



GST on REAL ESTATE

At
WIRC Nagpur Branch
[23rd November 2019]

- Suyog Nawal

ZADN & Associates
Chartered Accountants

A Walk Through ...

- Δ Journey of REAL ESTATE
- Δ Relevant Terminologies
- Δ A quick snapshot of New Era - Developer's Perspective
- Δ A quick snapshot of New Era - Landowner's Perspective
- Δ Transition from Old GST Era to New GST Era
- Δ Audience Poll
- Δ Legal Tangles
- Δ Open Forum

Journey of REAL ESTATE

[Indirect Taxation perspective]



ERA # 1 : Service Tax (Finance Act 1994)

- **Service Tax on preferential location** [*Suresh Kumar Bansal Vs Union of India & Others 2016-VIL-284-DEL-ST*]
 - July 2012 – New provisions did not provide for exclusion of value of land which was brought in later
 - *No service tax if the value of flat includes cost of land*
 - *Concept of escrow account emanated from the judgment*
- **CENVAT Credit**
 - CCR Reversal – Notices received for full credits availed in the initial phases wherein inputs / materials utilized post receipt of OC
 - Developer of Malls and Commercial Complex who do not sale the units but give on lease rentals

ERA # 1 : Service Tax (Finance Act 1994)

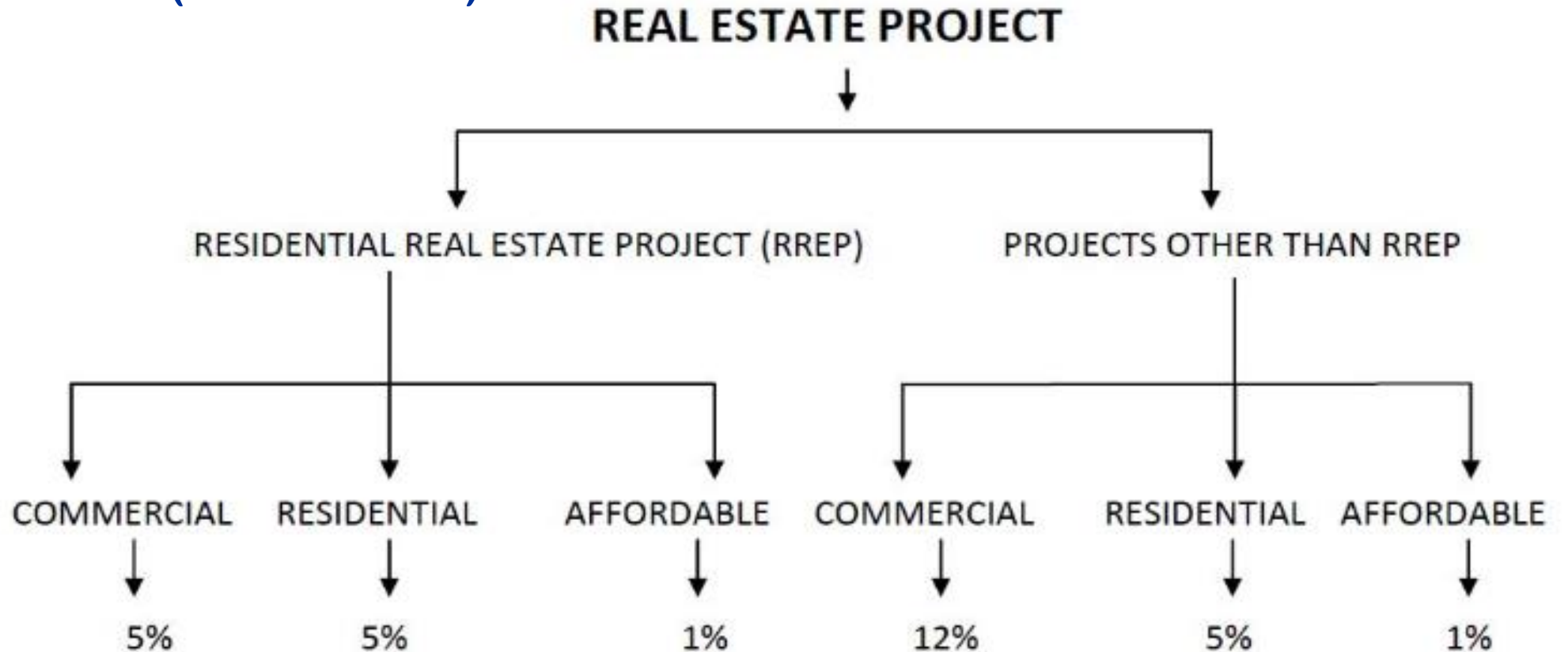
- **Valuation**
 - Low cost houses vis-à-vis Cenvat Credit
 - Area share in a JDA (incl. Point of Taxation)
- **Classification & related rate of tax**
 - Construction of complex service
 - Works contract service

[Supreme Court in case of K. Raheja Development Corporation V/s State of Karnataka.]
- **Legal Authority** - The word 'Carpet Area' is not defined in the Finance Act, 1994. Meaning of "Carpet Area" borrowed (with discretion) from N.B.C. (National Building Code), B.I.S. (Bureau of Indian Standards) Codes and under the Building Bye Laws but only Bureau of Indian Standards by its Code IS 3861 of 2002 (Reaffirmed in 2007) titled "Method of measurement of plinth, Carpet and Rentable areas of buildings" gives a detailed definition of "Carpet area"

ERA # 2 : GST (with ITC)

- Time of supply in JDA having area share (prior to 25th Jan 2018)
- Effect to ITC when estimated dynamics does not match with the facts, namely sale of units, price of units, etc.
- Admissibility of ITC in the hands of landowner granting development rights. Consequently, rise in price of units allotted to him by the developer
- Dual compliance - Maintenance of books project wise for RERA & GST
- Rate of Tax – 18% (effective 12%) & 12% (effective 8%)

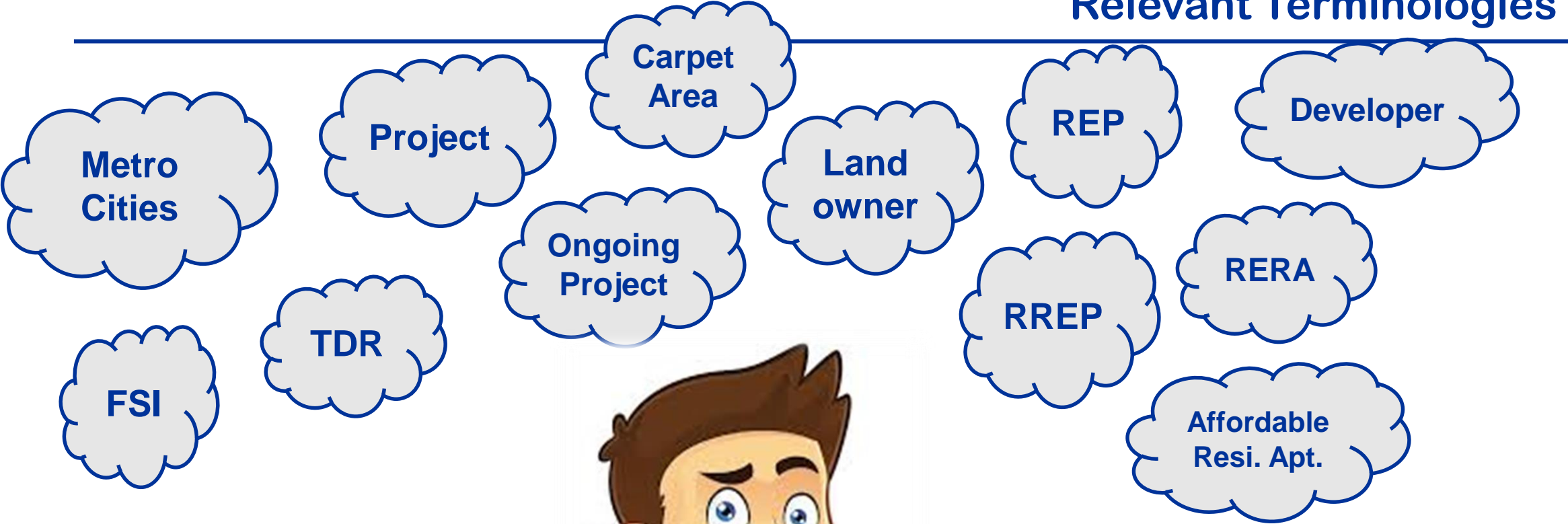
ERA # 3 : GST (without ITC)



Relevant Terminologies



Relevant Terminologies



A quick snapshot of New Era – Developer's Perspective



Developer's Perspective

Category	Specifications	Effective GST Rate
1. Affordable Residential Apartment (ARA) in RREP (i)	<ul style="list-style-type: none"> • Carpet area not more than 60 sq. mtr., AND • Gross amount charged does not exceed Rs. 45 Lakhs • Total carpet of Residential area is not less than 85% of total carpet area of project (85 : 15 criteria) 	1 %
2. Residential Apartment in RREP (ia)	<ul style="list-style-type: none"> • 85 : 15 criteria • Not an ARA 	5%
3. Commercial Apartments in RREP (ib)	Not a residential apartment	5%
4. Affordable Residential Apartment in REP (ic)	<ul style="list-style-type: none"> • An ARA • Not a RREP 	1%
5. Residential Apartment (other than ARA) in REP (id)	<ul style="list-style-type: none"> • Not An ARA • Not a RREP 	5%

Developer's Perspective

Category	Specifications	Effective GST Rate
6. Ongoing Project under specified Schemes of Central / State Govt. (ie)	<i>[option exercised to continue with existing rate]</i>	8%
7. <u>Commercial</u> in REP or <u>Residential</u> other than Affordable Residential Apartment (if)	<i>[option exercised to continue with existing rate]</i>	12%
8. Composite Supply of WORKS CONTRACT to ARA but not covered above in (i) to (if)	<ul style="list-style-type: none">• Project commences on or after 01-Apr-2019;OR• Ongoing project carrying existing rates (8%)	12%

Developer's Perspective

Category	Conditions
1. Affordable Residential Apartment (ARA) in RREP (i)	<ul style="list-style-type: none">• GST to be paid in Cash• ITC not taken except to the extent as prescribed in Annexure-I & II• ITC ineligible is paid in cash• Transfer of TDR / FSI in case of AREA SHARE –<ul style="list-style-type: none">✓ Developer pays tax on supply of constructed area✓ Landowner is eligible for claim of ITC if units sold prior to completion (CC)✓ Landowner pays GST not exceeding value charged by Developer to him• Min. 80% of inputs and input services are from Regd taxpayers<ul style="list-style-type: none">✓ For shortfall pay GST at 18% under RCM (Except for Cement at applicable rates)
2. Residential Apartment in RREP (ia)	
3. Commercial Apartments in RREP (ib)	
4. Affordable Residential Apartment in REP (ic)	
5. Residential Apartment (other than ARA) in REP (id)	

Category	Conditions
6. Ongoing Project under specified Schemes of Central / State Govt. (ie)	<i>[option exercised to continue with existing rate]</i>
7. <u>Commercial</u> in REP or <u>Residential</u> other than Affordable Residential Apartment (if)	<i>[option exercised to continue with existing rate]</i>
8. Composite Supply of WORKS CONTRACT to ARA but not covered above in (i) to (if)	Concessional rate applicable if – <ul style="list-style-type: none">• Carpet area of ARA not less than 50% of total carpet area• Valuation – booking of unit at nearest date

A quick snapshot of New Era – Landowner's Perspective



Transfer of Development Rights (TDR)

- ***Taxability:***
 - Exempted (proportionate to Residential units sold prior to OC)
 - Taxable when used for construction of commercial units
 - GST payable shall not exceed 1% or 5% of value of unsold units of the Developer
 - GST payable by Developer under RCM
- ***Time of Supply:***
 - Revenue Sharing – At the time of transfer
 - Area Sharing – Date of OC or first occupancy, whichever is earlier
- ***Input Tax Credit:*** GST charged by Developer is admissible in the hands of Landowner
- ***Outward Liability:*** Allotted units sold by Landowner before OC

TRANSITION

[From GST (with ITC) to GST (without ITC)]



Step # 1: Basic evaluation

- List down number of projects as per RERA
- Determining commencement of construction of each project
- Project wise stage of completion
- Input tax credit availed under each project

Step # 2: Commercial Evaluation (Cost Benefit Analysis)

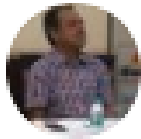
- Applying formula prescribed in Annexure I / II as applicable
- Determining the amount of reversal of ITC
- Can the same be absorbed as contingent cost of project ?
- Is there a requirement to revise the price of apartments ?
- By upward revision whether one is getting hit under anti-profiteering provisions ?
- What is the appropriate value of benefit (if any) that can be passed on to the buyer ?
- How many buyers would qualify to whom the benefit will be required to be transferred ?
- **ARE YOU STILL COVERED AGAINST ALL POSSIBLE LITIGATION AFTER ALL THE ABOVE QUESTIONS ARE ANSWERED ?**

Audience Poll





Tweet



Rk Agarwal
@rkatweets



Another blow to real estate sector — authorities asking reversal of transition input credit — GST liability may run into 100s of crs when sector is trying to keep its head afloat On one hand govt creating fund to help, on other hand taking it away [#realestate](#) worries [#economy](#)

7:58 AM · Nov 20, 2019 · [Twitter for iPhone](#)



Tweet



sankalp rastogi
@convstarter



Reducing gst rate only on housing sector has created a big hurdle for commercial space sector. Convincing clients is a big problem. Request [@GST_Council](#) [@nsitharaman](#) to pls consider aligning the gst rates of commercial sector with that of the housing for overall real estate growth

3:27 PM · Nov 19, 2019 · [Twitter for iPhone](#)

← **Tweet**







Shiv Khemka
@skkhemkaji



[@nsitharaman](#) 20% load of GST+ Registration on Purchase Price is too high and unaffordable for flat buyers. Real Estate is struggling. Low demand for commercial space also. Real Estate provides medium term large employment for unskilled. U may consider removing GST on Real Estate.





3:57 AM · Aug 24, 2019 · [Twitter for Android](#)



 **Tweet**

 **Porinju Veliyath**  @porinju · Jul 5 

Options for Indians with >5Cr income:

- a) pay 42% income tax
- b) become Pvt Limited & pay 25%
- c) reduce the income

 322  851  3.6K 


 **Rahul Gochhwal** 
@RGochhwal

Replying to @porinju

Plus pay 18% GST on consumption + pay tax on Savings + pay LTCG/STT on investments in stocks + GST on Real Estate investment. Reminds me of JRD Tata when he said he pays 97% tax.

7:38 PM · Jul 5, 2019 · [Twitter for iPhone](#)





← **Thread**


 **Vikram Sanghani**
@VikramSanghani

@GSTCouncil_indi, @GST_Council, @arunjaitley New 34th council meeting on GST rate on real estate is unfair for consumers. Most builders are applying 12% GST on fresh instalments to all who booked before April 1, 2019. No benefit of 5% GST.





11:17 AM · Apr 11, 2019 · [Twitter Web Client](#)

9 Retweets 7 Likes

 **Vikram Sanghani** @VikramSanghani · Apr 11
Replying to @VikramSanghani

The input tax credit in cities like Mumbai is minimal as the cost of construction is a small fraction of the sale price. The impact is minimal on builders if ITC is denied. Against that, consumers will bear the heavy 12% tax as builders are opting for 12% GST. Please stop this!!

 11  132  485 

Legal Tangle



BELIEVE IN EVERYTHING, TRUST NOTHING !!

Circular F. No. 354/32/2019-TRU, dated 14-5-2019

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Indirect Taxes & Customs, New Delhi

A number of issues have been raised regarding the new GST rate structure notified for real estate sector effective from 1-4-2019. A compilation of Frequently Asked Questions (FAQs) containing 41 questions was issued on 7th May, 2019. Part II of the FAQ is presented below. The answers to the FAQs have been given in simple language for guidance and easy understanding of all stakeholders in the real estate sector. They do not have force of law in case of conflict, the gazette notifications, which have legal force, shall have precedence.

7.	What is the criteria to be used by an architect, a chartered engineer or a licensed surveyor for certifying that construction of the project has started by 31st March, 2019	Construction of a project shall be considered to have been started on or before 31st March, 2019, if the earthwork for site preparation for the project has been completed, and excavation for foundation has started on or before the 31st March, 2019.
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**Under which law
the completion of
work will be
governed ?**

FAQs-I
Sr. no.
35

<p>There are many projects of</p>	<p>In case of redevelopment or slum rehabilitation</p>
<p>redevelopment/slum rehabilitation in pipeline as on 1st April, 2019. It is possible that in such projects the development rights have been conferred upon the developer and pursuant to which the development process has been initiated such as receipt of commencement certificate, excavation for foundation etc., but booking against units for sale has not been received prior to 1st April, 2019. However, allotment of units to the existing dwellers (in respect of free supply units) which will yield no monetary consideration has been done. Clause (xiii) of Para 4 of Notification No. 11/2017-CTR as amended by Notification No. 3/2019-CTR requires credit of at least one instalment in the bank account prior to 1st April, 2019 for a project to be considered as ongoing project. It may please be clarified whether in such cases, apartments being constructed in the project shall be deemed to have been booked prior to 1st April, 2019 in case development agreement is executed prior to that date and whether accordingly such projects shall be considered as an ongoing project?</p>	<p>projects, the original inhabitants or the slum dwellers are not required to pay any monetary consideration to the promoter for the residential apartments allotted to them. Therefore, the residential apartments allotted to the original inhabitants in case of redevelopment project or slum dwellers in case of slum rehabilitation or redevelopment project, the requirement that at least one instalment has been credited to the bank account of the promoter shall not be required to be met for such apartments to be considered as having been booked on or before 31-3-2019 provided other requirements for considering an apartment booked on or before 31-3-2019 have been met. The consideration for such apartments is receipt in the form of transfer of development rights from the original inhabitants in case of redevelopment projects or the government in case of slum rehabilitation projects. Hence, the condition relating to credit of at least one instalment in the bank account of the promoter for the apartments being constructed in a slum redevelopment project to have been partly or wholly booked shall be deemed to have been satisfied in order to consider the project as an ongoing project, provided all other conditions for considering an apartment as booked are met in case of apartments allotted to slum dwellers; as there is no cash payment to be made by the slum dwellers.</p>

FAQs-II

Sr. no.
01

In case of an area sharing arrangement between a Landowner-Promoter and a Developer-Promoter, where the Project qualifies to be considered an "Ongoing Project", whether an option of 1% or 5% (without ITC) vis-à-vis 8% or 12% (with ITC) as prescribed in Notification No. 3/2019 can be exercised by the Developer-Promoter and Landowner-Promoter independently?

The legal and operational harmony necessitates that both the Landowner-Promoter and the Developer-Promoter exercise identical option for a project.



Is this a
legal
statement ?

Can it be said that reversal of ITC as prescribed in Annexure – I and Annexure – II retrospective application of provisions of tax laws ?

Whether its legal sanctity can be challenged...??

Orissa High Court - Safari Retreats Private Limited Decision [W.P. (C) No. 20463 of 2018]

Inputs and input services used in construction of shopping malls and commercial complex should be allowed when the units are given on lease rental.

Contentions placed by petitioner:

- Section 16 of CGST Act – eligibility to claim ITC being registered taxpayer
- ... in the course of furtherance of business
- GST applicable on lease rentals charged on letting out the completed units – No loss to the exchequer
- If sale of immovable property post receipt of OC is not taxable where ITC is ineligible, lease rental being taxable ITC should be made eligible
- The treatment of these two different types of buildings as one for the purpose of GST is violative of the Petitioners' fundamental right to equality guaranteed by and under Article 14 of the Constitution
- Blocking credits is not the intention for implementation of GST

Patna High Court - Commercial Steel Engineering Corporation [CWP No. 2125 of 2019]

Patna HC holds that no recovery proceedings under section 73 of the BGST Act can be initiated against ITC availed but not utilized

Following 2 issues under consideration before Hon'ble High Court:

- (a) Whether or not the reflection of amount in the electronic credit ledger of the petitioner is a confirmation of availment or his entitlement for utilization
- (b) Whether the petitioner could have been subjected to a proceeding under section 73 of the Bihar Goods and Service Tax Act, 2017 for the entire credit reflecting in the ledger without quantification of the amount which has been either availed or utilized

Few Relevant Advance Rulings:

1. WB-AAAR: No abatement on preferential-location/car-parking charges realised separately from buyers, modifies AAR
2. Karnataka - AAR: Land-development under JDA constitutes a 'supply of service', not 'sale of land'
3. AAR: Facilities installation in commercial mall, not separate from civil structure, covered by blocked credit provision

OPEN FORUM



A quote by Louise Hay is displayed on a background of dandelion seeds. The text is in a dark teal color. The quote reads: "I do not fix problems. I fix my thinking. Then problems fix themselves." Below the quote is the name "Louise Hay" preceded by a tilde symbol (~).

"I do not fix
problems. I fix my
thinking.

Then problems fix
themselves."

~ Louise Hay

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