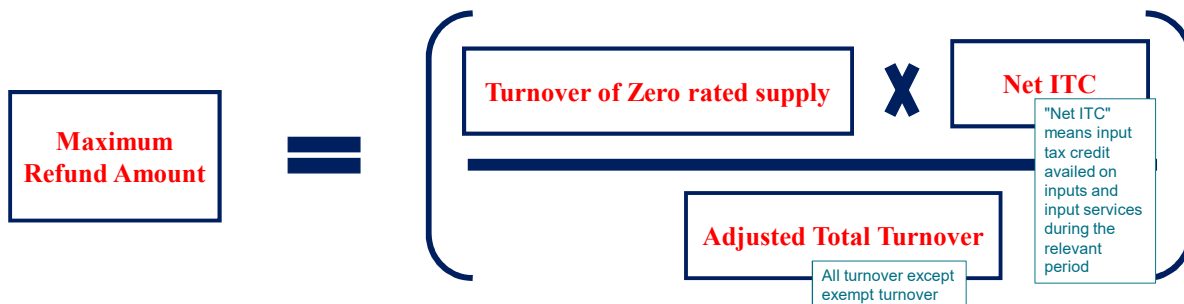
Major amendment in refund relating to Zero-rated supplies

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Refund amount calculation

Rule 89(4)



Turnover of zero-rated supply of goods means

- the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or
- **the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier,**
- whichever is less

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Export of goods or services

96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised.

(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the **sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period,** failing which the amount refunded shall be recovered in accordance with the provisions of [section 73](#) or [74](#) of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under [section 50](#):

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), **but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.**

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.]

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1. Inserted Vide :-[Notification No. 16/2020-Central Tax Dt.23.03.2020](#) [Para11 (a)]

THANK YOU!

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