

## CASE STUDIES PART II - ITC Cases

### **Case Study 1 : ITC on Corporate Governance Activities Like Supply of Outdoor Catering Services to Employees**

#### **A. Supply of catering services by manufacturing entity**

— A Ltd. is an entity engaged in the manufacturing of apparels. A Ltd. being a factory which is registered and governed in terms of the Factories Act, 1948, is required to provide food to its employees at subsidised rates, which is a mandatory requirement as per the Factories Act, 1948. To comply with this requirement, A Ltd. has set up its own catering facility within the factory premises from where it provides food to its employees at subsidised rate of Rs. 6/- per day. However, the actual expense incurred by A Ltd. for supplying food from its canteen works out to be Rs. 100/- per day.

*In light of the factual matrix in this case, A Ltd. (the client) seeks to understand the following:*

1.1 Whether A Ltd. is entitled to avail the credit of expenses incurred for providing catering services to its employees?

1.2 Given that A Ltd. and its employees are ‘related’ persons as defined in Section 15 of the CGST Act, whether A Ltd. can charge Rs 6/- per day from its employees or whether A Ltd. should charge Rs 100/- per day from its employees in terms of Section 28 of the CGST Rules?

1.3 What possible planning/structuring can be suggested to A Ltd. to bring about certainty and minimise the tax exposure?

### **Case Study 2 : Restriction on availment of input tax credit on restaurant charging and collecting GST at the rate of 5%**

— Delicious is a multi-cuisine standalone restaurant engaged in supplying food and beverage to its patrons.

— For the period 01.07.2017 to 14.11.2017, Delicious was discharging GST at the rate of 18% as per

Entry 7(iv) of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 issued under the CGST Act (“Rate Notification”) and availing ITC of GST charged on procurement.

— The Rate Notifications were first amended vide Notification No. 46/ 2017 -Central Tax (Rate) dated 14.11.2017 ("Amending Notifications"). Vide these Amending Notifications, it was made mandatory for the restaurant services provider w.e.f. 15.11.2017, to pay GST at 5% on restaurant services without the allowance for ITC.

— As on 14.11.2017, Delicious had availed ITC of INR 1.5 Crores which was available in its ITC ledger. However, as it was no longer entitled to avail and utilize ITC against its output liability, this ITC was reversed by Delicious.

*In light of the factual matrix in this case, Delicious seeks to understand the following:*

1. Whether it is mandatory for Delicious to pay CGST+SGST at the rate of 5% and not avail input tax credit? Can Delicious avail input tax credit and pay CGST+SGST at the rate of 18%?
2. Whether in the guise of rate fixation (under Section 9 of the CGST Act), the Government can completely extinguish Delicious' right to ITC of GST paid on inputs, input services and capital goods which are statutorily guaranteed under Section 16 of the CGST Act, subject only to restrictions prescribed under that Section?
3. Given that there is a high outgo on capital goods, the cold storage chain, the supply chain, royalties, rentals, and outsourced services, especially for restaurant chains operated by multinational corporations, can restaurant services be denied this option which is available to other service providers under the GST e.g. Goods Transport Agency ("GTA") i.e. lower rate of GST without ITC and higher rate of GST with credit? Can the vires of Rate Notification be challenged before a Writ Court?

### **Case Study 3 :Free Sample etc**

Textile Ltd. is in the business of manufacturing and supply of textile goods. During the manufacturing process, it encounters a certain physical loss of inputs due to the process involved as well as shrinkage of the fabric in terms of size to get the desired quality of the finished fabric. Textile Ltd. also sends free samples of finished goods to prospective customers. Textile Ltd. has also incurred expenditure on developing and printing a catalogue which is given to retail shops for use in selling its products. Textile Ltd. also writes off certain non-moving inventories of finished goods in the books of accounts. Textile Ltd. seeks your opinion on the admissibility of ITC in given situations.

#### **Case Study 4 : Damage & Insurance Claim**

The head office has a trading division as mentioned earlier. It is engaged in the business of trading of packing materials. It supplies its packing materials to its customers located across India. The trading division avails ITC on packing materials, it procures from the manufacturers. During the month of June 2019, the division sent a truckload of packing materials to Pune, by issuing invoice and necessary w-Way bills, for which the customer paid the consideration in advance. However, due to heavy rains, portion of the packing materials were damaged and became non usable by the customer and he returned the same. To the extent of the returned quantity, the trading division claimed insurance on the damaged goods, which claim was accepted to the extent of 75% of the value of damaged goods. Further, the trading division also sent back the damaged goods to the manufacturer who procured the same at a 25% of the sale price on which GST was also paid, as a manufacturer could use the same in manufacturing process.

What would be the effect of ITC claimed by the trading division as well as by the buyer, when:

- i. Transfer of property in goods has not taken place at the time of destruction of goods;
- ii. Transfer of property in goods has taken place at the time of destruction of goods.
- iii. Since insurance amounts have been received which includes the input tax component, department may insist on reversal of credit.

The department is of the clear view that the entire credit should be reversed as having received insurance amounts, to retain the credit would amount to unjust enrichment.

#### **Case Study 5 :**

ABC Limited is engaged in manufacture of aluminum. It also owns coal mines in Chattisgarh, from where coal is supplied to a distinct person under Section 25 of CGST Act (i.e. a branch) Madhya Pradesh, which has a power plant where power is captively consumed. All output supplies made by Madhya Pradesh branch are exigible to GST.

On supply of coal from Chattisgarh to Madhya Pradesh, in addition to IGST, compensation cess of Rs. 400/tonne is charged in terms of the Goods and Services Tax (Compensation to States) Act, 2017 ('Compensation Cess Act'). However, on output supply from the power plant, no compensation cess is charged. Accordingly, in terms of proviso to Section 11(2) of the Compensation Cess Act, input tax paid towards compensation cess cannot be availed.

(1) Given that credit of compensation cess is not available, whether second proviso to Rule 28 of CGST Rules can be applied in the present case?

**Case Study 6 : Lease**

In April 2023, Confused Ltd. Acquired lease hold land which is situated in GIDC along with an old factory building constructed thereon from Compliant Ltd. The Compliant Ltd. Has charged GST @18% on the amount received from Confused Ltd. Now Confused Ltd. Intends to demolish the existing building and construct a new factory building on the given land. Confused Ltd. Accordingly seeks your opinion on the admissibility of the ITC of the GST charged by Compliant Ltd.

**Case Study 7 : Gifts**

The company M/s. X is engaged in the manufacture and sale of Bournvita. They have floated the scheme for dealers under which the dealer is entitled to receive refrigerator, television, microwave-oven and other items depending upon the quantum of sale achieved by them. M/s. X has procured these items and availed the credit and have supplied these items to the dealer as per the eligibility given in the circular. The department is proposing to deny the credit on these items. M/s. X has approached you for advice.

Would your answer be different if there is no scheme floated by M/s. X for providing these items to dealer before supply of materials? However, the company subsequently decides to provide the items as a measure of good will.