EY Tax and Regulatory Alert

November 2021

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INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax

This section summarizes the regulatory updates under GST for the month of November 2021

- **Notification No. 13/2021-Central Tax (Rate) dated October 27, 2021** was issued by CBIC in order to amend Notification No. 01/2017- Central Tax (Rate) dated June 28, 2017 and to increase the rate of CGST on the permanent transfer of Intellectual Property Right in respect of goods from 6% to 9%.

- **Instructions No- 20/16/05/2021-GST dated 02.11.2021** is issued by CBIC for in order to introduce guidelines for disallowing debit of Electronic Credit Ledger under Rule 86A. It states that the Commissioner, or an officer authorised by him, not below the rank of Assistant Commissioner, must have "reasons to believe" that credit of input tax available in the electronic credit ledger is either ineligible or has been fraudulently availed by the registered person, before disallowing the debit of amount from electronic credit ledger of the said registered person under rule 86A.

- The reasons for such belief must be based only on one or more of the following grounds:

  - The credit is availed by the registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.

  - The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.

  - The credit is availed by the registered person on invoices or debit notes, the tax in respect. of which has not been paid to the government.

  - The registered person claiming the credit is found to be non-existent or is found not to be conducting any business from the place declared in registration

  - The credit is availed by the registered person without having any invoice or debit note or any other valid document for it.

- Further, the Commissioner or an officer authorized by him, not below the rank of Assistant commissioner, must form an opinion for disallowing debit of an amount from electronic credit ledger in respect of a registered person only after proper application of mind and after considering all the facts of the case, including the nature of prima facie fraudulently availed or ineligible input tax credit, and whether the same is covered under the grounds mentioned in sub-rule (l) of rule 86A, the amount of input tax credit involved.

- It is also required to consider whether disallowing such debit of electronic credit ledger of a person is necessary for restricting him from utilizing/ passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.

- Moreover, in case during the course of Audit under section 65 or 66 of CGST Act, 2017, it is noticed that any input tax credit has been fraudulently availed or is ineligible as per the grounds mentioned in sub-rule (1) of rule 86A, which may require disallowing debit of electronic credit ledger under rule 86A, the concerned Commissioner/ Principal Commissioner of CGST Audit Commissionerate may refer the same to the jurisdictional CGST Commissioner for examination of the matter for exercise of power under rule 86A.

- The amount disallowed for debit from electronic credit ledger should not be more than the amount of input tax credit which is believed to have been fraudulently availed or is ineligible.

- **Circular No. 165/21/2021-GST dated 17.11.2021** was issued by the CBIC to provide clarification on the issues in the applicability of the Dynamic Quick Response (QR) Code on B2C invoices in compliance of notification 14/2020-Central Tax dated 21st March, 2020.

- The circular clarifies that in case invoice is issued to a recipient located outside India for supply of services, for which the place of supply is in India as per the provisions of IGST Act 2017, and the payment received by the supplier is not in foreign exchange but through other modes as approved by RBI, such invoice may be issued without having a Dynamic QR Code.

- The said clarification was brought as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier in India.

- **Circular No.166/22/2021-GSTdated 17.11.2021** was issued by CBIC in order to provide the following clarifications on the refund related issues:

  - The Time period within which an application of refund can be filed in accordance with sub-section 1 of section 54, would not be applicable in case of refund of the excess balance in the electronic cash ledger.

  - Furnishing of certification/ declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases.

  - The amount deducted/collected as TDS/TCS by TDS/ TCS deductors under the provisions of section 51 /52 of the CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger.

  - It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability. He may discharge his liabilities either by utilizing the debit in electronic cash ledger or debit in electronic ledger and claim the balance unutilized balance in the electronic cash ledger as refund.

  - CBIC has further clarified that in case of deemed export supplies, where the refund is claimed by either the supplier or the recipient of the supplies, the relevant date under Explanation (2) under Section 54 for claiming the refund shall be the date when the returns related to such supplies are filed by the supplier.

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of November 2021

- **Notification No.52 /2021 Customs dated 03.11.2021** was issued by CBIC in order to reduce Road and Infrastructure Cess (RIC) on Petrol and Diesel from “Rs. 13 per liter” to “Rs. 8 per liter”.

- **Trade Notice No 22/2021-22 dated November 02.11.2021** was issued by DGFT to intimate the exporters that December 31, 2021 has been stipulated as the last date for making online applications under Merchandise Exports from India Scheme (MEIS), Service Exports from India Scheme (SEIS), Rebate of State Levies on Export of Garments (RoSL),Rebate of State and Central Taxes and Levies (RoSCTL) schemes.

- Post 31.12.2021, the online IT system will no longer be operational and hence no applications or claims under the said schemes can be submitted after the said date.

- It was also stated that the facility of filing of applications with a late cut provision would also not be available and all applications will get time barred after December 31, 2021.

- **Trade Notice No. 23/2021-2022 dated 09.11.2021** was issued by DGFT in regards to the constitution of RODTEP Committee for determination of RoDTEP rates for Advance Authorization, Export Oriented Unit, Special Economic Zone exports and to give supplementary report/recommendations on issues or representations relating to errors or anomalies with respect to the RoDTEP schedule of rates.

- CBIC had requested the EPC's and the trade/industry associations to submit their representations in requisite format within stipulated timelines.

- **Trade Notice No.24/2015-2020 dated 15.11.2021** is issued by DGFT for extension of the dates for mandatory filing of applications for Non-Preferential Certificate of Origin through the e-CoO Platform till 31st January 2022.

- Further, the notice also specifies that the existing systems for submitting and processing non-preferential CoO applications in manual/paper mode is being allowed for the stated time period and the online system is not being made mandatory for the time being.

- However, all the agencies as notified under Appendix-2E are required to ensure their on-boarding process is completed at the earliest and no later than 31st January 2022. Moreover, all the concerned exporters must also ensure that they are duly registered onto the said platform at the earliest.

- **Trade Notice 25/2015-2020 dated 19.11.2021** was issued by DGFT stating that the IECs which are not updated after 01.01.2014 will now be de-activated in a phased manner.

- All IECs which have not been updated after 01.01.2014 shall be de-activated with effect from 06.12.2021.

- The list of such IECs may be seen at the given link https://www.dgft.gov.in/CP/?opt=LIEC . The concerned IEC holders are provided a final opportunity to update their IEC in this interim period till 05.12.2021, failing which the given IECs shall be de-activated from 06.12.2021. Any IEC where an online updation application has been submitted but is pending with the DGFT RA for approval shall be excluded from the de-activation list.

- Any IEC so de-activated, would have the opportunity for automatic re-activation without any manual intervention or any visits to the DGFT RA.

- For IEC re-activation after 06.12.2021, the said IEC holder may navigate to the DGFT website and update their IEC online. Upon successful updation the given IEC shall be activated again and transmitted accordingly to Customs system with the updated status

Direct Tax

Part-A Key Direct Tax updates

This section summarizes the Direct Tax updates under for the month of November 2021

1. CBDT rolls out new Annual Information Statement, simplified Taxpayer Information Summary, feedback facility

- CBDT has introduced a new Annual Information Statement (AIS) on the Compliance Portal which provides a comprehensive view of information to a taxpayer with a facility to capture online feedback; It includes additional information relating to interest, dividend, securities transactions, mutual fund transactions, foreign remittance information etc.;
- Until the complete operationalization of new AIS, the display of Form 26AS on TRACES portal will also continue in parallel. It also provides a facility to submit online feedback which can also be furnished by submitting multiple information in bulk, in case the taxpayer finds the information to be incorrect;
- Taxpayer Information Summary (TIS) has also been introduced for each taxpayer which shows aggregated value for the taxpayer for ease of filing return. If the taxpayer submits feedback on AIS, the derived information in TIS will be automatically updated in real time and will be used for pre-filling of Return which shall be implemented in a phased manner;
- In case of variation between the TDS/TCS information or the details of tax paid as displayed in Form 26AS on TRACES portal and the TDS/TCS information or the information relating to tax payment as displayed in AIS on Compliance Portal, the taxpayer may rely on the information displayed on TRACES portal for the purpose of filing of ITR and for other tax compliance purposes.

2. India and the US agree on transitional approach for India's 2% Equalisation Levy pursuant to Pillar One solution

Background

- On 8 October 2021, the OECD released a statement reflecting the agreement reached by 1372 of the 141 member-jurisdictions of the OECD/G20 Inclusive Framework on BEPS3 on the two-pillar project to address the tax challenges of the digitalization of the economy (8 October Statement).
- Pillar One of the two-pillar project aims to allocate new taxing right to market jurisdictions through new nexus and profit allocation rules.
- The profits to be allocated to market jurisdictions under Pillar One is termed as "Amount A".
- Under the agreed Amount A framework, the 8 October Statement provided the following with respect to the unilateral measures taken by countries to tax digital economy:
  - The Multilateral Convention (MLC) implementing Amount A of Pillar One will require countries to remove all Digital Service Taxes (DSTs) and other relevant similar measures (i.e., unilateral measures).
  - No newly enacted DSTs or other relevant similar measures will be imposed on any company from 8 October 2021 until earlier of 31 December 2023 or the coming into force of the MLC.
  - There are reports from some members that transitional arrangements are being discussed expeditiously in relation to the unilateral measures.

- On 21 October 2021, a joint statement from five European countries and the US was released stating that a political compromise has been reached on a transitional approach to the treatment of unilateral measures till new Pillar One rules comes into effect5 (21 October statement). Under the compromise, it was agreed that:
  - The five European countries will not be required to withdraw their existing DST regimes until Pillar One takes effect. However, these countries will allow a credit of the portion of DST accrued by a MNE during "interim period" against the MNE's future Pillar One Amount A tax liability when Pillar One rules are in effect. The interim period is from 1 January 2022 to the date that the Pillar One MLC comes into force or 31 December 2023, whichever is earlier.
  - The US will terminate its proposed trade actions against the five countries with respect to their existing DSTs.
- On similar lines, Turkey and the US released a statement on 22 November 2021 that same terms as 21 October statement has been agreed between Turkey and the US.

Compromise between India and the US on 2% EL:

- From 1 April 2020, India had introduced 2% EL on e- commerce supply or services undertaken by NR EOP not having permanent establishment in India.
- Pursuant to trade investigations, the US found India's 2% EL as discriminatory and proposed tariff retaliatory measures on India. In June 2021, such retaliatory measures were suspended for a period of 180 days in lieu of the ongoing discussions on BEPS two-pillar solution.
- With the deadline of 180 days soon approaching and several other countries reaching a compromise with the US qua their unilateral measures, similar announcement between India and the US was awaited.
- On 24 November 2021, India issued a Press Release stating that India and the US have agreed that the same terms that apply under the 21 October Statement shall apply between the US and India with respect to India's charge of 2% EL. The final terms of the agreement shall be finalized by 1 February 2022.
- Considering the Press Release and 21 October statement, impact on India's EL may be as under:
  - India will not be required to withdraw 2% EL until Pillar One takes effect. However, India will allow a credit of the portion of 2% EL chargeable on NR EOP (belonging to an MNE) during "interim period" against that MNE's future Pillar One Amount A tax liability when Pillar One rules are in effect.
  - Interim period will be from 1 April 2022 till the implementation of Pillar One or 31 March 2024, whichever is earlier.
  - The US will terminate its proposed trade actions against India regarding the 2% EL
  - India and the US will remain in close contact to ensure that there is a common understanding of the respective commitments and endeavor to resolve any further differences of views on this matter through constructive dialogue.
- While the exact mechanism of the credit of 2% EL against future Amount A tax liability shall be available in February 2022, a numerical example basis credit rules explained in the 21 October statement is provided (refer next page).

Illustrative working of tax credit mechanism

Hypothetical Facts:

- Suppose a US Company (US Co) is an NR EOP selling goods through its own digital platform in India and is liable for 2% EL
- Assume Pillar One is effective from 1 April 2024 and is applicable to the US Co
- The US Co has paid 2% EL of INR 100 during the interim period of two years i.e., from 1 April 2022 to 31 March 2024.
- Once Pillar One is effective, the US Co's tax liability on Amount A in India is assumed to be INR 20 in tax year 2024-25 and INR 25 in tax year 2025-26.

Determination of interim tax credit:

- Interim tax credit will be = accrued tax under EL 2.0 - Interim Pillar One amount
- Interim Pillar One amount = tax liability on Amount A in first year multiplied by the interim period in days for which EL is agreed to be paid divided by 365

Particulars		Amount in NR
Amount A tax liability under Pillar One for first year i.e., tax year 2024-25	(A)	20
No. of days of interim period / 365	(B)	730/ 365 = 2
Interim Pillar One amount	(C) = (A) * (B)	40
EL 2.0 accrued during interim period	(D)	100
Interim tax Credit	(D) – (C)	60

Claiming Interim tax credit against tax liability on Amount A and carry forward of excess tax credit:

- The interim tax credit can be claimed only against Amount A tax liability.
- Excess unutilized credit, if any, will be carried forward for set off in future years

Particulars	Tax year 2024-25 Amount in INR	Tax year 2025-26 Amount in INR
Amount A tax liability	20	25
Less: Interim tax \credit restricted up to Amount A tax liability	20	25
Total tax payable on Amount A	Nil	Nil
Carry forward excess interim tax credit	40 (60-20) carry forwarded to tax year 2025-26	15 (40-25) carry forwarded to tax year 2026-27

3. CBDT issues further guidelines on withholding of taxes for sale and purchase of goods

Background

- Finance Act (FA) 2021 introduced TDS on purchase of goods through Section (s) 194Q, with effect from 1 July 2021. As per which, every buyer whose total sales or turnover or gross receipts exceeded INR100million (m) in the preceding tax year, is required to deduct tax at source at the rate of 0.1% from the resident seller on payment or credit, whichever is earlier. TDS is to be applied on the value of purchases exceeding INR5m qua seller during the tax year (TDS on purchases).

- It may be noted that the above provisions enable the CBDT to issue guidelines, with the approval of the central government, for the purpose of removing difficulties arising from giving effect to the above provisions. They are binding on both the tax authorities and the taxpayers.

- The taxpayers made representations to the CBDT highlighting several difficulties or ambiguity in application of the above referred provisions. In response to such representations, the CBDT issued Press release, Circular No. 17/20203 and Circular No. 13/20214 for removing certain difficulties and clarifying doubts on application of the above referred provisions.

- Now, CBDT has further issued guidelines, vide Circular No. 20/2021, for removal of difficulties on TDS on purchases and TCS on sales.

Clarifications provided in the Circular

a) Exclusion of indirect tax levies for TDS on purchase of goods

- Circular No. 13/2021 dated 30 June 2021 clarified that in case the GST component in the sale price of goods has been indicated separately in the invoice and TDS is deducted at the time of credit of the amount in the account of the seller (being earlier than payment), then the TDS on purchases is to be made on the amount credited without including such GST. The earlier circular also clarified that in case tax is deducted on payment where it is earlier than credit, then tax is to be deducted on the whole amount, as it is not possible to identify the GST component of the amount to be invoiced in future.

- With respect to purchase returns, Circular No. 13/2021 clarified that TDS on purchases is required to be made on payment or credit, whichever is earlier. Thus, before purchase return happens, TDS on purchases would already have been made on that purchase.

- In such case, if the money is refunded by the seller, then the TDS so deducted may be adjusted against subsequent purchases from the same seller. No adjustment is required if the purchase return is replaced by the goods by the seller as, in that case, purchase on which TDS on purchase is made is completed with goods replaced.

- Pursuant to the above clarification, the CBDT received further representations that in case of goods such as petroleum products which are not within the purview of GST, multiple levies such as VAT, excise, sales tax etc., are charged. While the treatment of GST component has been clarified in Circular No. 13/2021, there was no clarification with respect to other non-GST levies which have not been subsumed and replaced by GST.

- The CBDT has now clarified that the similar principle as clarified earlier for GST will apply in case of purchase of goods which are not covered within the purview of GST.

- Hence, if TDS is made at the time of credit of amount in the account of the seller and in terms of the agreement or contract between the buyer and the seller, the component of VAT/sales tax/excise/central sales tax (CST), as the case may be, is indicated separately in the invoice, then TDS is to be made on the amount credited without including such VAT/excise/sales tax/CST, as the case may be.

- However, if the tax is deducted on payment, if it is earlier than credit, the tax is to be deducted on the whole amount since it will not be possible to identify the VAT/excise/sales tax/CST component of the payment to be invoiced in the future. Furthermore, in case of purchase returns, the clarification, as provided in Circular No. 13/ 2021, shall also apply to purchase return relating to non-GST products liable to VAT/excise/sales tax/CST etc.

b) (iii) Application of TDS on purchases in respect of goods exempted under TCS

- As per the ITL, TCS is not collectible from the buyer on sale of certain goods7 (which are covered by different TCS provisions other than the general provision of TCS on sales) if they are to be utilized by the buyer, being resident in India, for the purpose of manufacturing, processing or producing articles or things or for the purpose of generation of power (i.e., industrial purposes) and not for trading purpose and such buyer furnishes a declaration as prescribed by the law.

- TDS on purchase is not applicable when tax is required to be withheld under any other provisions of the ITL or tax is collectible under any provision of the ITL except TCS on sales.

- The stakeholders made representations to the CBDT to clarify if the buyer is required to do TDS on purchases on such goods since they are exempted from TCS in view of the declaration furnished by the buyer about proposed use for industrial purposes.

- The Circular clarifies that since there is no tax collectible under the ITL on goods which are to be utilized for industrial purposes and not for trading purpose, TDS on purchase will apply and, hence, the buyer will be required to do TDS on purchase on such goods. This is subject to other conditions of TDS on purchase being satisfied.

Part B- Case Laws

Goods and Service Tax

1. **Union of India v. Bharti Airtel Ltd. and Others [CIVIL APPEAL NO. OF 2021 (ARISING OUT OF S.L.P. (C) NO. 8654 OF 2020) dated October 28, 2021]**

Subject Matter: Ruling wherein it was held that that every registered person is under obligation to self-assess the eligible ITC. He is not required to entirely depend on the auto generated information from the portal for discharging his tax liability.

Background and Facts of the case

- Bharati Airtel Limited (also referred to subsequently as "Bharati Airtel") was facing several problems while their filing of GSTR Form 3B due to the several glitches that were occurring in the Online GST Portal. Amidst these glitches, Bharati Airtel filed their GST returns for the period of July, 2017 to September, without availing the ITC in their electronic credit ledger and by paying INR 923 Crores in cash, thereby resulting in payment of excess amount of ₹ 923 Crores. Therefore, they had sought the refund accordingly.

- Consequently, Bharati Airtel filed a writ petition with the Delhi High Court for the said issue. The High Court allowed the writ petition filed by Bharati Airtel, and read down paragraph 4 of the Circular No. 26/26/2017-GST dated 29.12.2017 which restricted the rectification of Form GSTR-3B in respect of the period in which the error had occurred.

- The High Court also directed the authorities to verify the claim set forth by the Bharati Airtel within 2 weeks on filing of the rectified Form GSTR 3B.

- Thereafter, the Central Government moved to the Supreme Court challenging the Delhi HC order of refund. While the government claimed Bharati Airtel had under-reported Input Tax Credit **("ITC")** from July, 2017 to September 2017, Bharati Airtel stated it had paid excess tax of ₹ 923 Crore on inputs based on estimates since the Form GSTR-2A was not operational during the error period.

- The Hon'ble Supreme Court allowed the Revenue's plea against the Delhi HC order.

Discussions and findings of the case

- Bharati Airtel contended that various representations were made wherein the registered persons had requested for clarification on the procedure for rectification of errors made while filing their FORM GSTR3B.

- In this regard, Circular No. 7/7/2017GST dated 1st September 2017 was issued which clarified that errors committed while filing FORM GSTR – 3B may be rectified while filing FORM GSTR1 and FORM GSTR2 of the same month. Paragraph 4 of the said circular also stated that in case there is any amount remaining for adjustment for the previous month, the same may be adjusted in the return(s) in FORM GSTR3B of subsequent month(s) and, in cases where such adjustment is not feasible, refund may be claimed. However, that was done away with by introducing impugned Circular No. 26/26/2017GST dated 29.12.2017.

- Bharati Airtel also contended by that Form GSTR 2A became operational in September 2018 and post September'18, Bharati Airtel realized that it had sufficient amount in the ITC ledger account

(electronic credit ledger) during the relevant period.

- Further, due to non-functionality of GSTR2A, Bharati Airtel had to discharge its liability by depositing/paying in cash.
- However, in contrary to the above, the Hon'ble Supreme Court observed that that every registered person is under obligation to self-assess the eligible ITC. He is not required to entirely depend on the auto generated information from the portal for discharging his tax liability. Portal is only a facilitator and should not be regarded as primary source for doing self-assessment.
- The primary source of information for the purpose of self assessment by the taxpayer is in the form of agreements, invoices, challans, receipts of the goods and services and books of accounts which are maintained by the registered persons manually or electronically.
- The Hon'ble Apex Court had also held that there is no express provision permitting swapping of entries effected in the electronic cash ledger vis-a-vis electronic credit ledger or vice versa.
- Moreover, any unilateral change in GSTR-3B for the period in which the error occurred would have a cascading effect on the recipients and suppliers associated with the concerned transactions.
- Accordingly, the Hon'ble Supreme Court held that para 4 of the impugned Circular No 26/26/2017GST is consistent with the provisions of Central Goods and Services Tax Act, 2017 and the Rules thereunder.

Ruling

- In light of the above observations, the Hon'ble Supreme court allowed the Revenue's appeal and the High Court order was set aside.

2. Tata Motors Limited v. Commissioner of Central Excise.

Subject Matter: Ruling wherein it was held that subsequent generation of aluminium dross and skimming in the manufacture of aluminium castings/parts of motor vehicles does not amount to manufacture and hence, would not be liable to excise duty.

Background and Facts of the case

- The Appellant is involved in manufacture of aluminium motor vehicle parts. The issue involved in the present case is that whether the aluminium dross and skimming arising out of the manufacture of aluminium motor vehicle parts amounts to manufacture and liable to duty or otherwise.
- The Commissioner (Appeals) had dropped the demand for extended period against which Revenue filed appeal No. E/862/2012.In response to this ,the appellant filed appeal No. E/819/2012 against confirmation of demand for the normal period.

Discussions and findings of the case

- The appellant had observed that the demand on aluminium dross was confirmed by invoking the inserted explanation to section 2(d) of the Central Excise Act,1944.
- In this regard, the Appellant had contended that various judgements had been passed post the amendment to Section 2(d) whereby it was held that aluminium dross and skimming are not liable to duty such as **Hindalco Industries Limited v. Union of India [2015 (315) ELT 10 (Bom.)** and **Honda**

Motorcycle & Scoter India Pvt Ltd v. Commissioner of Central Excise, Gurgaon [2017 (3) – CESTAT CHANDIGARH].

- Further, the appellant referred to the Hon'ble Supreme Court's judgement in the case of Indian **Aluminium Co. Ltd. (supra)** wherein it was held that merely selling does not mean dross and skimming are marketable commodity as even rubbish can be sold. Thus, the appellant proposed that everything which is sold is not necessarily a marketable commodity as known to commerce and which it may be worthwhile to trade in.

- In contravention of the above, the Revenue contented that the explanation inserted in section 2(d) of Central Excise Act, 1944 can be interpreted to include any product arising in the course of manufacture to be liable to duty.

- However, the Hon'ble Tribunal subsequently held that the Apex Court's ruling in the case of **Union of India v. Indian Aluminium Co. Ltd**. (supra) it would apply to the present case.

- It also held that just because a particular product is covered by a tariff entry, it would not imply that the same is excisable, as for treating the goods as excisable the same must be "goods" and must be marketable. Consequently it also observed that there is no evidence of marketability of the dross.

Ruling:

- In light of the above observations, the Hon'ble Tribunal had held that the aluminium dross and skimming in the manufacture of aluminium castings/parts of motor vehicles does not amount to manufacture. Accordingly, it will not be liable to duty.

- Therefore it had allowed the appellant's appeal and dismissed the Revenues appeal.

3. M/S Exclusive Motors Pvt Ltd Vs Commissioner Of Customs (Preventive), New Delhi

Subject Matter: Ruling wherein it was held that mere failure to pay duty which is not due to fraud, collusion or willful misstatement or suppression of facts is not sufficient to attract extended period of limitation.

Background and Facts of the case:

- Appellant is an authorised dealer and service centre of M/s Bentley Motors Ltd. and for servicing and repairs of Bentley vehicles. The appellant imported spare parts from M/s Bentley Motors Ltd, UK which was its parent company.

- The authorised courier agent, upon arrival of the goods in India, filed the requisite courier Bills of Entry based on the declaration given in the respective invoices by the foreign consignor and it is stated that after being assessed by the proper officer and payment of requisite duty, the goods were delivered to the appellant and the requisite duty was collected by the authorised courier agent from the appellant.

- A Show Cause Notice was issued to the appellant alleging that appellant had cleared goods without disclosing retail sale price and had short paid customs duty. The appellant had filed a reply that the shipment of the consignments were made by the overseas suppliers for delivery at the doorstep of the appellant and, therefore, the matter was entirely between the overseas supplier and the concerned courier company and the appellant had no role whatsoever. Hence, he was not responsible for non-declaration of RSP of the imported goods.

- Thus, the appellant had contended that section 28(4) of the Customs Act could not have been invoked since the factual basis for invoking the extended period of limitation had not been made in the show cause notice.

- However, the Assistant Commissioner had confirmed the demand of differential duty with interest and penalty. Aggrieved by this, the Appellant filed an appeal with the Commissioner (Appeals) which was also dismissed.

- Hence, the appellant filed the present appeal to assail the order passed by the Commissioner (Appeals).

Discussions and findings of the case

- Sub-section (1) of section 28 of the Customs Act states where any duty has been short paid for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, the proper officer shall within one year from the relevant date, serve notice on the person chargeable with the duty which has been short paid requiring him to show cause why he should not pay the amount specified in the notice.

- However, Sub-section (4) of section 28, provides that where any duty has been short paid by reasons of collusion, or any wilful statement, or suppression of facts, the proper officer shall, within five years from the relevant date, serve notice on the person, requiring him to show cause why he should not pay the amount specified in the notice.

- It was also observed in the present case that the period involved is from 21.12.2012 to 25.05.2014, but the notice was issued to the appellant on 06.12.2016. It was, therefore, clearly beyond the stipulated period of one year. However, the show cause notice invoked the provisions of sub-section (4) of Section 28 of the Customs Act and stated that the appellant had not disclosed the true facts on the Bill of Entry.

- The Appellant has submitted that he had had no role in making any declaration to the Customs Authority nor the authorized courier agent had taken any authorization from the appellant prior to the clearance of the goods or later. However, the department supported the invocation of the extended period of limitation.

- The Hon'ble CESTAT also observed the judgement passed by the Supreme Court in the case of **Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay 1995 (78) E.L.T. 401 (SC)** which held that the suppression of facts should be deliberate and in taxation laws it can have only one meaning, namely that the correct information was not disclosed deliberately to escape payment of duty.

Ruling:

- Basis the above, the Hon'ble CESTAT had held that there is no mis-statement or suppression of facts by the appellant.

- Hence, the order of the Commissioner was set aside and appeal of the appellant was allowed.

4. Savista Global Solutions Private Limited V. Union of India

Subject Matter: Ruling where it was held that once a refund order is sanctioned, it has to be remitted to the taxpayers along with interest (if any).

Background and Facts of the case:

- The said petition was filed seeking a mandamus to the authorities to refund to the petitioner Rs.1,28,50,535/- that became due to the petitioner under the order dated 06.01.2020 passed by the authorities.

- Since that amount was not refunded to the petitioner, further prayer for award of interest was made. The petitioner had filed an application for refund manually before the authorities on 27.09.2019.

- The said application had been processed. However, the order of refund was passed beyond the period of 60 days stipulated under Rule 54(7) of the CGST Rules, 2017. Thus by the virtue of Section 56 of the CGST Act, 2017, interest @ 6% from the date of expiry of 60 days became due.

- Nevertheless, neither the amount of refund awarded under the order dated 06.01.2020 nor any interest had been paid to the petitioner, till date.

Discussions and findings of the case

- In its defence, the revenue authorities submitted that upon activation of the GST portal on 26.09.2019, the application made by the petitioner and the further process made by Revenue should have been through online mode only.

- The Revenue had also intimated the said deficiency in the procedure to the other revenue authorities vide communications dated 20.07.2020 & 27.08.2020. Thus, he claims no interest is due to the petitioner and that the refund may be paid only after due compliance is made by the petitioner and respondent no.6 by logging in the particulars of the refund and the refund order on the GST portal, through online mode only.

- However, the petitioner contested that the aforesaid contentions do not bring out any disentitlement of the petitioner either towards the refund of Rs.1,28,50,535/- or the interest payable thereon.

- The petitioner further submitted that although the law did contemplate such applications to be made and orders to be passed and refund to be made through online mode, Rule 97A was introduced which stated that any reference to electronic filing of the application would also include manual filing.

- In contrary to the above, Circular No.125/44/2019-GST came to be issued on 18.11.2019 prescribing the online mode for such refund applications w.e.f. 26.09.2019. However, it was observed that the circular cannot override effect of law arising from Rule 97A of the Rules.

- It was also observed that Circular itself was issued on 18.11.2019 i.e. well after the application dated 27.09.2019 had been filed by the petitioner and the same could not be pressed into service by the respondents.

- In furtherance of the above, it was also submitted by the petitioner that the Revenue Authorities have themselves processed the application filed by the petitioner and passed the order dated 06.10.2020 directing for refund. Once the application had been processed and or order passed, which has attained finality, the authorities cannot escape the plain effect of the same. They can also not escape the interest liability on the same.

Ruling:

- In light of the above, the High Court held that the Revenue Authorities shall refund the entire amount of Rs.1,28,50,535/- together with interest from the date against 27.11.2019 till the date of issuance of the demand draft @ 6% within 1 month of passing the order.

Part B – Case Laws

Direct Tax

1. Raman Krishna Kumar v. DCIT (TS-998-HC-2021) (Madras HC)

Madras HC rejects writ challenging prosecution at the stage of initiation; plea of reasonable cause to be examined only during trial

Background

- The provisions of the ITL as applicable for the relevant year, provided for prosecution of a taxpayer in a case where, the taxpayer wilfully failed to furnish its tax return within the specified due date under the ITL [Prosecution for non-furnishing of tax return]. As per the said provisions, the taxpayer is punishable with monetary penalty as well as rigorous imprisonment. Further, the provisions also provided that no prosecution shall be initiated against the taxpayer where the tax payable, as reduced by the advance tax and tax deducted at source, does not exceed INR3,0002 [Protection from prosecution for non-furnishing of tax return].

- The provisions of the ITL further provide for prosecution provisions where there is a wilful attempt to evade any tax/penalty and interest chargeable or imposable on the taxpayer or any payment thereof [Prosecution for tax evasion].

- Further, in case of any prosecution under the ITL which requires the default to be wilful (such as Prosecution for non-furnishing of tax return and Prosecution for tax evasion), ITL also provides for presumption for existence of culpable state of mind of the taxpayer while committing default. Such presumption is rebuttable which the taxpayer shall have to discharge positively beyond reasonable doubt to the satisfaction of the court.

Facts

- The Taxpayer, an individual, had earned substantial salary income as well as entered into certain high-value transactions [such as sale and purchase of mutual funds, credit card transactions etc.] during the tax year3 (TY) 2012-13.

- The Taxpayer, however, failed to suo-moto furnish its tax return for the said period within time prescribed under the ITL though, remitted the taxes.

- The Taxpayer also did not respond to several show cause notices issued by the tax authority with regard to the source of funds for undertaking the afore-mentioned high value transactions.

- Considering this, reassessment proceedings were commenced against the Taxpayer, on account of which, the Taxpayer further paid additional tax as self-assessment tax.

- In the above backdrop, the tax authority commenced proceedings against the Taxpayer in respect of Prosecution for non-furnishing of tax return and Prosecution for tax evasion, following which, the Taxpayer filed a writ before the Madras HC seeking quashing of such prosecution proceedings.

Taxpayer's Contentions

- In support of its petition to quash the prosecution proceedings, the Taxpayer contended as under:

- The Taxpayer was under the bonafide impression that his employer would have furnished the tax returns on behalf of the Taxpayer within the specified due date.

- Even though the show cause notices have been received, the Taxpayer was under the bona fide impression that, since tax had been paid, no further action is required to be clarified from his end.

- There was a bonafide mistake on the part of the employer to not file the Taxpayer's tax return. Accordingly, the Taxpayer is not to be prosecuted for a bonafide fault. In support of the proposition, the Taxpayer relied upon certain HC rulings.

Tax Authority's Contentions

- Failure to furnish tax returns is an offence liable to be prosecuted under the ITL. Reference was made to the Supreme Court (SC) ruling in the case of Sasi Enterprises v. ACIT.

- At the stage of initiating prosecution, the ITL mandates to proceed with the presumption of culpable mental state of the Taxpayer when he committed the offence. Though, such presumption is rebuttable, such defence can be taken up only at the trial stage of prosecution proceedings. Support was drawn from SC ruling in the case of Prakash Nath Khanna v. CIT.

- Court is to be cautious in quashing prosecution proceedings at the initiation stage and such quashing should be considered as an exception rather than the norm.

HC ruling

- The HC rejected the Taxpayer's petition to quash the prosecution proceedings and instead directed the Taxpayer to cooperate in court trials, on the following grounds:

- The Taxpayer committed an offence in not furnishing the tax return despite presence of taxable income as also not explaining the high value transactions sufficiently.

- The HC referred to the SC ruling in the case of Sasi Enterprises (supra) to hold that, furnishing of ROI within the stipulated period is a duty cast on any person who has to declare the income and the said provisions are mandatory.

- Further, the HC also referred to the said Apex Court ruling for the proposition that, for a default in furnishing the tax return within the stipulated period, there is a presumption of culpable mental state against the taxpayer and taxpayer is to rebut such presumption and prove his innocence and ignorance only in the course of trial in a court of law.

- The court is not to presume the Taxpayer's innocence of the offences complained against. It is for the Taxpayer to establish such innocence. The platform for establishing such innocence is court where trial is to be conducted.

- The judicial precedents relied upon by the Taxpayer are distinguishable for those rulings having failed to notice the provision of presumption of culpable mental state and/or did not have benefit of the SC ruling in Sasi Enterprises pronounced subsequent to these precedents.

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