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TAX JURISPRUDENCE

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EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER DIRECT AND INDIRECT TAXES

We are pleased to draw your attention to following important decisions which might be useful for you to take call on tax position.

Case & Citation	Issue Involved	Decision
Direct Tax		
Amplitude Inc. [TS-788-ITAT-2026(DEL)]	Whether subscription receipts earned by Amplitude Inc. from Indian customers for providing product analytics services under a cloud-based SaaS model are taxable in India as royalty/equipment royalty or as Fees for Technical Services/Fees for Included Services under the Income-tax Act, 1961 and Article 12 of the India-USA DTAA.	The Hon'ble Tribunal held that the receipts are not taxable as royalty/equipment royalty or FTS/FIS. The customers merely accessed standard automated SaaS services and did not obtain possession, control, dominion or any right to commercially exploit the assessee's software, servers, equipment, infrastructure or intellectual property. Further, no technical knowledge, skill, know-how or process was made available to the customers. Accordingly, the Tribunal allowed the appeals and directed the Assessing Officer to verify and grant the due TDS credit and consequential relief.

Indirect Tax		
M/s SBF Ispat Private Limited [TS-443-AAAR (RAJ)-2026-GST]	Whether Input Tax Credit (ITC) of GST paid on inputs, capital goods, or input services used in setting up and operating a remotely situated solar power plant for "captive use" is available under Sections 16 and 17 of the CGST Act, 2017?	Hon'ble Rajasthan AAAR upheld the AAR ruling denying ITC. Feeding electricity into the DISCOM grid constitutes an outward "supply". Since electricity is charged at a 'NIL' rate of tax under Notification No. 02/2017 (Rate), it is an exempt supply, making the inward logistics ineligible for credit under Section 17.
M/s RHI Magnesita India Limited [TS-444-AAAR (HAR)-2026-GST]	Whether Input Tax Credit (ITC) is admissible on professional and merchant banking services availed in relation to raising capital via a Qualified Institutional Placement (QIP), where the proceeds are split between corporate debt repayment and equity investment in a wholly owned subsidiary?	Hon'ble Haryana AAAR partly allowed the appeal. It held that ITC on services related to the QIP process is admissible only to the extent the proceeds were utilized for the repayment or pre-payment of the company's own borrowings, as this qualifies as an activity in the course or furtherance of business. Conversely, ITC is completely denied on the portion of proceeds invested as equity in its subsidiary company, as they are distinct legal entities. The lower AAR ruling denying ITC in its entirety was modified accordingly.

The brief analysis of above referred decisions and rulings are given below.

Case 1 – Amplitude Inc., ITA No.3528/Del/2023 Assessment Year: 2021-22 and ITA No.1675/Del/2025 Assessment Year : 2022-23 [TS-771-ITAT-2026(Mum)]

Facts in brief & Issue Involved:

- The taxpayer, Amplitude Inc. is a technology company incorporated in and a tax resident of the USA. The company provides a data analytics platform to help businesses analyse customer behaviour. It operates under a Software-as-a-Service (SaaS) model, where Indian customers access the application (hosted on AWS servers) via a subscription-based internet login

- The dispute involves receipts of approximately Rs. 14.58 crore for AY 2021-22 and Rs. 30.24 crore for AY 2022-23, The taxpayer claimed these as exempt income under the India-USA DTAA

- The Assessing Officer treated the said receipts as taxable in India as equipment royalty and FTS/FIS.

- The core issue is whether these subscription-based receipts for product analytics services are taxable in India as "Equipment Royalty" or "Fees for Technical Services (FTS) / Fees for Included Services (FIS) under the Act and Article 12 of the India-USA DTAA.

Contentions of Taxpayer

- The taxpayer argued that customers have no physical control, dominion, or possession over the underlying servers or equipment, which is essential for "Equipment Royalty"

- Customers are granted only a non-exclusive, non-transferable right to access services for internal business purposes; no copyright or proprietary rights (IPR) are alienated to them

- The services are standardized and automated, requiring no human intervention, and thus do not qualify as technical services

- The taxpayer contended that the "make available" test under Article 12(4)(b) of the DTAA is not met because no technical knowledge, skill, or process is transferred to the customers that would allow them to perform the services independently in the future

- Taxpayer relied on the Supreme Court's ruling in *Engineering Analysis* and the Delhi High Court's ruling in *Amazon Web Services*

Contentions of the Revenue

- The Revenue contended that "use" of equipment in the digital era should include accessing the capacity and functions of a system, even without physical possession. They argued that Explanation 5 to Section 9(1)(vi) of the Act (which makes possession/control irrelevant for royalty) should be read into the DTAA to tax the receipts

- The Revenue contended that the taxpayer was not merely providing access to a standard facility but was rendering product analytics services involving technical elements and human intervention. Therefore, the receipts were taxable as FTS/FIS under the Act as well as under the India-USA DTAA.

- The Revenue maintained that the services satisfy the "make available" clause and should be taxed as FIS

Observations & Decision of the Hon’ble ITAT

- The Hon’ble Tribunal noted that the issue was covered in favour of the Taxpayer by various decisions of the jurisdictional High Court and co-ordinate benches. The Hon’ Tribunal particularly relied on the decision of the Hon’ble Delhi High Court in CIT v. Amazon Web Services (2025) 174 taxmann.com 1188 (Del.).

- The Tribunal held that customers do not acquire any right to use the infrastructure or software for commercial exploitation

- The charges are for availing a service provided via proprietary equipment, and no part of that equipment or IPR is alienated to the customer

- The Hon’ Tribunal found that the services are automated and do not satisfy the "make available" requirement of the India-USA DTAA

- The Hon’ Tribunal held that the AO was not justified in taxing the receipts and allowed both appeals of the Taxpayer, The AO was also directed to verify and grant appropriate TDS credit to the Taxpayer.

NASA Comments

- This ruling reinforces the established legal principle that standardized SaaS subscriptions are service-oriented rather than royalty-based. It clarifies that in the absence of the transfer of technical knowledge (the "make available" test) or the transfer of control over equipment, such payments remain non-taxable under the beneficial provisions of the India-USA DTAA. Furthermore, it reiterates that domestic law amendments cannot unilaterally override treaty definitions unless specifically incorporated into the treaty.

- The decision should be useful for non-resident SaaS and cloud service providers as well as Indian payers while evaluating withholding tax obligations under section 195. However, the taxability analysis remains fact-specific and should consider the contractual terms, nature of access granted, PE position in India, extent of customisation or human intervention, and whether any technology or IP rights are actually transferred or made available.

Case 1 – M/s SBF Ispat Private Limited [TS-443-AAAR (RAJ)-2026-GST]

Facts in brief & Issues Involved

- SBF, the appellant is engaged in the manufacture of steel products, specifically TMT Bars and MS Billets and is in the process of setting up a 20.5 MW (AC) capacity Solar Power Project for Captive use in the solar park of appellant in village of Bikaner. This remote location was officially declared an 'additional place of business under their single GSTIN.

- The electricity generated by the solar plant is fed directly into the RVPN/DISCOM grid. The DISCOM processes energy credits for the power generated, which are then structurally adjusted and reduced against the actual electrical consumption bills of the appellant's primary manufacturing factory located elsewhere.

- The appellant sought an advance ruling to verify if they could claim ITC on goods, services, and capital assets used for the engineering, procurement, and construction (EPC) phases of the power plant, arguing it was an integral part of their taxable steel business. The AAR vide Order No RAJ/AAR/2025-26/19 denied the credit on January 23, 2026, leading to this appellate proceeding.

Contentions of Taxpayer

- The entire volume of generated electricity is dedicated strictly to running the electric melting furnaces at their steel factory; no third-party commercial sales take place. Thus, it functions purely as an intermediate step within a wider taxable industrial operation.

- Both the solar site and the manufacturing centre operate under a single unified GST registration. Geographical separation does not sever the functional business connection.

- The appellant relied on various rulings asserting that credit cannot be denied on inputs used to generate power for business operations simply due to geographical distance or routing through a common grid.

Observations & Decision of the Hon’ble AAAR

- The Hon’ble AAAR observed that Once power is systematically transferred into the grid of RVPN/DISCOM, it operates as a distinct supply to an external corporate entity, moving out of the exclusive domain of the appellant.

- The AAAR also observed that the framework of transferring power to the grid in exchange for utility billing credits mirrors an "exchange" or "transfer". This satisfies the legal definitions of a "supply" under Section 7 read with Section 2(83) of the CGST Act, 2017.

- Further under the active GST framework, electrical energy is classified under the tariff but carries a **'NIL' rate of tax** in terms of Sl. No. 104 of Notification No. 02/2017-CT (Rate).

- The AAAR further highlighted that no explicit "wheeling and banking" agreement was submitted on record to legally protect the absolute identity of the power as a purely self-routed stream. Without it, title to the electricity transfers to the DISCOM at the grid injection point.

- The AAAR upheld the AAR's decision stating that transfer of electricity from solar power plant to RVPN/DISCOM will be treated as “supply” and since the GST rate on supply of electricity is “NIL”, the appellant is not eligible to avail Input Tax Credit on GST paid on Input, Capital Goods and Services used in designing, erection & installation etc of Solar power plant.

NASA Comments

- This ruling defines the limits of "captive consumption" under GST for solar plants located away from the factory. It holds that routing power through the state grid amounts to a supply of 'NIL'-rated electricity, which blocks ITC under Section 17 read with Rules 42 and 43.

- The ruling suggests that unless power is generated at the factory itself (like rooftop solar consumed directly, without going through the grid), the GST paid on the project may become a pure cost with no credit available.

- Companies setting up captive solar projects should relook at their agreements with DISCOMs — especially wheeling and banking arrangements — and build this possible tax cost into their project planning.

Case 2 - RHI Magnesita India Limited, Appeal No. HAAAR/2023-24/05 Date of Pronouncement: 22.05.2026 [TS-444-AAAR (HAR)-2026-GST]

Facts in brief & Issue Involved

- The Appellant, M/s RHI Magnesita India Limited, is a registered taxpayer under the GST regime engaged in the manufacturing and marketing of special, basic, and non-basic refractory products, Systems and Services.

- To raise capital, the Appellant undertook a Qualified Institutional Placement (QIP) under the SEBI Regulations, 2018. For this purpose, they appointed HSBC Securities and Capital Markets (India) Pvt. Ltd. as the Book Running Lead Manager to manage the issuance and strategy.

- The Appellant also procured ancillary services such as legal counsel, consultancy, credit ratings from various professionals paying the applicable GST on all professional invoices received.

- The funds raised through the QIP process were deployed toward two distinct operational avenues:
  1. Repayment or pre-payment of certain company borrowings.
  2. Investment in the equity shares of its 100% wholly owned subsidiary, Dalmia OCL Limited (DOCL).

- The Haryana Authority for Advance Ruling (AAR) vide its order dated February 21, 2024, denied ITC in its entirety on the grounds that raising funds through a QIP is not an activity undertaken in the course or furtherance of business. Aggrieved by this blanket denial, the Appellant preferred an appeal before the Haryana Appellate Authority for Advance Ruling (AAAR).

Contentions of Taxpayer

- The Appellant contended that the definition of "business" under Section 2(17) of the CGST Act is inclusive and expansive, specifically covering any activity or transaction that is incidental or ancillary to the main trade or manufacturing activities.

- It was submitted that capital raising is fundamental to operational sustainability, business expansion, and debt optimization, meaning the professional services obtained directly qualify as "input services" under Section 16(1).

- Regarding the subsidiary investment, the Appellant submitted that DOCL operates in the exact same line of business (refractories). Investment by a holding company in its wholly owned subsidiary is an essential and incidental activity for strategic synergy, capacity enhancement, and long-term consolidation, with the ultimate financial benefits accruing directly back to the holding company as reflected in its consolidated financial accounts.

- The Appellant placed strong reliance on pre-GST judicial precedents, including *Steel Strips Wheels Ltd.*, and *Hinduja Global Solutions Ltd.*, which established that expenditures incurred for raising finance for corporate operations carry a valid nexus with business activities.

Observations & Decision of the Hon'ble AAAR

- The Hon'ble AAAR observed that funds used for repayment or pre-payment of borrowings represents the discharge of financial liabilities undertaken in the course or furtherance of business. Efficient debt management reduces interest burdens, enhances corporate liquidity, and strengthens the operational capacity of the entity. Thus, services used to raise funds for debt repayment qualify as services used in the course or furtherance of business under Section 16(1).

- The AAAR further validated that the principles emerging from pre-GST Cenvat era judicial precedents i.e. that expenses incurred for raising finance for business operations bear a nexus with business activities remain fully relevant under the GST framework.

- Conversely, regarding the equity investment in the subsidiary (DOCL), the AAAR observed that a holding company and its subsidiary are fundamentally **distinct legal entities** under trite law. Expenditure incurred by one entity cannot be claimed as ITC in the hands of another.

- The AAAR noted that although invoices were issued to the holding company, the actual corporate benefit and asset augmentation from those services accrued directly to DOCL. In the absence of a direct and proximate nexus with the holding company's own taxable transactions, the Appellant is ineligible to claim ITC on this portion.

- Accordingly, the AAAR modified the lower authority's ruling: the proportionate ITC attributable to QIP proceeds utilized for internal debt repayment is admissible, while the proportionate ITC attributable to the subsidiary investment is inadmissible.

NASA Comments

- This ruling provides welcome clarity on the availability of ITC for capital-raising expenses such as QIPs, IPOs, and private placements. It recognizes such activities as business-related but links ITC eligibility to the end use of the funds.

- Taxpayers should maintain clear records of fund utilization. ITC is generally available where funds are used for business operations, while the proportion attributable to investments in subsidiaries or downstream equity infusions may not be eligible and should be treated as a project cost.

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