KATALYST
ADVISORS LLP

Katalyst Kaleidoscope

November 2020: Tax and Regulatory Insights

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A. Income Tax

1. Hyderabad ITAT: Piramal's investment in Shriram Capital Ltd through an investment vehicle held not a colourable device[1]

Piramal Enterprise Ltd ('Piramal') intended to acquire 20% stake in Shriram Capital Ltd. To achieve this, it made an investment of INR 6.22 Cr in the assessee partnership firm (which was a Shriram Group firm) towards capital and INR 2,111 Cr towards capital reserves in FY 14-15. Through this investment Piramal thus acquired a 75% interest in the assessee firm, which then invested in Novus, a group company of Sriram Group which acquired 20% stake in Shriram Capital on a private placement basis and Novus then merged with Shriram Capital subsequently. This effectively resulted in Piramal Group receiving 20% ownership in Shriram Capital through the assessee firm.

The Assessing Officer was of the opinion that the additional INR 2,111 Cr brought in by Piramal was towards acquisition of 20% stake in Shriram Capital and Shriram Group as a whole ought to have paid tax on this sale of stake. However, by applying the above mechanism, tax on this sale has been avoided. Thus, the modus operandi adopted by the assessee is a colourable device.

The assessee submitted that other investors in Shriram Capital had imposed conditions, per which the company could allot shares only to its existing shareholders or other Shriram group companies. The investment in Shriram Capital was made through the assessee firm to avoid these difficulties. This view was accepted by the Hon'ble Tribunal and the transaction was held not to be a colourable device.

The Assessing Officer also argued that the INR 2,111 Cr invested by Piramal towards capital reserves was received by the firm without any consideration and therefore sought to tax the same under Sec. 56(1) and alternatively, under Sec. 56(2)(viia). Sec. 56(1) is a residuary head of income and Sec. 56(2)(via) provides for taxation of inadequate consideration for shares received by a firm or a closely held company. The Hon'ble Tribunal held that the receipt of capital contribution from partner is a capital receipt and therefore cannot be brought to tax under Sec. 56(1). Moreover, Sec. 56(2)(via) was not applicable in the present case merely because assessee firm used the consideration to invest in Novus on the same day.

<u>Katalyst Comments:</u> *The Income Tax law is now replete with a large number of Special Anti-Avoidance Rules ('SAAR') [such as those in Section 56(2)] as well as GAAR provisions. This underlines the importance of being very cautious in structuring transactions; having said this, if SAAR provisions are sought to be applied by the tax department, also keeping in mind that*

[1] ITO vs M/s. Shrilekha Business Consultancy Pvt. Ltd. ITA No.1371/Hyd/2018 & ITA No.1041/Hyd/2019

they are anyway very wide, for the revenue department to seek to extend them further would be a stretch; but that unfortunate situation does exist on ground. Also, from a GAAR perspective, the key aspect is that if a structure is driven by commercial rationale with a consequential tax benefit (rather than the other way round), then it should be acceptable.

2. Ahmedabad ITAT: Allows depreciation on goodwill arising on amalgamation[2]

Unicorn Packers Limited ('UPL') got amalgamated into the assessee Urmin Marketing Pvt Ltd w.e.f. 1st April 2014, under a Scheme of Amalgamation approved by the High Court, for a consideration of INR 555 Cr. As the consideration exceeded the net book value of assets of the amalgamating company by INR 486 Cr, the assessee claimed the difference to be goodwill and amortised the same @ 25%. The revenue was of the opinion that goodwill generated was a colorable device and disallowed the depreciation claimed.

The Hon'ble Tribunal first ruled on assessment in the name of a non-existent company (i.e. UPL) which post its amalgamation with the assessee ceased to exist. The Tribunal applied the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd.[3] and held that such an assessment is void ab-initio and bad in law.

In regard to goodwill on amalgamation, the Assessing Officer ('AO') held that, as no depreciation on goodwill would have been allowed to the amalgamating company had amalgamation not taken place, hence, depreciation should not be allowed to the amalgamated Company. Given the fact pattern that the assesse had amalgamated into a group company (which was subsequently converted into a LLP), the AO's contention was that the exercise resulted in higher capital accounts in the books of the LLP without any corresponding inflow, and that goodwill was created to avoid tax. Additionally, even the valuation report was questioned by the AO.

The Hon'ble Tribunal held that the restriction on depreciation is only in relation to assets that existed prior to amalgamation, and cannot be applied to goodwill generated on amalgamation and therefore, rejected the applicability of the proviso to the assessee's case; the Tribunal also rejected the AO's questioning of the valuation report on the grounds of lack of technical expertise of the tax department in this area.

The Hon'ble ITAT ruled in favour of the assessee also on the ground that the Scheme was approved by the Hon'ble High Court of Gujarat, after inviting comments from the Income Tax Department. No replies were received from the department within the stipulated period and therefore, it was assumed that the Income Tax Authorities have no objections on the scheme

[2] Urmin Marketing P.Ltd. v DCIT (ITA.No.1806/Ahd/2019)
[3] PCIT Vs. Maruti Suzuki India Limited reported in 416 ITR 613

and the scheme was approved. Subsequent objections by the tax authorities after having given their approval by way of no objection, is not desirable. As goodwill is a depreciable asset per CIT vs Smifs Securities Ltd[4], ITAT allowed the claim of the assessee for depreciation on goodwill.

Katalyst Comments: *The Ahmedabad Tribunal placed heavy reliance on the opportunity provided to the Income Tax Department during the proceedings of the Scheme of Amalgamation and did not entertain their subsequent objections.*

3. Delhi ITAT: Applies exception to indirect transfer provision retrospectively and holds that Singaporean 'start-up' investment off-load to Snapdeal as non-taxable[5]

The assessee, a Singaporean company off-loaded its investment in another Singaporean company which held shares in an Indian company to Snapdeal in AY 2015-16. The Assessing Officer applied the provisions of Sec. 9(1)(i) which seeks to tax sale of shares of a foreign company, where the underlying asset is shares of an Indian Company. The assessee argued that Explanation 7 to the said section would apply retrospectively in the instant case, even though it was made applicable from 1st April 2016, as other provisions and circulars with regards to taxation of underlying sale of shares of an Indian company were applicable retrospectively.

Explanation 7 carves out such indirect transfers where the foreign company holds neither rights of management or control in the Indian company nor voting power or share capital exceeding 5%. The Hon'ble Tribunal upheld the retrospective application of the carve out and held the sale to be non-taxable.

Katalyst Comments: *Consistency in applicability of provisions covering similar transactions has been accepted by the Tribunal.*

4. Delhi ITAT: Exchange difference from redemption of shares at par, non-taxable[6]

The assessee, Havells' India Ltd, purchased shares in foreign subsidiary in Euros in AY 2008-09 by remitting funds from India and redeemed the said shares at par value. On repatriation of redemption proceeds an exchange gain was generated on conversion of Euros to INR. The Assessing Officer opined that the exchange gain arose on sale or redemption of shares and the same was taxable as capital gain under Sec. 45 being the charging section for capital gains.

[4] CIT vs Smifs Securities Ltd 348 ITR 302
[5] Augustus Capital PTE Ltd (ITA No. 8084/DEL/2018)
[6] Havells India Ltd [TS-580-ITAT-2020(DEL)]

The Hon'ble Tribunal held that investment made by the assessee was made in Euro and redemption of such shares was also made in Euro. Thus, actual profit or loss on sale/redemption of such shares have to necessarily be computed in Euro only and thereafter, converted to INR for the purposes of Section 45 of the Act. In other words, the cost of acquisition of shares and consideration received thereon should necessarily be considered in Euro and the resultant gain/loss thereon should thereafter be converted into INR at the prevailing market rate. In the present case, the net gain/loss on redemption of shares was Nil, i.e. no gain on transfer of shares, since the shares were redeemed at par value and thereby, there was no capital gains taxable under Section 45 of the Act.

The said contention is also supported by Rule 115, which provides that income chargeable under capital gains should be converted at rate provided thereunder. The inference that follows is that, for conversion of capital gains from foreign currency to INR, the gain calculated in foreign currency should be converted to INR at applicable exchange rate. Thus, the gain was held as non-taxable.

5. CBDT extends due dates for filing income tax returns for AY 2020-21[7]

#	Assessee	Extended Due Date
1.	Company required to furnish a transfer pricing report	31st Jan, 2021
2.	Other Companies	31st Jan, 2021
3.	Assessee whose accounts are required to be audited	31st Jan, 2021
4.	Partner of a firm whose accounts are to be audited	31st Jan, 2021
5.	Other Assessees	31st Dec, 2020
6.	Submission of audit report and tax audit report	31st Dec, 2020

B. Corporate Law Highlights

Redemption of Preference Shares by issue of Equity Shares[8]

Sec. 55(3) of the Companies Act, 2013 provides that, in case a Company is unable to redeem preference shares or pay dividend on such shares in accordance with terms of the issue, it may, with the consent of the holders of 75% in value of such preference shares and with the

[7] CBDT Notification No. 88/2020/ F. No. 370142/35/2020-TPL dated 29th October, 2020
[8] Accuspeed Engineering Services Pvt Ltd SR.No.1469/2019

approval of the Tribunal on a petition, issue further redeemable preference shares, thereby redeeming the previously issued shares.

In the present case, Accuspeed Engineering Services Pvt Ltd sought to redeem preference shares out of proceeds of issue of equity shares. The Hon'ble National Company Law Tribunal (NCLT) observed that, the Registrar of Companies (RoC) in its report mentioned that, redemption of preference shares out of the proceeds of issue of equity does not fall within the provisions of Section 55(3) of the Companies Act. On this basis, the Petition was dismissed by NCLT.

Katalyst Comments: *Redemption of preference shares out of proceeds of issue of equity shares would not require approval of preference shareholders or the Tribunal, as provided in Sec. 55(3). Preference shares may be redeemed out of profits or out of fresh issue of shares made for redemption of shares.*

C. Securities' Law Highlights

1. SEBI: Amendments to Listing Obligations and Disclosure Regulations[9]

SEBI has issued the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2020. The key changes are summarized below:

- Regulation 54(1) has been amended requiring the listed entity to maintain *either* 100% asset cover *or asset cover as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.*
- The exemption from maintenance of asset cover in case of unsecured debt securities issued by regulated financial sector entities has been scrapped.
- Companies shall be required to forward, inter-alia, all covenants of the NCD issue and a half-yearly compliance certificate regarding maintenance of asset cover, etc. to the Debenture Trustee.
- A company having its equity shares or convertible securities listed shall be required to make disclosure of initiation of forensic audit along with reasons and entity initiating the forensic audit. Further, final forensic audit report (other than for forensic audit initiated by regulatory / enforcement agencies) along with comments of the management, if any shall also be submitted to the stock exchange.

[9] Circular No. SEBI/ LAD-NRO/GN/2020/33 dated 8th October, 2020

2. SEBI: Circular on Scheme of Arrangement[10]

Further to the circular dated 10th March 2017, the SEBI has now issued a circular bringing about certain amendments to the former; the new circular has several dimensions and the key ones with respect to schemes of arrangement have been captured in the table below:

#	Erstwhile Provisions	Modified Provisions	Katalyst Comments
1.	No provisions with respect to the Independent Directors providing a report on Schemes of Arrangement.	The new circular requires for a report from the Committee of Independent Directors recommending that the draft Scheme is not detrimental to the shareholders of the listed entity.	This is a substantial change and Independent directors now have to dive deeper into the scheme of arrangement. This is a significant responsibility put on independent directors, especially considering that what is "detrimental to the interest of shareholders" can be a very subjective concept.
2.	The Audit Committee was earlier required to provide a report on the draft scheme of arrangement after taking into consideration the valuation report placed before the Audit Committee.	The Audit Committee will now have to take into consideration the following additional parameters before issuing their report on the draft scheme of arrangement: - Need for merger/demerger/ amalgamation/ Arrangement; - Rationale of the Scheme; - Synergies of business of entities involved in scheme; - Impact of the Scheme on the shareholders; - Cost benefit analysis of the Scheme;	Requiring the Audit Committee to comment on the need for the scheme of arrangement, rationale of the scheme and impact of the scheme on shareholders would result in significant additional responsibility on the Audit Committee; here also, the need, rationale and impact are very subjective issues

[10] SEBI/HO/CFD/DIL1/CIR/P/2020/215 dt. 3rd November 2020

#	Erstwhile Provisions	Modified Provisions	Katalyst Comments
3.	The valuation report was provided by an independent chartered accountant.	The valuation report now needs to be issued by a "registered valuer" as specified in Section 247 of the Companies Act, 2013 and applicable rules.	The Registered Valuer is a concept linked to the Insolvency and Bankruptcy Code. Since the rules pertaining to these were formalized somewhere in early 2019, this amendment seeks to factor in the same.
4.	- Post the submission of documents pertaining to schemes of arrangement to the stock exchanges, the stock exchanges got the documents in order for the SEBI to process them further. - Stock Exchanges were required to issue an Observation Letter/ No Objection Letter on the draft scheme of arrangement to SEBI. Thereafter, SEBI would analyze the scheme in greater detail. This was somewhat considered to be a double screening process.	- The Stock exchanges are required to analyze the documents pertaining to the Schemes of Arrangement in greater detail. - The requirement of an Observation letter has been done away with. The Stock Exchanges need to issue a No Objection Letter basis which the SEBI shall issue a Comment Letter once a No objection letter has been provided by the stock exchanges.	The burden of examining and approving a draft scheme of arrangement has been placed primarily on the stock exchanges.
5.	Where the scheme involves the transfer of the whole/substantially the whole of an undertaking of the listed entity and the consideration is not in the form of listed equity shares, majority of minority vote of public shareholders	The dual criterion has been done away with, and the benchmark is linked to 20% of the "value" of the undertaking as per the last audited balance sheet [Reference to Section 180(1)(i) has been replaced by reference to Section 180(1)(ii)].	- The term "value" is again subjective, but seems to refer to net worth of the undertaking.

#	Erstwhile Provisions	Modified Provisions	Katalyst Comments
	is required. In this context, the term "substantially" the whole of an undertaking prescribed a dual criterion being: - 20% or more of the consolidated Net worth as per the last audited balance sheet or, - 20% or more of the consolidated total income		

3. SEBI: Consultation Paper on review of Delisting Regulations and proposed changes[11]

SEBI released a Consultation Paper on 20th November 2020, reviewing the existing Delisting norms and proposing to streamline the existing regulation by enhancing disclosures and rationalizing timelines. Public comments are invited and are to be submitted by 21st December, 2020. Key changes proposed are summarized below:

#	Extant Provisions	Proposed Modifications
1.	Board of Directors of the Company is required to intimate to the stock exchanges, the intention of the promoters/acquirers to delist the company.	The Promoters/Acquirers shall be required to make an Initial Public Announcement of their intention to voluntarily delist the company on the same day their intention is intimated to the Company, along with reasons for delisting.
2.	Board directors of the Company is required to conduct a board meeting to approve delisting, wherein an audit report (under Regulation 55A of the SEBI (Depositories and Participants) Regulations, 1996) in respect of the equity shares sought to be delisted, as well as due diligence	The Board would now be required to conduct the Board meeting within 21 days from receipt of proposal of promoters to delist the Company. Further, along with the application to the Stock Exchange, the said audit report and the due diligence report shall also be submitted.

[11] Dated 20th November, 2020

#	Extant Provisions	Proposed Modifications
	report of the merchant banker is to be considered. Thereafter, an application is to submitted to the Stock Exchange for in-principle approval of delisting.	
3.	Due Diligence is required to be performed by a merchant banker. The same merchant banker can also be appointed as the manager to the offer.	- It is proposed that the due diligence be carried out by a Company Secretary, not related to the merchant banker or promoter. Further, a merchant banker is to be appointed as the manager to the offer prior to making of Initial Public Announcement. - As the manager to the offer, the merchant banker will be required to oversee arrangements for discharge of consideration, contents of public announcements and letter of offer, etc.
4.	The Board is required to certify that proposal for delisting is in the interest of the shareholders and that the Company and the promoters are in compliance of applicable provisions.	A committee of independent directors would have to be constituted to provide their recommendations on proposal for delisting, for which they may obtain expert opinion. Their voting pattern will have to be disclosed.
5.	Public shareholders' approval is to be sought through postal ballot.	It is proposed to obtain public shareholders' approval either through postal ballot or through e-voting.
6.	No specific provision allowing or restricting promoters from making their initial offer at a price higher than the floor price.	- Promoters will now be explicitly permitted to offer a price higher than the floor price for delisting. - Further, if the discovered price is the same is the floor price, the Promoters will have not have the option to reject the price.
7.	- The estimated consideration calculated basis the floor price and no. of shares is required to be deposited in an escrow account after obtaining Stock	- It is proposed that the Promoters deposit 25% of the consideration in an escrow account within 7 days of obtaining shareholders' approval and deposit the balance after obtaining Stock Exchange approval as before.

#	Extant Provisions	Proposed Modifications
	Exchange approval and before making public announcement. - On failure of the offer, the escrow account is required to be closed.	- On failure of offer, 99% of the amount in escrow shall be released within 1 working day of public announcement and the balance 1% after shares tendered are returned.
8.	No specific provision for announcing outcome of reverse book building process.	- The outcome of the reverse book building process shall be announced within 2 hours of closure of tendering period. - Unconfirmed bids shall not be displayed on the book building window.
9.	- No specific timeline for filing application for in-principle approval of Stock Exchange. - One-year period for filing final application for delisting.	- Application for in-principle approval to be made within 15 days of passing special resolution. - Final application to be made within 5 working days of payment of consideration to shareholders.
10.	Application for in-principle approval is to be disposed off by the Stock Exchanges within 5 working days.	This period is proposed to be extended to 15 working days.
11.	On success of offer, consideration is required to be paid within 10 working days.	- It is proposed that if the discovered price is the same as floor price, payment shall be made through secondary market settlement. If the discovered price is higher than floor price, consideration to be discharged within 5 working days. - In respect of physical shares, 10 working days' time-limit to continue.
12.	Public shareholders that did not tender shares during the bidding process, post delisting of company, have a one-year window for tendering their shares to the promoters at the final price.	The proposed modifications contain a more detailed procedure to be followed by the merchant banker/Promoter for exit of remaining public shareholders. These include: - Filing of quarterly progress report with the stock exchange disclosing shareholders that have exited and remaining public shareholders.

#	Extant Provisions	Proposed Modifications
		- Quarterly follow up communications to the remaining public shareholders - Quarterly advertisement inviting remaining shareholders to avail exit opportunity during the one-year exit window.
13.	No specific provision for shareholders being vanishing companies or struck off companies or shares transferred to IEPF.	It is proposed that for calculating the minimum shares to be tendered during the reverse book building process, these shares shall be deducted.
14.	Counter offer by promoters shall not be less than the book value.	Clarification proposed that book value to be based on consolidated and standalone financials, whichever is higher, as per the latest quarterly financial statements.
15.	Cooling off period: - Between delisting and re-listing is 5 years. - No provision for cooling off period between two delisting offers. - No provision for cooling off period between buy-back/preferential allotment and delisting.	The cooling-off period proposed in various situations is as follows: - Between delisting and re-listing: 3 years. - Between two delisting offers: 6 months. - Between a buy-back/preferential allotment and delisting: 6 months.

4. SEBI's Consultation paper on review of requirement of Minimum Public Offer for large issuers[12]

SEBI has issued a consultation paper as above and the context, as stated therein, is that it has been represented that such large issuers already have investments by private equity / other strategic investors who would be classified as public shareholders post listing, and therefore, mandating minimum 10% of post issue market cap (calculated at offer price) leads to unnecessary dilution of the holding of promoters and existing shareholders and is therefore, a constraining factor for listing. Also, the current requirement under Securities Contract (Regulation) Rules is that the newly listed company is required to bring Minimum Public

[12] Dated 20th November 2020

Shareholding (MPS) to at least 25% within 3 years of listing, which is onerous in the above context.

In light of the above, the proposal in the consultation paper is two-fold:

- If the post issue market cap exceeds Rs. 10,000 cr, then, instead of 10% offer to public, it should be Rs. 1,000 cr + 5% of market cap exceeding 10,000 cr (accordingly, if the post issue market cap is let's say, Rs. 1,50,000 cr, then the current dispensation requires the public offer to be at least Rs. 15,000 cr, whereas the proposed dispensation would require the public offer to be at least 8,000 cr).

- In terms of additional time to such issuers to first comply with 10% MPS and subsequently 25% MPS, instead of 3 years, the proposal is 10% within 18 months and 25% within 3 years (if market cap is upto Rs. 1,00,000 cr) and 10% within 2 years and 25% within 5 years (if market cap exceeds Rs. 1,00,000 cr).

5. SEBI's Consultative paper on reclassification of promoter/promoter group[13]

Regulation 31A of the LODR Regulations provides for conditions in relation to reclassification of any person as promoter/public. As a result of certain representations made, SEBI's primary Market Advisory Committee has reviewed the process and several changes are proposed, including the following:

- One of the conditions for reclassification is that the person seeking reclassification along with the persons related to them should not already be holding more than 10% of total voting rights; the proposal is to increase this to 15%.
- In case of an open offer where the intent of reclassification has already been mentioned in the letter of offer, exemption for the procedure of reclassification maybe granted since it should be a mere formality.
- The current regulatory framework does not prescribe a timeline for the company to place a reclassification request before the board; it is proposed to prescribe a time limit of 1 month in this regard.

D. RBI and Foreign Exchange Regulations

Key Aspects of India's Consolidated FDI Policy[14]

The Department for Promotion of Industry and Internal Trade ("DPIIT") released the consolidated FDI Policy after an interval of three years, the previous one being in August 2017.

[13] Dated 23rd November 2020
[14] DPIIT File Number 5(2)/2020-FDI Policy dt. 15th October 2020

Since the entire policy is quite an elaborate document, we have cherry picked the critical ones and have listed them below:

- **Restrictions on investments from certain neighboring countries:**

  An entity of a country, which shares a land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country can invest only under the approval route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the approval route. No such investment is allowed from Pakistan in defense, space, atomic energy and sectors/activities that are prohibited for foreign investment. Further, in the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, results in the beneficial ownership falling within the restriction/purview of the above – this will also require Government approval.

- **Cap on Investment in Digital News Media:**

  A 26 % cap on FDI has been introduced in the segment that covers digital news under the approval route to bring it at par with the cap on newspaper and periodical publications and the publication of Indian editions of foreign magazines dealing with news and current affairs, which are also subject to the approval route.

- **E-Commerce related changes:**

  - E-commerce entities with foreign investment to obtain and maintain a statutory audit report by 30th September every year for the preceding financial year, which indicates their compliance with India's laws.
  - Not permitting exclusive product launches

E. Goods and Service Tax Highlights

1. No refund of tax paid on exports if the exporters are Advance Authorization holders

The Gujarat High Court[15] has upheld the constitutional validity of Rule 96(10) of CGST Rules as amended by Notification no. 54/2018-CT dated 9th October 2018. The Court has held that the exporters who are advance authorization ('AA') holders are not entitled for refund of tax paid on exports based on the combined reading of section 16(3) of the CGST Act read with Rule 96(10) of the CGST Rules w.e.f. 23rd October 2017.

[15] In case of Cosmo Films Ltd. [TS-925-HC-2020(GUJ)-NT]

Katalyst comments: *Restrictions on refund have been put directly on exporters of goods/services vide Notification no. 54/2018-CT dated 9th October 2018 w.e.f. 9th October 2018 and not before that. However, vide the captioned decision the High court has given the retrospective effect of denial of refund of tax paid by AA holders w.e.f. 23rd October 2017 and unsettled the law which requires consideration by the Hon'ble Apex court.*

2. Services supplied to Principal's foreign client is liable to GST

Tamil Nadu[16] Appellate Authority of Advance Ruling ('AAAR') has upheld the ruling of Authority of Advance Ruling ('AAR') to clarify that supply of software support services provided by the Appellant to the Principal's foreign client is liable to GST under the CGST/TNGST Act and not under the IGST Act. The AAAR has also held that the person who is liable to pay the consideration is the 'recipient' of service and in the instant case, Principal in India is liable for the payment of service to the Appellant and hence, software services supplied by the Appellant are liable to GST and the same cannot be classified as export of service to the foreign client of Principal.

3. Allows proportionate ITC for installation of Renewable Power Generation Plant under REC scheme

Applicant is engaged in the business of edible oil and starting a new business which deals with 'Generation and distribution of Renewable Energy' under the Renewable Energy Certificate (REC) scheme. This REC can be traded in market and liable to GST @ 12%. In the RE power plant set up by the Applicant under the REC scheme, electricity and REC are two output supplies. Also, the supply of REC is taxable while supply of electricity is exempt. In this regard, the Tamil Nadu AAR[17] has held that the Applicant is entitled for proportionate ITC for procurement of capital goods used for installation of taxable supply i.e. Renewable Power Generation Plant under REC scheme as per section 17(2) of the CGST Act read with Rule 43 of the CGST Rules, 2017.

4. Updates on e-invoicing[18]

The Government vide notification no. 61/2020-CT dated 30th July 2020 had increased the limit of aggregate turnover for issue of e-invoices from Rs. 100 crores to Rs. 500 crores for B2B supplies. The said limit has been revised back to Rs. 100 crores w.e.f. 1st January 2021.

[16] In case of Rajesh Rama Varma [TS-880-AAAR-2020-NT]
[17] In the matter of Kumaran Oil Mill [TS-877-AAR-2020-NT]
[18] Notification no. 88/2020-CT dated 10th November 2020

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