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Prior to April, -2025, when ISD Registration Not Mandatory under GST – Kerala HC Upholds Branch-Office ITC Claim on Invoice Issued in the Name of Corporate Office

The Hon'ble Kerala High Court in *Intertek India Pvt. Ltd. v. Assistant Commissioner of Central Taxes and Central Excise [WP(C) No. 30075 of 2024 dated June 08, 2026]* quashed the order passed under Section 74 of the CGST Act, 2017 demanding reversal of input tax credit ("ITC") amounting to Rs. 1,31,14,220/- along with equal penalty, and held that (i) the Assessee was legally entitled to avail ITC on the strength of self-invoice issued under reverse charge mechanism even where the foreign supplier's invoice was raised in the name of the separately registered Delhi corporate office; and (ii) prior to the amendment of Section 20 of the CGST Act with effect from April 01, 2025, obtaining registration as an Input Service Distributor ("ISD") was not mandatory for distribution of common ITC among distinct persons.

Facts:

M/s Intertek India Pvt. Ltd. ("**the Petitioner**") is a multinational company having its registered office in Kerala, with separately registered units in Delhi, Haryana, Karnataka, Maharashtra and Tamil Nadu under the CGST Act, 2017.

During the period July 2017 to March 2019, M/s Intertech USA Inc., the foreign parent company ("**foreign company**"), provided IT support and infrastructure services such as email, virus protection, IT management, etc., to all units of the Petitioner across India.

The foreign company issued invoice dated August 31, 2017 in the name of the Petitioner's Delhi corporate office; however, as per the administrative practice of the Petitioner, the payment for the said invoice was discharged by the Kerala unit (i.e., the Petitioner).

The Petitioner issued a self-invoice in terms of Section 31(3)(f) of the CGST Act, discharged the GST liability under reverse charge mechanism ("**RCM**") on the import of service, and availed the corresponding ITC.

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Since the said services were also availed by the other units of the Petitioner across India, the Petitioner cross-charged the proportionate value along with the corresponding ITC to the other units (distinct persons under Section 25(4) of the CGST Act) by issuing five tax invoices.

Pursuant to a GST audit initiated vide Form ADT-01 dated October 29, 2020, the Respondent issued show-cause notice dated June 15, 2022, culminating in Order-in-Original No. 12/2024-25-GST-KKD dated June 20, 2024 ("**Impugned Order**") under Section 74 of the CGST Act, confirming demand of Rs. 1,31,14,220/- towards IGST along with equal penalty, on the following grounds:

- Wrongful availment of ITC by the Petitioner, as the foreign supplier's invoice was raised in the name of the separately registered Delhi unit; and
- Distribution of ITC among other units of the company without obtaining mandatory registration as an ISD.

Aggrieved by the Impugned Order, the Petitioner approached the Hon'ble Kerala High Court by way of writ petition.

Issues:

- Whether the Petitioner was entitled to avail ITC on the strength of self-invoice issued under reverse charge mechanism, in respect of services where the foreign supplier had issued the original invoice in the name of its separately registered Delhi corporate office?
- Whether obtaining registration as an Input Service Distributor was mandatory for distribution of common input tax credit among distinct persons, prior to the amendment of Section 20 of the CGST Act with effect from April 01, 2025?

Held:

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The Hon'ble Kerala High Court in **WP(C) No. 30075 of 2024** held as under:

- **Observed that**, Section 9(3) of the CGST Act read with *Notification No. 10/2017-Integrated Tax (Rate) dated June 28, 2017* casts the liability to discharge GST on reverse charge basis upon the recipient of services located in the taxable territory; and the Petitioner, having discharged the consideration as well as the tax under RCM, squarely qualified as the "recipient" within the meaning of Section 2(93)(a) of the CGST Act.
- **Noted that**, a conjoined reading of Sections 16(2) and 31(3)(f) of the CGST Act read with Rule 36 of the CGST Rules, 2017 makes it clear that a self-invoice issued by a person liable to pay tax on reverse charge basis is a valid "tax-paying document" for availing ITC. The invoice issued by the unregistered foreign supplier could not have been treated as the relevant document for the purpose of ITC, since it was not issued by a "supplier registered under the Act".
- **Held that**, the unamended Section 20 was only an enabling provision and did not mandate distribution of ITC exclusively through the ISD mechanism. The express phrase "*shall be required to be registered*" inserted in the amended Section 20 (effective April 01, 2025 vide Finance Act, 2024) itself demonstrates that mandatory ISD registration is a prospective requirement; had it been mandatory earlier, no such amendment would have been necessary.
- **Observed that**, the minutes of the 50th GST Council Meeting dated July 11, 2023 (Agenda Item 3(xix)) and the CBIC FAQ on IT/ITeS sector expressly clarified that the ISD mechanism was not mandatory under the unamended law and that credit could alternatively be passed on by issuing tax invoices under Section 31 to the concerned branches. Section 24(viii) only requires ISD registration where the office of the company chooses to act as an ISD; it does not bar distribution of ITC otherwise.

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- **Held that**, the entire transaction was revenue-neutral, as the tax had already been discharged under RCM by the Petitioner and no loss whatsoever was caused to the exchequer. In cases where there is no question of evasion of tax, a liberal approach ought to be adopted while interpreting the statutory provisions, thereby providing maximum benefit to bonafide taxpayers; imposing huge liability on technical grounds is against the spirit and purpose of the CGST Act, which is intended to provide a simple and seamless procedure for assessment, payment and collection of tax.
- **Relied on** the decision of the Hon'ble Karnataka High Court in ***Micro Labs Ltd. v. State of Karnataka [2025 SCC OnLine Kar 28321]***, which took a similar view.
- **Directed that**, the Impugned Order to the extent it treated ITC of Rs. 1,31,14,220/- as ineligible and held that the Petitioner had illegally distributed ITC among the other units of the company, is quashed. Consequently, **the demand and penalty imposed on the said findings are declared as not legally sustainable.**

Our Comments:

The judgment is a welcome relief for multinational and multi-state entities that, during the early years of GST (i.e., prior to April 01, 2025), commonly resorted to the cross-charge mechanism under Section 31 read with Schedule I of the CGST Act for distributing the common input services availed at one office to other distinct persons within the same legal entity, instead of obtaining a separate ISD registration. The Kerala High Court has rightly distinguished the pre-amendment and post-amendment positions of Section 20 of the CGST Act and conclusively settled the issue for the unamended period.

Section 9(3) of the CGST Act casts the liability of tax on reverse charge basis upon the recipient of notified supplies. Section 31(3)(f) read with Rule 36(1)(b) of the CGST Rules, 2017 specifically recognises a self-invoice raised by the recipient under RCM as a valid document for availing ITC under Section 16(2)(a) of the CGST Act. The Court, by giving primacy to the self-invoice

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issued by the Petitioner (and not the foreign supplier's invoice raised in the name of the Delhi unit), has correctly applied the statutory scheme — the foreign supplier's invoice is not the "tax-paying document" because the foreign supplier is admittedly not registered under the CGST Act.

On the second issue, the Court's reasoning aligns squarely with the legislative intent reflected in (i) the recommendations of the 50th GST Council Meeting dated July 11, 2023, (ii) **CBIC's Circular No. 199/11/2023-GST dated July 17, 2023** (which expressly clarified that the ISD mechanism was not mandatory for distribution of common input services prior to the amendment), and (iii) the Finance (No. 2) Act, 2024 substituting Section 20 with effect from April 01, 2025 to make ISD registration mandatory *prospectively*. The clear "*shall be required to be registered*" language in the amended provision, when juxtaposed with the permissive "*may distribute*" in the unamended provision, leaves no doubt that the mandatory character was introduced only with effect from April 01, 2025.

Pari materia judgments: The Hon'ble Karnataka High Court in ***Micro Labs Ltd. v. State of Karnataka [2025 SCC OnLine Kar 28321]*** has taken an identical view and held that ISD registration was not compulsory under the unamended Section 20 of the CGST Act. The view that revenue-neutral transactions ought to be interpreted liberally finds support in a long line of authorities, including the Hon'ble Supreme Court in ***CCE v. Narayan Polyplast [2005 (179) ELT 20 (SC)]*** and ***CCE v. Narmada Chematur Pharmaceuticals Ltd. [2005 (179) ELT 276 (SC)]***, wherein it was held that, where the entire exercise is revenue-neutral, the demand of tax is unsustainable.

Pending litigation: It is pertinent to note that the Hon'ble Bombay High Court in ***Bajaj Allianz General Insurance Company Limited v. Union of India and Ors. [WRIT PETITION (L) NO. 3983 OF 2026]*** is also seized of the issue of legality of mandatory ITC distribution through ISD under the pre-amended Section 20, and the said proceedings are currently sub-judice. The view

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expressed by the Kerala and Karnataka High Courts shall serve as persuasive precedent in the said matter.

Way forward: Taxpayers facing similar demands for periods prior to April 01, 2025 may rely on this judgment, along with the Karnataka HC decision in *Micro Labs* and CBIC's **Circular No. 199/11/2023-GST dated July 17, 2023**, to defend cross-charge availment of credit. Going forward (i.e., post April 01, 2025), however, taxpayers **must obtain ISD registration** for distribution of common input services (including services taxable under RCM) procured by a Head Office on behalf of distinct persons, in light of the amended Section 20 read with Section 24(viii) of the CGST Act.

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