KATALYST ADVISORS

Katalyst Kaleidoscope

October 2023: Tax and Regulatory Insights

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A. Income tax highlights

1. Supreme Court: Telecom license fee 'capital in nature' and held disallowable[1]

In the present case, SC has overruled the Delhi HC judgement in case of Bharti Hexacom and has settled the controversy on allowability of variable licence fee paid annually by telecom companies under the Telecom Policy of 1999, in favour of the Revenue, and has held the same to be capital in nature which may be amortised as per Section 35ABB.

It has been held that Delhi HC was not right in apportioning the expenditure incurred towards establishing, operating, and maintaining telecom services, as partly revenue and partly capital by dividing the licence fee paid before and after July 31, 1999.

It has further held out that mere payment of an amount in instalments does not convert or change a capital payment into a revenue payment. Therefore, what is relevant is the nature of the original obligation and whether the subsequent payment made in instalments relates to or has a nexus with such original obligation or not. The manner of payment was held to be irrelevant and the consequence of non-payment would have resulted in ouster of the licensee from the trade and accordingly, it was held that the payment made is intrinsic to the existence of the license as well as trade itself, which can be characterized as capital only.

Katalyst Comment

The National Telecom Policy of 1994 was substituted by the New Telecom Policy of 1999 on 22 July, 1999. The 1999 Policy stipulated that the licencee would be required to pay a one-time entry fee and additionally, a licence fee on a percentage share of gross revenue (AGR).

Section 35ABB[2] provides that, any capital expenditure incurred for acquiring any right to operate telecommunication services either before the commencement of the business to operate telecommunication services or thereafter at any time during any financial year shall be allowed as deduction in equal instalments over the period the licence remains in force.

One would have thought that the one time fee should qualify for amortization u/s 35ABB, but in any case, the variable fee should be treated as revenue expenditure.

2. Supreme Court: Tax treaty interpretation vis-à-vis most favoured nation (MFN) clause:[3]

There are several tax treaties that India has entered with OECD countries and some of them have a clause that if there is a lower rate of withholding tax in a treaty which is entered into with an OECD member country, then, as per the most favoured nation clause entered into by India, such lower rate should apply.

The facts and the context were that there was a protocol to the India France treaty which said that, wherein the contention of Steria India was that having regard to Clause 7 of the protocol, the more

[1] CIT Delhi Vs Bharti Hexacom Ltd. & Others [TS-605-SC-2023] dated October 16, 2023

[2] w.e.f F.Y.1995-96

[3] Nestle SA [TS-616-SC-2023] dated October 19, 2023

restrictive definition of "Fees for Technical Services" appearing in the subsequent India-UK tax treaty must be read as forming part of the India France tax treaty, as well.

There were other assesses also involved in some similar context for India Netherlands treaty, but that was regarding lower rate of tax with a similar context as above.

In the context of Nestle and the protocols to the India Swiss tax treaty, the argument of the assessee was that Slovenia, Lithuania and Columbia ("SLC countries") later entered into respective treaties with India, and a lower rate in those treaties was applicable to Nestle's situation vis a vis the India-Swiss treaty. The SLC countries became OECD members subsequent to the date of the India - France treaty, but the Assessee contended it does not matter whether they were members of OECD at that time for Nestle, Switzerland to claim parity of treatment.

In the above context, it was held by the Supreme Court that a stipulation in a DTAA or a Protocol with one nation and which requires (through a protocol) the same treatment in respect to a matter covered by its terms, after its being entered into when another nation (which is member of a multilateral organization such as OECD), which is given better treatment, does not automatically lead to integration of such term extending the same benefit in regard to a matter covered in the DTAA of the first nation, which entered into DTAA with India. In such event, the earlier DTAA requires to be amended through a separate notification under Section 90 in absence of which the assessee's contention could not be accepted.

3. Supreme Court: Requirement to furnish PAN from a TDS perspective cannot override tax treaties[4]

Section 206AA requires that in a TDS context, if a PAN is not furnished by an assessee, the tax deduction shall be at the highest of the rates specified in the Income Tax Act, or at the rate of 20%. The Supreme Court was dealing with a situation where Air India had taken an engine on lease from a foreign company, and had deducted tax at 10% under India Netherlands treaty; the Tribunal had held that the requirement to furnish PAN cannot override the treaties and Air India had rightly deducted tax at 10% and not at higher rate. The High Court had dismissed the Revenue Department's appeal and vide this judgement, the Supreme Court rejected special leave petition of the Revenue department.

4. Bombay HC: Section 37- commission payment wholly & exclusively for business purpose- Revenue cannot sit in the judgement regarding quantum of payment[5]

During assessment proceedings, the assessee had furnished details of commission paid and had provided relevant documentary evidence including agreements.

The Assessing Officer had made partial disallowance on the grounds that neither the Assessee nor the commission recipients could show that the orders were procured with their assistance and

[4]Commissioner of Income Tax vs Air India Ltd (SC) [2023] dated July 4, 2023
[5]The Indian Hume Pipe Co. Ltd Construction House vs. Commissioner of Income Tax, Central II, [ITXA No.744 of 2002; dated August 31,2023; (Bom.) (HC)]

accordingly had failed to furnish evidence to show that services have been rendered; the Tribunal confirmed the AO's view on disallowance.

On further appeal before the High Court, it observed that the AOs & the Tribunal act of partial allowance indicates that they accepted the fact of rendering of service by the commission agent and it is only on that basis partial amount was allowed; the Court further noted that there was no allegation made in the assessment order of any flow back of the commission payment by the commission agent to the Appellant assessee. So long as the services had been rendered and the agents confirmed the receipt of the commission which were made through banking channels, the genuineness of the payment could not be doubted. The Court observed that in applying the test of commercial expediency, the reasonableness, and the quantum of the expenditure to be judged from businessman's view point & not from the Revenue's perspective, and that the revenue cannot decide quantum of the expenditure necessary for the business. In view thereof, appeal of the assessee was allowed.

5. Delhi ITAT: Investment in preference shares of subsidiary written off, disallowed as a capital loss[6]

The facts of the case were that Religare Enterprises Ltd ('Religare') is registered as an NBFC, and is a holding company of the Religare group; due to significant financial stress of the group including in a 100% subsidiary of Religare called Religare Capital Market Ltd. ('RCML'), Religare had made a substantial investment into RCML by way of preference shares to enable RCML to fund its Mauritius subsidiary, which, in turn, funded losses in the UK step down subsidiary.

There had been various allegations against the group, including by a forensic audit carried out, and that needs to be borne in mind in the context of the Tribunal decision which held that investments made in RCML owing to losses incurred by Mauritius subsidiary cannot be allowed as deduction, even though the investment was a result of High Court approved capital reduction scheme.

6. Mumbai ITAT: Allows Mauritian entity carry-forward of LTCL along with DTAA exemption for STCG[7]

In the present case, the Assessee, a Mauritius based investment entity had claimed exemption of short-term capital gain (STCG) under India-Mauritius DTAA and had carried forward long term capital loss (LTCL) under Section 74(1). The Revenue observed that since the capital gains derived by a tax resident of Mauritius in India is exempt under Article 13 of India-Mauritius DTAA, the question of carrying forward of capital losses from such transactions does not arise at all and hence denied the claim of carry forward of LTCL.

As per the provision of the Act, STCL can be carried forward or adjusted intra-head but LTCL can be carried forward but intra-head adjusted cannot be made against the STCG; ITAT pointed out that the legislature has kept this difference in carry forward as well as intra-head adjustment separate

[6] Religare Enterprises Limited [TS-560-ITAT-2023(DEL)] dated September 28, 2023
[7] Indium IV (Mauritius) Holdings Limited [TS-591-ITAT-2023(Mum)] dated October 11, 2023

for LTCG/LTCL and STCG/STCL; Under the head of income "Capital Gains", each transaction constituting the short-term and long-term capital gains are different sources of income.

Section 90(2) allows assessee to claim the beneficial provisions of the treaty in respect of STCG and for LTCL, the Assessee had only option to apply the provisions of Section 74 and accordingly, it chose to carry forward LTCL. Thus, following the judicial precedents, ITAT held that the Assessee has rightly claimed beneficial provisions of the India-Mauritius DTAA in respect of STCG, and at the same time allowed the carry forward of LTCL as per Section 74

7. Mumbai ITAT: Upheld Penalty under Black Money Act for non-disclosure of foreign assets in Schedule FA of ITR[8]

In the present case, Assessee with her husband had made joint investment outside India; the income from foreign investments (i.e. Interest income, capital gains etc) were disclosed in relevant years. However, the assessee failed to disclose foreign assets under Schedule FA while filing the return of income and the AO levied penalty towards non-disclosure of such foreign investments under section 43 of the Black Money Act 2015 (BMA) which was confirmed by CIT (A). On further appeal, Tribunal held that section 43 of the BMA contains provisions for the levy of penalty, wherein a resident and ordinarily resident person is liable for a penalty if he fails to furnish or files inaccurate particulars of investment outside India while filing the ITR. The disclosure of foreign investments/assets is to be made in ITR Schedule FA and such disclosure to be made not only for the undisclosed assets but any asset held by the assessee as a beneficial owner or otherwise.

Further the assessee also contended that the penalty laid down in sec 43 is discretionary and not mandatory in nature. However, the assessee failed to substantiate that the AO has exercised his discretion extravagantly, and accordingly, it was held that the AO exercised his discretion judiciously and no material was brought to show that AO levied penalty arbitrarily and unjustifiedly.

Katalyst Comment

Section 43 of BMA provides discretionary powers in the hand of AO to levy penalty for failure to furnish in the ITR any information or for furnishing inaccurate particulars about an asset (including financial interest in any entity) located outside India. In the light of such powers granted to AO and the aforesaid decision, it would be seen that despite foreign income being disclosed & offered to tax in the ITR, a mere failure to disclose such foreign assets could attract penalty; thus, one needs to be very mindful in such disclosure requirements.

8. Chandigarh ITAT: Share Premium allegedly received in excess of FMV- inapplicable to loan conversion and Revenue cannot pick & choose valuation method[9]

In the present case, Assessee was earlier operating as a partnership firm which subsequently got converted into a company wherein all the partners of the firm became shareholders and an unsecured loan given by the erstwhile partners was converted into equity shares issued at a

[8]Ms. Shobha Harish Thawani v. JCIT - *[2023] 154 taxmann.com 564 (Mumbai - Trib.)* dated September 27, 2023

[9] I.A. Hydro Energy Pvt. Ltd [TS-603-ITAT-2023(CHANDI)] dated October 13, 2023

premium. AO made additions under Section 56(2)(viib) holding that the Assessee issued equity shares at a premium which was in excess of the fair market value (FMV) of shares; the additions made were deleted by CIT (A).

The ITAT upheld the decision of CIT (A) and observed that:

i) no money was received during the year under consideration
ii) outstanding loans received in preceding years were converted to share capital
iii) the legislative intent to arrest abuse of tax laws to defraud Revenue was not available as the receipt of loans in earlier years got duly verified in the scrutiny of earlier AYs

ITAT pointed out that Revenue is not authorized to pick and choose a particular method of valuation of share as the option is specifically given to the assessee as per Rule 11UA(2). The AO has power to verify the method of valuation adopted by the assessee but the same cannot be substituted by NAV method once the assessee has exercised option of DCF valuation method.

In the above case, Revenue had neither found any specific error not it had adjusted the same with different valuation by DCF method itself, but outrightly rejected DCF and proceeded with NAV method merely for huge difference in projected and actual results. ITAT opined that valuation cannot be rejected on variation in projected and actual figures since some differences are bound to be there.

B. Corporate Law Highlights

1. Delhi HC: Once resolution-plan under IBC extinguishes all claims, dispute cannot be urged before Arbitral Tribunal[10]

The Delhi HC dismissed a petition filed by Indian Oil Corporation Ltd. (Petitioner), seeking to invoke the constitution of an Arbitral Tribunal in respect of disputes emanating from a Gas Supply Agreement (GSA) which was executed by it in favour of Arcelor Mittal Nippon Steel India Ltd. (Respondent). The HC pointed out that "Once it is accepted that the approval of the Resolution Plan results in the extinguishment of all claims that the petitioner may have had, the dispute which is now sought to be canvassed cannot be permitted to be urged again before the AT (Arbitral Tribunal)."

The HC highlighted that claims or liabilities which could have been enforced against the corporate debtor are duly considered during the CIRP with the Adjudicating Authority undertaking a detailed exercise with respect to identification of the various creditors of the corporate debtor, including the classes thereof, the scrutiny of claims received and the ultimate apportionment of the amounts deposited by the SRA amongst the creditors.

[10] Indian Oil Corporation Ltd. vs. ArcelorMittal Nippon Steel India Ltd. [LSI-940-HC-2023(DEL)] dated October 12, 2023

It further pointed out that successful Resolution Applicant cannot be left open to defend or oppose claims which are either not factored in the Resolution Plan, nor can it be left to fend off actions that may be brought with respect to alleged or asserted dues of the corporate debtor which were not admitted.

2. Supreme Court: Issues Contempt notice to NCLAT members for "willfully" defying its directions[11]

In the present case, Mr Deepak Chhabria had filed an application before NCLAT for grant of interim relief which was dismissed by the NCLT; the issue was regarding appointment of executive chairperson in the AGM of Finolex Cables Limited. NCLAT reserved the judgement and directed the parties to maintain status quo.

Aggrieved by the NCLAT directions, a contempt petition was moved before SC on the ground that despite the order of Court, the declaration of the result of the Annual General Meeting of Finolex Cables was being deferred till a judgment was rendered by NCLAT. In this regard, SC directed the scruitinizer to declare the result of the Annual General Meeting and directed the NCLAT to declare its judgment in the pending appeal after it is duly apprised of the fact that the result of the Annual General meeting had been declared, however, the members of NCLAT passed the judgement before the results of AGM were declared.

Accordingly, SC held the judicial and the technical member of NCLAT prima facie guilty of "falsehood" and accordingly held liable to be proceeded for contempt and issued show cause notice to the tribunal members.

The SC held that the members of the NCLAT:

i) failed to disclose facts to the chairperson of the NCLAT

ii) incorrectly sought to create a record in the order dated October 16, 2023 that the order of this court was drawn to the notice of the bench only at 5.35 pm on October 13, 2023 because of which they had passed the order before AGM results were declared

iii) delivered the judgement in defiance of the directions of the court, which was of unbecoming of a judicial tribunal

Accordingly, SC has set aside the NCLAT judgement dated October 13, 2023 and directed a fresh hearing, and has directed the NCLAT members to reply to the contempt notice; it has also held that the appeal shall be heard afresh at a Bench presided over by the chairperson of the NCLAT.

[11] Orbit Electricals Pvt Ltd vs Deepak Chhabria & Anr [LSI-973-SC-2023 (NDEL)] dated October 18, 2023

C. SEBI/RBI/Other Legal highlights

1. Revised Standard Operating Procedure (SOP) (issued by BSE) on application filed to the Stock Exchanges w.r.t Scheme of Arrangements [12]

As per Regulation 37 and 59A of the SEBI (LODR) regulations read with SEBI Master Circular on schemes of arrangement, listed companies are supposed to file schemes of arrangement with the Stock Exchange(s) for their approval.

In this context, BSE has issued a revised SOP to be followed by listed companies, the gist of which is as follows:

i. The Scheme of Arrangement seeking Stock Exchange's NOC shall be submitted to the Exchange along with all the documents as set forth in the exchange Checklist within 15 working days of board meeting approving the draft scheme of arrangement failing which, the Company shall take fresh approval from its Board.

ii. Audited Financials of last 3 years not older than 6 months of unlisted companies involved in the Scheme of Arrangement shall also be submitted along with the application.

iii. Audited financials considered for preparation of Valuation Report, should not be older than 3 months on the date of valuation report and detailed working of valuation under different methods shall also be disclosed.

iv. The Board shall consider the scheme within 7 working days of issuance of valuation report.

Further, the circular also clarifies the detailed procedure for the Exchange Queries wherever there are material inadequacies or non-compliance with the SEBI circulars and due course of action from the companies.

2. SEBI: BSE & NSE amend the format of the Corporate Governance Report to include Cyber Security Incidents Disclosure[13]

SEBI vide its notification dated 14/06/2023 mandated the inclusion of the cyber security incidents and breaches or loss of data and documents in Company's CG Report. In this regard, BSE & NSE have notified the format for submission for such details and have modified the existing utility of CG Report to include the following fields:

Details of Cyber Security Incidence		
Whether as per Regulation (27)(2)(ba) of SEBI (LODR) Regulations, 2015 there has been cyber security incidents or breaches or loss of data or documents during the quarter		Yes/No
Date of Event	Brief Details of the event	

[12] BSE circular dated 29/09/23, notice no- 20230929-30

[13] BSE circular dated 29/09/23, notice no-20230929-26 & NSE Circular Ref No: NSE/CML/2023/69 dt 29/09/23

The new format shall be applicable from the quarter ended 30/09/2023

3. SEBI: Working groups set up to recommend simplification and ease of compliance[14]

SEBI has set up 16 working groups in the context of an amendment made in the Budget and these groups are reviewing compliance requirements under various SEBI regulations applicable in regulated entities such as Mutual funds, Stock Exchanges, AIF, Portfolio Managers etc.

One of the working groups also deals with delisting, buyback and LODR (which has now become extremely wide, detailed and heavily compliance oriented).

Suggestions in relation to this initiative have been called for latest by November 6, 2023

4. SEBI: Delhi HC judgement regarding (PIL) by petitioner concerning delisting of securities[15]

In the present case, the petitioner had filed the PIL against Union of India, SEBI (Respondent No. 2 or R2) and BSE (Respondent No. 3 or R3); the petitioner had raised various grounds before Delhi High Court to protect the interest of investors and prayed for several reliefs, primarily the following:

i. Making a mandatory provision for purchase of shares and securities by promoters of a to be suspended company, from investors as a pre-condition for suspension of trading.

ii. For SEBI and Stock Exchange (R2 and R3) to come out with more stringent and effective alternate penal provisions against promoters and management of errant listed companies.

iii. Constituting an internal panel by SEBI to monitor conduct of promoters of a listed company.

iv. To institute a grievance redressal mechanism within R2 and R3 for the redressal of grievances of the public investors of the listed companies whose trading of shares already remains suspended and to trace out the promoters and management of such listed companies and make them settle the dues of innocent public shareholders/investors.

In a detailed judgement, it was held by the Delhi High Court that the provision of law for delisting and mechanism to protect the interest of investors are robust, the delisting provisions have appropriate checks and balances, and the petitioner has an alternative remedy before securities and appellate tribunal in case he is aggrieved in the matter of delisting. Accordingly, no further orders are required to be passed in the instant PIL, and the interest of the investors is certainly protected under the Statutory Provisions governing the field.

[14] SEBI Press Release No.24/2023 dated October 4, 2023

[15] Atul Agarwal versus Union of India, 179 SCL 464 dated May 19, 2023

5. **SEBI: Listed Cos. must disclose arbitration matters under Sch. III of LODR to the extent permissible under Arbitration Act**[16]

SEBI, in its reply to an Informal Guidance sought by GAIL(India) Ltd., has stated that listed companies can make disclosures regarding the details of arbitration proceedings or arbitral awards under Schedule III of the LODR Regulations to the extent it is legally permissible under the Arbitration and Conciliation Act, 1996

The Disclosures would include disclosing initiation of arbitration proceedings, the amount of claim involved in such proceedings, the fact of passing of an arbitral award and its effect on the listed entity, the fact of termination of the arbitration proceedings, court orders in relation to the arbitration proceedings etc.

6. **RBI: NBFC Scaled Based Regulation, Directions 2023**[17]

The RBI has issued the above directions to effectuate the regulatory structure more formally for scale-based regulations based on size, activity and perceived riskiness. The four layers of NBFC are as follows:

1. Lowest layer shall be known as NBFCs-Base Layer (NBFCs-BL)
2. Middle and Upper layer shall be known as NBFCs-Middle Layer (NBFCs-ML)
3. NBFCs Upper layer (NBFCs-UL)
4. The Top Layer will be known as NBFCs-Top Layer (NBFCs-TL)

A different regulatory regime with escalating rigors has been prescribed for these four layers.

7. **SC: Karta of HUF can sell, alienate, or mortgage joint family property**[18]

In the present case the Karta of the HUF had mortgaged the HUF property which was challenged by one of the members. SC has held that the Karta has the right to sell/dispose of/alienate an HUF property since HUF can act through its Karta or an adult member of the family. The SC held that the Karta of the HUF, was entitled to mortgage the HUF property and the other members need not be consented for such mortgage, however, the members can challenge such alienation if the same was not a legal necessity or for the betterment of the estate.

[16] Informal Guidance No. SEBI/HO/CFD-PoD-2/OW/P/2023/40986, dated: October 04, 2023

[17] RBI Master Directions- RBI/DoR/2023-24/105 dated October 19, 2023

[18] N.S.Balaji vs Debt Recovery Tribunal [SLP- 21476- 21477/2023] dated October 3, 2023

D. Goods and Service Tax Highlights

1. Key announcements of 52nd GST council meeting held on October 7, 2023[19]

The GST Council has made several important announcements with respect to trade facilitation and compliance streamlining. The key announcements *inter-alia* include implementation of amnesty scheme for filing of appeal in respect of order passed till 31st March 2023 with enhanced pre-deposit of 2.5%, clarity on taxability and valuation of personal and corporate guarantee by directors and group companies, allowing receipt in INR in special Vostro Account for export of services etc.We have summarised below the key announcements:

a. Taxability and valuation of personal and corporate guarantee

Personal guarantee by Directors: - It is proposed that a circular to be issued to clarify that, when there is no consideration involved for personal guarantee provided by the director to the bank and financial institutions, the open market value of the transaction may be treated as zero and no tax is payable and in case where consideration is involved, GST is payable under the reverse charge mechanism by the Company.

Corporate guarantee for related persons: - In Rule 28 of CGST Rules, 2017, sub-rule (2) to be inserted to provide that the taxable value for the supply of a corporate guarantee service will be higher of 1% of the guarantee offered or the actual consideration. Also, a circular to be issued to clarify that the valuation of corporate guarantee provided between related persons will be governed by proposed rule 28(2) of the CGST Rules irrespective of the input tax credit (ITC) availability to the recipient of the service.

Katalyst comments: *The Supreme Court judgement in the case of Edelweiss Financial Services Limited[20] held that corporate guarantee services are not liable to service tax in the absence of consideration, however, the said decision would not hold good under the GST law for related party scenarios. The GST Law provides that services between related parties to be a supply, even when provided without a consideration under Schedule I of the Central Goods and Services Tax Act, 2017. Due to the apparent conflict between the industry practice being followed so far and the government's intent to tax corporate and personal guarantees, the chances of large-scale litigation on this issue in future are high.*

b. Supplies to SEZ units and developer for authorised operations on payment IGST to be allowed

Notification No. 1/2023-Integrated Tax dated July 31, 2023 (effective from October 1, 2023) to be amended to allow the supplier to claim a refund of the IGST paid on the supply to a SEZ unit and developer for authorized operations.

[19] Press Release dated October 7, 2023
[20] Edelweiss Financial Services Limited 2022 (2) TMI 1359

Katalyst comments: This will result into timely receipt of refund of IGST payment made at the time of supply to SEZ units.

c. ISD mechanism to be mandatory

The GST Law to be suitably amended to make ISD mechanism mandatory for third-party invoices of input services procured by the Head Office ('HO'), attributable to both HO and branch office ('BO') or exclusively to one or more BOs. This amendment would apply prospectively.

d. Clarifications on place of supply of certain services

Circulars to be issued to clarify place of supply in case of following services: (1) transportation of goods services, where supplier and recipient are outside India; (2) advertising services; and (3) co-location services.

e. Remittance for export of service

A circular is to be issued to clarify remittances received in Special INR Vostro account to be treated as consideration to qualify 'export of service' in terms of sub-clause (iv) of section 2(6) of the IGST Act.

Katalyst comments: *This amendment is pursuant to RBI circular dated July 11, 2022 which allows trade settlement in INR in special Vostro Account to qualify as admissible mode of payment and consequently, the receipt of export proceeds would qualify as export in terms of the payment condition.*

f. Automatic restoration of provisionally attached property post one year

Sub-rule (2) of rule 159 of the CGST Rules, 2017 to be amended to restrict the effect of provisional attachment order in Form GST DRC-22 to one year.

g. Other key recommendations:

- Supply of all goods and services by Indian Railways will be taxed under the Forward Charge Mechanism to enable them to avail ITC and reduce cost.

Extra Neutral Alcohol (ENA) used for manufacture of alcoholic liquor for human consumption to be kept outside the ambit of GST. ENA for industrial use to attract 18% GST.

2. ITC of installation of roof-solar plant is available and ITC of Central-AC, Lift, Architect-fees, fire-safety extinguisher is not available[21]

Gujarat AAAR rules that ITC of installation of roof solar plant atop a building is available as the same is not permanently fastened to the building and qualifies as 'plant and machinery' and it is not the immovable property in terms of section 17(5) (d) of the CGST Act. However, with respect to installation of lift, the AAAR provided that the works contract service of erection, installation and commissioning of lift, makes it an immovable property and hence, ITC of the same is not available. Further, the AAAR has also clarified that the ITC of Architect and Interior Designer fees is not available as it is capitalised and ITC of Fire Safety Extinguishers and Electrical fittings, once fitted, is not available as it becomes immovable property.

***Katalyst comments**: A welcome ruling by the Gujarat AAAR as it is clarified that installation of roof solar plant atop a building qualifies as 'plant and machinery' and ITC of the same is available*.

3. Goods cannot be seized based on the non-disclosure of route and destination of final goods in tax invoice[22]

The Allahabad High court has ruled that goods cannot be seized based on non-disclosure of route and non-disclosure of destination of final goods in tax invoice as there is no specific provision which bounds the supplier to disclose the route to be taken during transportation of goods unlike VAT regime. The HC clarified that the power of detention as well as seizure can be exercised only when the goods are not accompanied by the genuine documents provided under the CGST Act.

***Katalyst comments:** A welcome decision by the Allahabad HC as the GST Law does not provide for disclosure of any route for transportation of goods and therefore, goods cannot be seized for non-disclosure of route and non-disclosure of destination of goods.*

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[21]In the matter of the Varachha Co-op Bank Ltd. [TS-518-AAAR(GUJ)-2023-GST] dated October 13, 2023
[22]Ram Kamal Healthcare Pvt. Ltd. vs. UOI & 3 Ors. [TS-515-HC(ALL)-2023-GST] dated October 11, 2023