

# IMPORTANT GST UPDATES



Issued in case of Global Calcium Private Limited by Madras High Court  
WP(C) Nos.78, 83 & 87 of 2024 | Date: 19-01-2024

## Ruling

### **Deduction of Tax under Section 192 Not Conclusive Proof of Incentive to Directors as Salary for GST**

## Observations & Findings

The petitioner, Global Calcium Private Limited, operates in the field of Bulk Drugs and Pharmaceutical Intermediaries, and being a registered entity under GST laws, consistently filed returns. Following an audit of their records, discrepancies emerged, leading to the issuance of notices. The petitioner responded to these notices, including the one under Section 73 of the TNGST Act, ultimately resulting in the contested orders.

Within these orders, three distinct issues were addressed. The first concerned the non-claiming of Input Tax Credit (ITC) due to the alleged suppression of purchases. The primary issue, the second one, revolved around the payment of performance-linked incentives to two whole-time directors, deemed subject to GST. The third issue pertained to discrepancies concerning E-way bills.

Regarding the first defect involving ITC, the petitioner's counsel argued that their purchases were correctly disclosed in their filed returns. Any unclaimed ITC, as mentioned in the orders, resulted from ineligibility under Section 17(5) of the TNGST Act. Concerning the performance-linked incentives paid to directors, counsel contended that these incentives were also given to them as employees, making them exempt from GST under Circular No.140/10/2020-GST, dated 10.06.2020.

Despite presenting this circular to the assessing officer and highlighting that TDS was deducted under Section 192 of the Income Tax Act, 1961, not Section 194-J, counsel argued that the assessing officer disregarded these submissions. Consequently, he asserted that the contested orders should be challenged.

The assessing officer had reviewed the balance sheet, Form-16, and Form-26AS, examining the petitioner's expenses related to remuneration and performance-based incentives. While the petitioner claimed TDS was deducted under Section 192, this alone was not decisive. The key consideration was whether the remuneration was paid for services rendered as employees or under a contract for services.

Circular No.140/10/2020-GST clarified this distinction, which the petitioner referred to extensively. However, the orders in question were issued without fully considering these relevant aspects, and there is a possibility that the petitioner did not present all pertinent documents. Consequently, the impugned orders are unsustainable and have been quashed by the Madras High Court.

The court directed that the matter be reconsidered by the assessing officer, with the petitioner given ten days to submit additional documents and a four-week deadline for the respondent to complete the reassessment.