

❖ Indirect Tax

Goods & Services Tax

Clarifications regarding applicability of GST on certain services (Circular No. 206/18/2023-October 31-GST)

Central Board of Indirect Taxes & Customs (CBIC) on the basis of recommendations by GST Council in its 52nd meeting held on October 07, 2023, clarify the following issues, with reference to GST levy as:

1. *Whether 'same line of business' in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators:* - It is hereby clarified that input services in the same line of business include transport of passengers or renting of motor vehicle with operator and not leasing of motor vehicles without operator which attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.

2. *Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants:-* It is clarified that whenever electricity is being supplied bundled with renting of immovable property or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations, Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

3. *Whether job work for processing of "Barley" into "Malted Barley" attracts GST @5% as applicable to "job work in relation to food and food products" or 18% as applicable on "job work in relation to manufacture of alcoholic liquor for human consumption":-* It is hereby clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) which covers "job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff" irrespective of the end use of that malt and attracts 5% GST.

4. *Whether District Mineral Foundations Trusts(DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority:-* DMFTs work for the interest and benefit of persons by providing services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

5. *Whether supply of pure services and composite supplies by way of horticulture/horticulture works(where the value of goods constitutes not more than 25 % of the total value of supply) made to CPWD are eligible for exemption from GST:-* It is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works(where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

For details:

<https://taxinformation.cbic.gov.in/view-pdf/1003189/ENG/Circulars>

❖ **Pronouncement**

October, 31 st 2023	Sanjay Kumar Agarwal { Petitioner(s) } Vs State tax officer (1) & Anr. { Respondent(s) }	Supreme Court of India Inherent Jurisdiction Review Petition (Civil) No. 1620 of 2023 In Civil Appeal No. 1661 of 2020
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A party is not entitled to seek a review of a judgment delivered by Supreme Court merely for the purpose of a rehearing and a fresh decision of the case.

The Hon'ble Apex Court inter alia observed that the power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution of India. Of course, that power is subject to the provisions of any law made by the Parliament or the Rules made under Article 145. Supreme Court in exercise of the powers conferred under Article 145 of the Constitution of India has framed the Supreme Court Rules, 2013. The Order XLVII of Part IV thereof deals with the provisions of Review. Accordingly, in a Civil Proceeding, an application for review is entertained only on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure and in a Criminal Proceeding on the ground of an error apparent on the face of record. However, it may be noted that neither Order XLVII CPC nor Order XLVII of Supreme Court Rules limits the remedy of review only to the parties to the judgment under review. Even a third party to the proceedings, if he considers himself to be an "aggrieved person," may take recourse to the remedy of review petition. The quintessence is that the person should be aggrieved by the judgment and order passed by this Court in some respect {(2019) 18 SCC 586, *Union of India vs. Nareshkumar Badrikumar Jagad & Others*}.

In the words of Krishna Iyer J., (as His Lordship then was) "a plea of review, unless the first judicial view is manifestly distorted, is like asking for the Moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result..... A review in the Counsel's mentation cannot repair the verdict once given. So, the law laid down must rest in peace." {(1980) 2 SCC 167, *M/s. Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi*}.

It is also well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. { *AIR 1965 SC 845, Sajjan Singh and Ors. vs. State of Rajasthan and Ors.* }.

For details:

https://main.sci.gov.in/supremecourt/2022/32268/32268_2022_6_1501_48032_Judgement_31-Oct-2022.pdf

❖ **Terminology for Today****Hollow Corporation**

A business in which important elements are outsourced to subcontractors.

❖ Competition law

CCI approves proposed combination relating to minority investment by India Business Excellence Fund – IV in SK Finance Limited (October 31, 2023)

The Competition of Commission of India (CCI) has approved the proposed combination relating to minority investment by India Business Excellence Fund – IV in SK Finance Limited. India Business Excellence Fund – IV (Acquirer) is a Category II Alternative Investment Fund registered with the Securities and Exchange Board of India. It primarily invests in equity and equity-linked instruments and/or debt and/or mezzanine or other instruments of Indian or India related companies. It is a sector-agnostic fund, providing growth capital to mid-sized companies.

SK Finance Limited (Target) Target is a non-banking finance company registered with the Reserve Bank of India as a Non-Banking Non-Deposit Taking Systemically Important Asset Finance Company engaged in the business of providing financing for vehicles (new and used) and loans to Micro Small and Medium Enterprises. Target largely caters to low-mid income, self-employed individuals that are largely under-banked (in semi-urban/rural areas) with minimal access to organized lending.

The proposed combination relates to a minority investment by Acquirer in the Target by way of subscription to equity shares of the Target and purchase of outstanding equity shares of the Target from Mr. Rajendra Kumar Setia, the promoter of the Target; and Baring Private Equity India AIF (Proposed Combination).

For details:

<https://pib.gov.in/PressReleasePage.aspx?PRID=1973532>

❖ Market Watch

Stock Market Indices as on 01.11.2023		Foreign Exchange Rates as on 01.11.2023 (https://m.rbi.org.in/script/ReferenceRateArchive.aspx)			
S & P BSE Sensex	63,615.81 (-259.12)	INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR / 1 JPY
Nifty 50	18,991.95 (-87.65)	83.28	88.03	101.11	.5506

Prepared by Directorate of Academics

For any suggestions, please write to academics@icsi.edu.

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