Recent Developments in Litigation (GST)

20th November'2021

CMA Pratyush Chattopadhyay

Godrej & Boyce Mfg. Co. Ltd. Vs UOI – Mumbai High Court – Division Bench (Writ Petition – 3226 of 2019)

Issue in Brief

- Honble H.C set aside the SCN, which denied carry forward of E. Cess (EC) & SHE Cess (SHEC). Explanation 3 of Section 140 of CGST Act is not applicable to section 140(1) .

- SCN was issued alleging wrong availment of inadmissible transitional credit of the EC & SHEC . SCN was issued on the premise that the ITC in relation to EC and SHEC has been taken away by a retrospective amendment to the GST law.

Points to be kept in mind

•As on 30th June'17, the credit in relation to EC & SHEC was eligible. Even transitional credit provision did not have such restriction.

•Section 28 of the CGST (Amendment) Act, 2018 dt 29/8/18 withdrew the color of " Eligible Duties & Taxes" from EC & SHEC

•Suddenly unutilized EC & SHEC becomes cost, without any fault of the Industry.

•Keeping track of notification/ tweets / flyers/ press release/ circulars / withdraw of some portion of circulars was the job of any tax professional.

•Can or should any retrospective amendment take away vested right ?

Godrej & Boyce Mfg. Co. Ltd. Vs UOI – Mumbai High Court – Division Bench (Writ Petition – 3226 of 2019)

Assessee's Contention

• SCN was issued in August'2019 . Alleging Godrej has taken ineligible credit. While reversing the credit (under protest) Rs – 3.83 Cr , interest was paid under protest.

•The Notification (Sec 28 of CGST Amendment Act'2018) has been issued on an erroneous legal premise and hence is without jurisdiction. CGST Amedment Act was enforced from 1-2-2019 (2/2019-CT) – with some exception.

•**Amendments introduced in Explanations 1 and 2 to section 140 of the CGST Act have not been brought into force**, and that the SCN could not have been issued merely based on the newly inserted Explanation 3 to section 140 of the CGST Act.

•**Explanation 1 defined 'eligible duties**' for the purpose of sub-sections (3), (4) and (6) of section 140 of the CGST Act, and **Explanation 2** defined '**eligible duties and taxes**' for the purpose of subsection (5) of section 140 of the CGST Act.

• **Explanation 3**. –was inserted, wherein it was specifically clarified that 'eligible duties and taxes' excludes any cess that has not been included in Explanations 1 and 2 " For removal of doubts, it is hereby clarified that the expression **"eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2** and any cess which is collected as additional duty of customs ……. "

Godrej & Boyce Mfg. Co. Ltd. Vs UOI – Mumbai High Court – Division Bench (Writ Petition – 3226 of 2019)

Revenue's Contention

- Relied heavily on Amendment of Section 140

- Raised some technical question like alternative remedy etc.

Take Away

- For relief - we need to knock the door of Higher Court

- Fear of coercive action should not take away our legal rights. Even if we need to do something, that should be "under protest".

- Reach out to "Experts " before giving up any right.

UOI Vs Bharti Airtel – Supreme Court 6520/2021

Facts of the Case

• Bharti Airtel Ltd (BAL), to provide its supply, availed various services. It filed GSTR 3B for mentioning liabilities & ITC and discharged applicable tax liabilities.

•BAL did not utilise ITC and paid liability in cash during initial phase of GST (July-Sep'17). In absence of any in-built mechanism in GSTN portal, to verify authenticity of inward supplies, BAL was compelled to follow this route.

•Once the facility of GSTR2A became functional in GSTN portal, BAL realised that it had substantial amount of ITC (**Rs 923 Cr**) available in ITC ledger.

•BAL approached Delhi High court for remedial measures including refund of cash (Rs 923 Cr), rectification of GSTR 3B Return, which they have already paid.

•Delhi High Court, while reading down para 4 of Circular No 26/26/2017- GST Dt 29-12-2017, allowed BAL to rectify GST3B, resulting in refund of cash.

• Delhi High Court issued favourable order to Bharti Airtel .

•Government of India filed Appeal before Supreme Court and the decision came.

UOI Vs Bharti Airtel – Supreme Court 6520/2021

Points to be noted / Ground realities

•Right from 2015 , assurance given to industry was that the system of return (including ITC availment etc) filing will be automated under GST. Just three days before the implementation of GST Government informed (Notification No. 10/2017-CT Tax dated 28.06.2017) automated system will not be implemented and a summary manual return to be filed.

•Technical glitches , at the time of implementation of GST, was a night mare.

•New Forms prescribed, subsequently modified or withdrawn / kept abeyance, instruction issued through twitter , FAQs, made the implementation challenging.

•Form GSTR 3B was not a Return. Gujarat High Court clearly mentioned that GSTR 3B is a stop gap arrangement & not a prescribed Return Form. In October '2019, The Government, through a retrospective amendment, made GSTR 3B as a valid Return.

•Onus is on buyer to ensure the vendor is GST compliant. – **Key differentiator between erstwhile Cenvat related provision.**

•GSTR 2A became operative from September'2018. Post that only BAL came to know about such huge ITC balance for the period under reference.

• **An error had occurred or reasons beyond the control** . BAL was unable to correct the mistake in Form GSTR3B for the relevant period.

•BAL relied on para 4 of the Circular 26/26/2017 **dated 291/12/17** stating that " ….. It may be noted that while making adjustment in the output tax liability or input tax credit, **there can be no negative entries in the FORM GSTR-3B**. **The amount remaining for adjustment, if any, may be adjusted in the return(s) in FORM GSTR-3B of subsequent month(s) and, in cases where such adjustment is not feasible, refund may be claimed**

•In short Department itself was not fully geared up to handle such an elaborate electronic procedure and was forced to tweak the procedural part to ensure smooth operation.

UOI Vs Bharti Airtel – Supreme Court 6520/2021

Assessee's Contention

•. In absence of GSTR2A, satisfying conditions laid down in section 16(2) (C) and (d) **become impossible**.

•Assessee should not be penalised to incur blockade of working capital on account of technoligical failure from the Government.

•Circular of 26/26/2017 mentions clearly that the refund is available in certain circumstances.

•The recipient had no access to the vendor's returns had no facility to verify the correctness of the ITC taken.

•The **Department cannot take advantage of its own failure of not being able to operationalize** relevant Forms. It is unfair and inequitable that failure of the department should benefit the department by forcing the registered person to discharge liability by cash

UOI Vs Bharti Airtel – Supreme Court 6520/2021

Revenue's Contention

•. The **right to claim ITC**, being a statutory right, is **circumscribed by conditions and restrictions**, subject to which a registered person is entitled to take credit.

•A registered person is legally bound to maintain records regarding transactions between suppliers and the recipients based on their agreements, invoices and books of accounts. **Such records would itself reveal about the eligibility to credit and its availment**.

•The **registered person under the law is obliged to do a selfassessment** , take credit and pay tax. The Authorities have no role to play in that regard.

•By introducing the provision, Government is not taking away the right of ITC nor denying the ITC.

•The efficacy of common electronic portal or so to say mal functioning thereof, does not extricate the registered person from the primary obligation of selfassessment

•Rectification / revision of Return can be done in the month during which such or incorrect particulars came to be noticed.

•The role of tax authorities would come at the time of verification of the records and returns filed by the registered person.

UOI Vs Bharti Airtel – Supreme Court 6520/2021

Judgement in brief

- Supreme Court dealt with an issue, which arose from Delhi High Court order, wherein the High Court allowed the tax payer to rectify GSTR 3B filed for certain periods (Jul-Sep'17). Supreme Court set aside the High Court Order.
- A registered person is legally bound to maintain records regarding transactions between suppliers and the recipients based on their agreements, invoices and books of accounts
- The efficacy of common electronic portal or so to say mal functioning thereof, does not extricate the registered person from the primary obligation of selfassessment

Take Away

• Have we been forced to a situation of impossibility , where technology help will not be available but assesses will be liable to ensure vendor's compliance record ? – ICEGATE linkage is an issue.

• We need to have a robust mechanism to ensure that ITC and self assessed tax is taken care of.

UOI Vs VKC Footsteps (I) Pvt Ltd [2021-TIOL-237-SC-GST)

Sections

54 (3) ..... a registered person may claim refund of any unutilised input tax credit at the end of any tax period :

Provided that **no refund** of unutilised input tax credit **shall be allowed in cases other than** —

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), **except supplies of goods or services** or both **as may be notified by the Government** on the recommendations of the Council :

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty :

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Rule 89(5) : **Application for refund of tax, interest, penalty, fees or any other amount**

[(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula :-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation *:* - For the purposes of this sub-rule, the expressions - (a) **Net ITC shall mean input tax credit availed on inputs** during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

Before April'18 – Net ITC was Input Tax credit availed on Inputs and Input Services during the relevant period. This was changed with retrospective amendment.

UOI Vs VKC Footsteps (I) Pvt Ltd [2021-TIOL-237-SC-GST)

Arguments on behalf of the Company

1. Rule 89(5) of the CGST **Rules as originally enacted provided** for refund of ITC availed on both inputs (that is input goods) and input services and was in line with Section 54(3) of the CGST Act. Accordingly, **the assessee was granted refund of such unutilised ITC**. This was subsequently amended retrospectively.

2. The Statement of Objects and Reasons accompanying the bill introducing the CGST Act also emphasised that there would be a seamless transfer of ITC from one stage to another in the chain of value addition

3. The situation in which the quantum of **input taxes exceeds output tax is an anomaly, aberration and distortion resulting from various sources of taxes and conflicts with the fundamental principles** of GST. **(One India One Tax)**

4. **Government may in the public interest impose lower rates of tax on products such as fertilizers**,. **The objective of taxing such goods at a lower rate is frustrated if inputs for making the final products are taxed at a higher rate and no refund of unutilized credit is granted**. Refund of unutilised ITC seeks to achieve the objective of value-added consumption-based taxation in its true sense (should few corporates will take the hit because they are in the business of public interest)

5. Section 54(3) has been enacted to achieve the objective of removing the cascading effect of unutilized ITC**.** Section 54(3**)** provides for refund of "any unutilised input tax credit" but the refund is available in only two situations namely, (a) zero rated supplies; and (b) inverted duty structure. **The quantum of refund is provided by the main part of Section 54(3) which stipulates the refund of any unutilised ITC. This includes credit availed on input goods as well as on input services having regard to the definitions contained in Sections 2(62) and 2(63);**

6. Though the **CGST Act makes a distinction between 'inputs' and 'input services', this is only relevant at the stage prior to the availment of credit**, namely to determine the eligibility. **After the credit has been availed, it goes in a common pool** it cannot be co-related to ITC availed on particular input goods or input services.
(Can utilisation be segregated ?)

UOI Vs VKC Footsteps (I) Pvt Ltd [2021-TIOL-237-SC-GST)

Arguments on behalf of the Company

7. The State does not want the taxpayers to suffer the ill effect of tax cascading solely because of its decision to offer a reduced rate of tax on outputs, relative to the tax rate on inputs;

8. **Articles 269A and 279A** introduced by the 101 Constitutional Amendment **seek to harmonise goods and services and remove the cascading effect of taxes**. The **Statement of objects and reasons associated** with the constitutional amendment introducing the CGST Act **emphasized the need to treat goods and services as one combined category**. The concept of one nation one tax introduced by GST laws cannot be ignored only at the time of refund

9. The proviso to Section 54(3) speaks only of categories of cases where refund would be available**. It does not speak of a restriction** on the quantum of refund

10. **The word "inputs**" in Section 54(3) first proviso (ii) **cannot be restricted to goods because the CGST Act/ SGST Act treats goods as services**. **For instance, transfer of right in goods without transfer of title is deemed as "Supply of Services"** as per Clause 1(b) of Schedule II .**Similarly, "Works Contract" as defined in Section 2(119) of the CGST Act is deemed as per Clause 6(a) of Schedule II as "Supply of Services"** although it involves the supply of goods.

11. **There is no distinction between ITC on goods or services either at the time of availing or taking of the credit or at the time of utilization of credit. Therefore, it could not have been the intention of the Parliament to differentiate between the two only at the time of refund** in the case of an inverted duty structure envisaged under clause (ii) to the first proviso to section 54;

UOI Vs VKC Footsteps (I) Pvt Ltd [2021-TIOL-237-SC-GST)

Arguments on behalf of the Government

1. **The refund of taxes is neither a fundamental right nor a constitutional right**. The Constitution only guarantees that the levy should be legal and that the collection should be in accordance with law. **Refund is always a matter of a statutory prescription and can be regulated by the statute** subject to conditions and limitations;

2. **Discriminatory treatment under tax laws is NOT per se invalid.** It is invalid only when equals are treated unequally or unequals are treated equally.

3. Goods and services are distinct at a constitutional level. CGST Act also defines Input & input Service distinctly. Hence, 'goods' and 'services' and 'inputs' and 'input services' have distinct definitions;

4. The Proviso of **Section 54(3) to be considered as restriction**. The first proviso cannot be read as a mere qualification or eligibility for the grant of refund on the entire unutilised ITC **comprising input goods and input services** (a) The expression used is 'the credit' and the **accumulation is restricted only on account of 'inputs'**. The proviso limits the grant of refund only to two circumstances and hence the limitation has to be read as it is without extending it to input services and capital goods, specifically since the legislature has not included them;

5. When there is an express inclusion limited only to the credit accumulation arising out of 'inputs', it would not be permissible to include input services and capital goods in the face of the statutory provision. **What has not been included in the statute should not be included by way of judicial interpretation;**

6. Explanation-I to Section 54(3) defines refund in three parts: (a) When it comes to zero rated supplies on exports, it extends the refund to 'inputs', 'input services' (b) When it comes to deemed exports, it restricts the refund of tax only on the supply of goods; (c) **When it comes to inverted structure, it limits it as provided in the proviso to Section 54(3)**. This is one more reason to read the proviso to Section 54(3), as a restriction and not as a qualification. If the intent of Parliament was to grant a refund arising both out of input goods and input services even in the case of inverted tax structure, it would have defined refund in Explanation-I at par with zero rated supplies and there was no need to limit it only to one situation of the credit accumulation arising on account of 'inputs'.

UOI Vs VKC Footsteps (I) Pvt Ltd [2021-TIOL-237-SC-GST)

Arguments on behalf of the Government

7. **The legislature is entitled to the widest latitude when it identifies categories of classification and unless things constituting the same class are treated differently** without a rationale, the provision cannot be declared as unconstitutional

8. Article 279A(6) does not compel parity of treatment between goods and services. In fact, Article 366(12) deals with the definition of 'goods', Article 366(26A) deals with the definition of 'services' and Article 366(12A) defines 'goods and services'. Thus, goods and services are identified as two distinct aspects;

UOI Vs VKC Footsteps (I) Pvt Ltd [2021-TIOL-237-SC-GST)

Observation of the Bench

1. ITC accumulated on account of input goods and there has been no utilisation of the ITC on input services. While a similar formula is provided in **Rule 89(4) with regard to zero rated supplies, in that case, the 'Net ITC" includes input goods and input services and thus, there is no imbalance between the different components of the formula. The formula prescribed in Rule 89(5) however, seeks to deduct the total output tax from only one component of the ITC, namely ITC on input goods. This in our view is at odds with reality, where the ITC on both input goods and input services is accumulated in the electronic ledger and is then utilised for the payment of output tax. In making such an assumption, the formula tilts the balance in favour of the Revenue by reducing the refund granted.**

2. **Government has exercised its powers of delegated legislation to frame a formula, which has certain inequities.** However, these inequities are to be ironed out by the Government in the course of the application of the formula. **We are affirmatively of the view that this Court should not in the exercise of the power of judicial review** allow itself to become a one-time arbiter of any and every anomaly of a fiscal regime despite its meeting the jurisdictional framework for the validity of the legislation, including delegated legislation.

3. **If provision of law is explicitly clear, language unambiguous and interpretation leaves no room for more than one construction, it has to be read as it is.** In that case, the provision of law has to be tested on the touchstone of the relevant provisions of law or of the Constitution and **it is not open to a court to invoke the doctrine of "reading down" with a view to save the statute from declaring it ultra vires by carrying it to the point of "perverting the purposes of the statute**

Judgement in Brief

- Section 54(3) and Rule 89(5) are constitutionally valid. Legislation is within its power.
- It is not inclined to invoke to doctrine of " reading Down" with a view to save the statute from declaring it ultra vires .
- Observations mentioned in para 104 to 111 shall be considered by the GST Council to enable it to take a considered view in accordance with the law.

Advance Ruling :
Kanhaiya Realty Pvt Ltd (Advance Ruling – West Bengal)

Issue in Brief

•Applicant manufactures and sales hosiery goods such as Vests, Briefs, etc.

•To incentivize its customers, applicant is proposing a scheme whereby it would offer unconnected goods (gold coin or any type of white goods) for sale at a discounted price to such retailers who have bought a certain unit of hosiery product from it.

•Customers will be at liberty not to purchase the goods offered under the said promotional schemes

•Such unconnected goods, would be offered at reduced/ discounted prices For example, the retailer would be eligible to buy a split air conditioner for Rs. 50 only against purchase of 1300 boxes of hosiery goods.

•Under the promotional scheme, the hosiery goods would be sold first on a separate invoice and once the retailer would met the eligibility criteria, the goods specified in the scheme would be supplied to the said retailer vide a separate invoice. So, the supply of hosiery goods followed by the supply of goods under promotional scheme shall not take place for a single price.

Query

• Whether the supply of such unconnected goods at nominal price against purchase of specified units of hosiery goods pursuant to a promotional scheme would be considered as mixed supply or composite supply.

•Whether credit of the input tax paid on the items being sold at nominal prices (as indicated above) would be available to the applicant.

Advance Ruling :
Kanhaiya Realty Pvt Ltd (Advance Ruling – West Bengal)

Order

• It is not a mixed supply because the supplies (i) are not made in conjunction with each other; (ii) are not made for a single price; (iii) do not constitute a composite supply.

•It is not a composite supply because Supplies are not naturally bundled and supplied in conjunction with each other in the ordinary course of business .

•ITC is available , subject to other condition, if goods are used used in the course or furtherance of business. Proposed scheme is for promotion of business.

•Since the transaction can not be treated as gift , ITC can not be denied u/s 17(5) (h)

•Order touched valuation aspect (not considered for order) - Section 15 (1) of the GST Act (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the **price is the sole consideration** for the supply.

Take Away

• Should discount scheme be revisited ? Many options can be explored.

• Business partnering opportunity

Advance Ruling :
KAMDHENU AGROCHEM INDUSTRIES (Maharashtra)

Issue in Brief

• The Applicant is an importer and reseller having main place of business in Maharashtra. It has warehouses in Gujarat and and Kerala. They are registered in all three states.

•Applicant is getting order from other states as well . Based on one of such order, goods were imported in Krishnapatnam Port (AP)

•Applicant directly sold the goods from port (DPD) to customer however, invoice was issued under the Maharashtra GSTIN charging applicable IGST in the said invoice.

•It sells Goods from warehouses near the ports in Gujarat and Kerala State where the Applicant store the imported goods in those States. Thereafter, the goods are sold to customers from those warehouses by issuing invoices under the respective State's GSTIN by charging CGST SGST or IGST, as the case may .

•Customer is proposing to operate through a single point to cater other customers in the eastern part of the country.

•Issue pertains to a situation where the imported goods are sold by the applicant before the Bill of Entry is filed/before the goods are cleared for home consumption on payment of Customs duty.

Advance Ruling :
KAMDHENU AGROCHEM INDUSTRIES (Maharashtra)

Query

• Should Applicant is required to obtain the registration in importing States other than Maharashtra, if goods are imported, sold and delivered directly from CFS (Container Freight Station) / DPD (Direct Port Delivery) which is under the Customs Boundaries to customers from those States?

•Whether the Applicant is required to obtain registration in State where the applicant is proposing to open a warehouse for sale of imported goods from such warehouse?

•Whether issuing invoices under Maharashtra GSTIN is permissible in law for supply of imported goods from the proposed warehouse located in the State where the Applicant is not registered under GST?

Advance Ruling :
KAMDHENU AGROCHEM INDUSTRIES (Maharashtra)

Order

• As per Section 7(2) of the IGST Act, 2017 , supply of goods imported into India shall be treated as supply of goods in the course of inter - state trade or commerce . IGST is payable at the point when duties of Customs are levied.
•Section 11 (a) of the IGST Act, 2017, the place of supply shall be the location of the importer. In the present case since the importer is registered in Mumbai, the place of supply will be Mumbai, Maharashtra.

• The applicant will be selling the goods **before clearing the same for home consumption from the port of import**, the place of supply shall be the place from where the applicant makes a taxable supply of goods which, in this case will be the Maharashtra Office. **Hence, the applicant can supply the goods on the basis of invoices issued by the Maharashtra Office** and, therefore, they need not take separate registration in the State of Import.

•In second case, after clearing the goods applicant would be storing the said goods in warehouse. sale will take place from the said warehouse. The sale of goods from such warehouse by the applicant is an independent transaction.

•In respect of goods the subsequent sale after the import subsequent sale in the same State where import happens.

•**Since the situs of transaction in question is not within the state of Maharashtra, Adavance Ruling Authority can not pass any order.**

Take Away

• If Goods are sold before payment of customs duty, GST registration in respective state is not required.

•If goods are sold after payment of customs duty and IGST, GST registration in respective state is important.

•Blindly following Gandhar Oil refiniery decision ("When the goods reach the port we unload the same at Port warehouse and remove the goods from the port warehouse to customer) may lead to a unwarranted situation.

Advance Ruling :
TATA MOTORS LTD (GUJ/GAAR/R/39/2021)

Issue in Brief

• The Company is maintaining canteen facility to its employees at its factory premises to comply with the mandatory requirement of maintaining the canteen as per the Factories Act, 1948.

•Proviso to Section 17(5) (b) of Central Goods & Service Tax Act, 2017 , ITC of GST paid on goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

•Company is recovering nominal amount on monthly basis to ensure use of canteen facility only by authorized persons/employees and expenditure incurred towards canteen facility borne by Applicant is part and parcel of cost to company.

• Press release dated 10.07.2017 clarified that, supply by employer to employee in terms of contractual agreement of employment (part of salary/CTC) is not subject to GST.

•Employer-employee relationship is must to avail this facility.

•The Company is not in the business of providing canteen service and hence recovery of nominal amount will not fall in definition of supply at all.

Query

• Whether input tax credit (ITC) available to Applicant on GST charged by service provider on canteen facility provided to employees working in factory?

•Whether GST is applicable on nominal amount recovered by Applicants from employees for usage of canteen facility?

•If ITC is available as per question no. (1) above, whether it will be restricted to the extent of cost borne by the Applicant (employer)?

Advance Ruling :
TATA MOTORS LTD (GUJ/GAAR/R/39/2021)

Order

Section 17(5)(b) "(b) the **following supply of goods or services or both-**
(i) food and beverages, outdoor catering, beauty treatment, health services ……. except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both **shall be available where an inward supply** of such goods or services or both is used by a registered person **for making an outward taxable supply of the same category** of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and
(iii) travel benefits extended to employees on vacation such as leave or home travel concession:
Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."

•We note that sub clause of Section 17(5)(b)(i) ends with colon : and is followed by a proviso and this proviso ends with a semicolon.

• Colons and semicolons are two types of punctuation. **Colons are used in sentences to show that something is following**, like a quotation, example, or list. **Semicolons are used to join two independent clauses/ sub clauses , or two complete thoughts** that could stand alone as complete sentences. That means they're to be used when you're dealing with two complete thoughts that could stand alone as a sentence.

•We find that **semicolon creates a wall for conveying mutual exclusivity between the sub-clauses**, in present matter. **It is obvious that the legislature intended the said sub-clauses to be distinct and separate alternatives, with distinctively different qualifying factors and conditionalities**

• **We hold that Section 17(5)(b)(i) sub-clause ending with a colon and followed by a provisio which ends with a semi colon is to be read as independent sub-clause, independent of sub clause Section 17(5)(b)(iii) and its proviso [of subclause iii].**

Advance Ruling :
TATA MOTORS LTD (GUJ/GAAR/R/39/2021)

Order

- ITC on GST paid on canteen facility is blocked credit under Section 17 (5)(b)(i) of CGST Act and inadmissible to applicant.

- GST, at the hands on the applicant, is not leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant and paid to the Canteen service provider.

Take Away

- Restriction on ITC will always be read in its strictest meaning. Commercial decisions should be taken kaeeping materiality concept in mind.

- Intent & citation of settled principle in earlier tax regime may not be relevant at the lower level of judiciary.

- GST on recovery of Canteen subsidy is open for litigation. It is not a speaking order . Hence, matter remain open.

The Institute of Cost Accountants of India

(Statutory Body under an Act of Parliament)