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TAX JURISPRUDENCE

CASE LAW ALERT – JUNE 2022
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EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER 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
Indirect Tax		
Sanchita Kundu Vs. The Assistant Commissioner of State Tax & Ors. [W.P.A. 7231 and 7232 of 2022]	Whether ITC can be denied on the ground that the registration of the suppliers had already been cancelled with retrospective effect?	Honorable Calcutta High Court disposed of the writ petition directing the GST authority to allow ITC If it is found upon verification and considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration.
M/s Jayabheri Orange Country Owners Association [2022-TIOL-66-AAR-GST]	Whether GST is applicable on collection of monthly maintenance charges, not exceeding Rs 7,500/- per member, even if the total collection of the society/ RWA crosses Rs 20 Lakhs in a year? Whether GST is applicable, if in a particular month, where monthly contribution crosses Rs 7,500/- due to collection of annual sinking fund contribution along with monthly maintenance?	GST is not applicable where monthly collection does not exceed Rs 7,500/- even if the overall yearly collection crosses Rs 20 lakhs. GST will be applicable only in that month where monthly contribution crosses Rs 7,500/-.

	Whether monthly collection of common area electricity charges on actual basis divided by carpet area when charged pro-rata is liable to GST?	GST won't be applicable on monthly collection of common area electricity charges recovered at actual basis.
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The brief analysis of above referred decisions and rulings are given below.

Case 1 – Sanchita Kundu Vs. The Assistant Commissioner of State Tax & Ors. [W.P.A. 7231 and 7232 of 2022]

Facts in brief & Issue Involved

- ◆ Petitioner had claimed ITC as per invoice issued by its suppliers after the due diligence of genuineness of the supplier on the GSTN portal;
- ◆ Later on, GST registration of the supplier was cancelled with retrospective effect. GST authority passed an order disallowing ITC pertaining to said supplier and also ordered recovery of interest and levy of penalty;
- ◆ Being aggrieved by the order, a writ petition was filed before Calcutta High Court challenging the order passed by the GST authority.

Contentions of the Petitioner

- ◆ Petitioner has verified the genuineness and identity of the suppliers. The name of the supplier was appearing as registered person on GSTN portal and said registration was valid at the time of transactions.
- ◆ When the name of the supplier was appearing on the Government records, petitioners could not be faulted if the supplier appeared to be fake later on.
- ◆ The invoice-wise details of all the purchases were available on the GSTN portal in form GSTR-2A.
- ◆ Invoice value including GST has been paid to the supplier and all the transactions were made through bank.
- ◆ Petitioner is helpless where revenue finds later (after the transactions were completed) that supplier was fake and bogus.

Observations & Decision of High Court

- ◆ If it is found upon verification of the relevant documents that all the purchases are genuine and supported by valid documents and were made before the cancellation of registration of the supplier, the benefit of ITC shall be granted.
- ◆ It cannot be said that there was any failure on the part of the petitioner in compliance with any statutory obligation before entering into the transactions in question.
- ◆ Writ Petition was disposed with the direction to GST department to dispose of the case by passing a reasoned and speaking order after giving an effective opportunity of hearing to the petitioners, within eight weeks.

NASA Comments

- ◆ This judgement comes as a great relief to trade and businesses as genuine ITC claim cannot be denied merely the registration of vendor is cancelled with retrospective effect at later date.

Case 2 – M/s Jayabheri Orange Country Owners Association [2022-TIOL-66-AAR-GST]

Facts in brief & Issue Involved

- ◆ Applicant is a Resident Welfare Association (RWA) collecting monthly maintenance charges, sinking fund and electricity charges used for common area.
- ◆ Applicant had approached the Authority of Advance ruling of Telangana to ascertain GST applicability where:
 - Total collection of society crosses Rs 20 lakhs in a year but monthly collection per member do not exceed Rs 7,500/-.

- Monthly contribution per member generally does not exceed Rs 7,500/-, however in a particular month it exceeded Rs. 7,500/- due to collection of sinking fund.
- Electricity charges and water charges are collected on an actual basis.

Observations & Decision of Advance Ruling Authority

- ◆ Serial No. 77 of Notification No. 12/2017, as amended vide Notification No. 02/2018 dated 25.01.2018, provides that service by an unincorporated body or a non-profit entity to its own members is exempt up to an amount of Rs. 7,500/- per member for sourcing goods or services from a 3rd person for the common use of its members in a housing society or a residential complex.
- ◆ As per above entry, GST will not be applicable where monthly collection per member does not exceed Rs 7,500/- even if total yearly contribution crosses Rs 20 lakhs for the society.
- ◆ Amount collected for maintenance charges and any other charges including sinking fund exceeds Rs 7,500/-, it will be liable to GST.
- ◆ GST is not leviable on monthly collection of common area electricity charges from its residents on actual basis (pro-rata on carpet area basis).

NASA Comments

- ◆ This ruling brings some clarity for the society on applicability of GST on collection of various charges from its members on monthly or periodical basis.
- ◆ Ruling by AAR is binding only on applicant and its jurisdictional officer. It does not have general binding precedence value.

We will be glad to provide any elaboration or elucidation you may need in this regard.

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