EY Tax and Regulatory Alert

July 2022

Prepared for ACMA

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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 July 2022

- **Notification No. 10/2022–Central Tax dated 05.07.2022** was issued by CBIC stating that the taxpayers having aggregate turnover up to **INR 2 crores** have been exempted from filing annual return in Form GSTR-9 for Financial Year 2021-22.
- **Notification No. 11/2022–Central Tax dated 05.07.2022** was issued by CBIC extending the due date of filing **FORM GST CMP-08** for the 1st quarter of FY 2022-23 (April 2022 to June 2022) has been extended from 18 July 2022 to 31 July 2022.
- **Notification No. 12/2022–Central Tax dated 05.07.2022** was issued by CBIC for waiving of the late fee levied under section 47 of CGST Act for delay in filing FORM GSTR-4 for FY 2021-22.
  - It has been extended till 28 July 2022 (Previously the waiver was for the period from 01 May 2022 till 30 June 2022).
- **Notification No. 13/2022–Central Tax dated 05.07.2022** was issued by the CBIC for specifying the time period excluded in limitation period. The same is summarized below:
  - Time period from 01 March 2020 to 28 February 2022 is excluded from calculation of limitation period for filing refund claim under Section 54 and 55 of the CGST Act.
  - Time period from 01 March 2020 to 28 February 2022 is excluded from calculation of limitation period for issuance of demand/ order (by proper officer) in respect of erroneous refunds under Section 73 of the CGST Act.
  - Limitation period for issuing other demand orders for the Financial Year 2017-18 under Section 73 of the CGST Act (otherwise linked with due date of annual return) has been extended up to 30 September 2023.
- **Notification No. 14/2022–Central Tax dated 05.07.2022** was issued by the CBIC for amending the CGST Rules, 2017. The notification is summarized below:
  - In cases where registration has been suspended for continuous non-filing of specified number of returns, the said suspension can be revoked once all the pending returns are filed on the portal by the taxpayer.
  - Further, the below mentioned declaration to be mentioned in tax invoice issued under Rule 46 of CGST Rules stating that e-invoicing provision is not applicable even though aggregate turnover exceed the prescribed limit *"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule."*
  - New Form **GST PMT-03A** has been introduced for re-credit of amount in electronic credit ledger in cases where erroneous refund has been sanctioned to a taxpayer on account of accumulated Input Tax Credit ("ITC") or zero-rated supply.
  - UPI & IMPS has been provided as an additional mode for payment of GST to taxpayers under Rule 87(3) of CGST Rules.
  - GST PMT 09 can be used for transfer of balance in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person.
  - Furthermore, the manner of calculating interest has been provided as follows (Rule 88B of the CGST Rules, 2017):

- **In case of delay in filing of return**- Interest shall be payable on amount paid in cash (by debiting cash ledger) for the period of delay.

- **In case of irregular availment of ITC**- Interest shall be payable on the amount of ITC availed and utilized from the date of utilization till the date of reversal or payment *(For the above amount shall be deemed to be utilized to the extent the amount in electronic credit ledger fall below the amount of ITC wrongly availed).*

- **In all other cases**- Interest shall be payable on the amount which remains unpaid from due date till date of payment.

- Amendment in refund provisions (Rule 89 of CGST Rules) was also introduced as follows:

  - For refunds pertaining to supplies to SEZ Developer/Unit, it is clarified that "specified officer" shall mean the "specified officer" or "authorized officer", as defined under SEZ Rules, 2006.

  - Refund of unutilized Input Tax Credit on account of export of electricity to be provided to exporters of electricity. However, exporters are required to furnish a specific statement containing the prescribed details.

  - Value of goods exported out of India shall be lower of a) FOB value declared on shipping bill or bill of export b) value declared in tax invoice or bill of supply.

  - Formula for maximum refund amount under inverted duty structure has been amended. The revised formula is as follows:

    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 x (Net ITC÷ ITC availed on inputs and input services)}

  - Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist is deemed to be omitted with effect from 01 June 2019.

  - Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist is deemed to be omitted with effect from 01 June 2019.

  - In case there is any mismatch in shipping bill and GSTR 1 then application for refund of IGST on export of goods shall be considered to be filed from then date when such mismatch is rectified.

- Refund may be withheld by the Commissioner in the Board or authorized officer of the Board if considered necessary based on data analysis and risk parameters. The same shall be intimated to proper officer of Central or State tax and to the exporter electronically in Form GST RFD- 01. The said form shall be construed as application of refund and shall be deemed to be filed on date of transmission

- Certain amendments have been made in monthly return GSTR 3B. The details of the same are as follows:

  a) Insertion of Para 3.1.1 for specific disclosure of taxable supplies made through electronic commerce operator.

  b) Para 4B to include the details of reversal under Rule 38 (credit claimed by banking and financial institution) and Rule 17(5) (Blocked credits).

  c) Para 4D to be renamed from “Ineligible ITC” to “Other details”. Further, following details are required to be furnished under “Other details”:

    1) ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period.

    2) Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions.

d) GSTR-3B filing instruction has been amended for providing clarification for reporting supplies made through e-commerce operator.

- In addition to above relevant changes have been made in Form GSTR 9, GSTR 9C, GST PMT -03A, GST PMT-06, GST PMT-07, GST PMT-09, GST RFD-01, and Statement 3B (Rule 89 (2)) in order to give effect to the aforementioned amendments.

- **Supreme Court Order: GST Portal to be open from 1st September to 31st October 2022 for transition of ITC:** an order was issued by the Supreme Court bench of Justice Abdul Nazeer and Justice J.K. Maheshwari, directing that the GSTN portal to be kept open between **01.9.2022 and 31.10.2022** for the registered assessees to upload **TRAN-1 & TRAN-2** forms.

- This benefit has been extended to all GST registered assessees, irrespective of whether they had filed writ petitions, or their claims have been rejected on the ground that there are no technical glitches.

- Field Formation all over India given 90 days' time to verify the veracity of the claims and pass orders on merits in accordance with law, after granting reasonable opportunity.

- **Circular No 170/02/2022-GST dated 6 July 2022** was issued by CBIC Central Board of Indirect Taxes and Customs (CBIC) pertaining to the manner of reporting of ITC reversal and Ineligible ITC in Table 4 of GSTR-3B and the manner of furnishing of details of inter-state supplies to registered persons, composition dealers and UIN holders in Table 3.2.

- Manner of reporting of ITC reversal and ineligible ITC in Form GSTR-3B:

  - Detail of reversal to be reported in Table 4(B)(1): This table of FORM GSTR-3B requires reporting of ITC which are to be reversed absolutely and cannot be reclaimed in future. The detail of such ITC has been mentioned below and the recent amendment in this regard has been highlighted in blue:

    - Common ITC reversal on input and input services on account of exempt supply (Rule 42).
    - Common ITC reversal on capital goods on account of exempt supply (Rule 43).
    - ITC reversal by banking company or financial institutions (Rule 38).
    - Ineligible ITC under sec 17(5) of CGST Act.

  - Detail of ITC to be reported in Table 4(B)(2): Earlier, this table covered all reversals which are not specifically covered by Table 4(B)(1) above. Post amendments, this table of FORM GSTR-3B requires reporting of ITC which are to be reversed temporarily and has potential of reclaim in future. The detail of ITC reversals to be reported in this table has been mentioned below:

    - Reversal of ITC due to non-payment to supplier within 180 days (Rule 37).
    - Reversal of ITC due to non-receipts of goods (Rule 16(2)(b).
    - Reversal due to non-payment of tax to government (Rule 16(2)(c)).
    - Reversal of ITC which was availed earlier in Table 4A because of some inadvertent mistake.

  - Table 4(D): Vide Notification No. 14/2022–Central Tax dated 05 July 2022, Table 4(D) was renamed from "Ineligible ITC" to "Other Details". Consequently, the details to be reported under this table are as below:

    - Table 4(D)(1) will be have details of all ITC which was reversed earlier under Table 4(B)(2) and now, the same is eligible for reclaim for fulfilment of conditions as provided under law.
    - Table 4(D)(2) will have details of the following:

- ITC not available due to expiry of time period under Section 16(4) (due date of filing GSTR 3B of September of following year).

- ITC not available in case where recipient of intra-state supply is located in State/ UT other than PoS.

- Manner of Furnishing details of inter-state supplies to unregistered persons, composite dealers and UIN dealers in Table 3.2, the aforementioned table shall include the following:

  - Inter-state supplies to Unregistered person as reported in GSTR-1 including amendment of details reported in prior tax periods.
  - Supplies to Composition dealers and UIN holders (reported in Table 4A/4C/9 of GSTR-1, as applicable).

- **Circular No 171/03/2022-GST dated 06.07.2022** was issued by the CBIC to provide the clarification on the applicability of legal provision pertaining to demand and penalty in respect of transactions involving issuance of invoice without actual supply(hereinafter referred to as "fake invoices")

  - Issuance of fake invoice by one registered person ('A') to another ('B') with no underlying supply

    - No demand, recovery and penal action can be initiated on A under Section 73 and 74 of the CGST Act, 2017 as there is no actual supply.

    - Registered person 'A' shall be liable to penalty under Section 122(1)(ii) - Higher of INR 10,000 or amount of tax evaded.

  - Issuance of fake invoice by one registered person (A) to another. ITC availed and utilised by B on such fake invoice issued. Further, actual invoice issued by B to third person (C) along with underlying supply

    - Implications on A would remain as mentioned in s.no.1 above.

    - Demand and recovery of fraudulently availed and utilised ITC can be initiated on B under Section 74 along with interest.

    - Further, no dual penal action shall be initiated under any other provisions of CGST Act, including Section 122, once penal action under Section 74 has been initiated.

  - Issuance of fake invoice by one registered person (A) to another (B). ITC availed and utilised by B on such fake invoice issued. Further, fake invoice is issued by B to third person (C) passing on such ITC to (C)

    - Implications on A would remain as mentioned in s.no.1 above.

    - No demand and recovery can be initiated on B under Section 73 and 74 of the CGST Act, 2017 either for fraudulent availment of ITC or tax liability on outward supply.

    - 'B' shall be liable to a penalty under Section 122(1)(ii) and Section 122(1)(vii) for issuance of fake invoice and availment/ utilisation of credit without actual receipt of goods or services - Higher of INR 10,000 or amount of tax evaded.

- **Circular No 172/03/2022-GST dated 06.07.2022** was issued by the CBIC to clarify certain issues, the summary of which has been given below:

- Refund claimed by the recipients of supplies regarded as deemed exports:

  - **Whether the ITC availed for claiming refund of tax paid on supplies would be subjected to provisions of Section 17 of the CGST Act, 2017?**

    The ITC of tax paid on deemed export supplies, was allowed to the recipients only for the purpose of claiming refund and therefore, is not ITC in terms of the provisions of Chapter V of the CGST Act, 201. Consequently, such ITC would not be subjected to provisions of Section 17 of the CGST Act, 2017.

- **Whether the ITC availed by recipient of deemed export supplies for claiming refund of tax paid on supplies be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017?**

  As the ITC of tax paid on deemed export supplies is allowed to the recipients only for claiming refund, such ITC is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies or on account of inverted rated structure.

▶ Interpretation of section 17(5) of CGST Act

- **Whether the proviso at the end of clause (b) section 17(5) of the CGST Act is applicable to the entire clause (b) or is applicable only to sub-clause (iii) of clause (b)?**

  Proviso shall be applicable to entire clause (b) of Section 17(5) i.e. food beverages, healthcare service, outdoor catering, renting of motor vehicle, membership of club and travel benefit to employees. Excerpt of the aforementioned proviso is reproduced below for reference:
  "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".

- **Whether provisions of section 17(5)(b)(i) of the CGST Act restricts ITC on input services by way of "leasing of motor vehicles, vessels or aircraft" or by way of any type of leasing is barred under the said provisions?**

  Restriction of ITC is only for leasing of motor vehicles, vessels and aircrafts and not for leasing of any other items.

- **Whether various perquisites provided by employer to its employees in terms of contractual agreement are liable for GST?**

  Perquisites provided by employer to the employee in terms of contractual agreement entered into between them, will not be subjected to GST in terms of Schedule III of the CGST Act.

▶ Utilization of the amounts available in the electronic credit and cash ledger:

- **Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?**

  Any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person except for making payment of any tax which is payable under reverse charge mechanism.

- **Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?**

  Amount in credit ledger cannot be used for making payment of any interest, penalty, fees, erroneous refund where such refund was sanctioned in cash and any other amount payable under the acts. However amount available in the electronic cash ledger may be used for the same.

▶ **Circular No 173/03/2022-GST dated 06.07.2022** was issued by CBIC clarifying that the refund of input tax credit(ITC) on account of Inverted Duty Structure is allowed in the following cases:

▶ Accumulation of ITC is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time; and

▶ Lower/ concessional output tax rate is on account of some notification issued by the Government providing for such lower rate.

▶ Accordingly Circular No. 135/05/2020-GST dated 31 March 2020 (which clarified that refund on account of inverted duty structure would not be admissible in cases where the input and output

supply are same) has been suitably amended incorporating the above changes.

- **Circular No 174/03/2022-GST dated 06.07.2022** was issued by the CBIC clarifying on the manner of re-credit in electronic credit ledger in cases where erroneous refunds sanctioned has been paid back by the tax payer along with applicable interest and penalty.

- FORM PMT 03A has been introduced to re-credit the amount in case of following category of refund sanctioned erroneously.

    - Refund of IGST obtained in contravention of Rule 96(10), in case benefits as mentioned in the specified notifications have been availed

    - Refund of unutilised ITC on account of zero rated supply (export or SEZ) without payment of tax

    - Refund of unutilised ITC due to inverted tax structure

- The procedure for re-credit of amount in electronic credit ledger is as follows:

    - Deposit the amount along with applicable interest and penalty through FORM GST DRC-03 by clearly mentioning the reason for such deposit.

    - Written request shall be made to jurisdictional proper officer in format prescribed in “Annexure A” (enclosed in the circular attached).

    - The Proper officer, on being satisfied, shall re-credit the amount and pass order in FORM GST PMT 03A, preferably within 30 days of receipt of request or date of payment of erroneous refund, whichever is later.

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of July 2022

- **Notification No. 15/2015-2020 dated 01.07.2022** was issued by the Department of Commerce in regards to extending the deadline for submission of application under MEIS for exports made in the 4 month period, September 2020 to December 2020 to 31.08.2022.

- **Trade Notice No. 61/2022-Customs dated 13.07.2022** was issue by the CBIC amending notification No. 26/2022 — Customs (N.T.) dated 31.03.2022 published in the Gazette of India in adding Deputy Director of Revenue Intelligence or Assistant Director of Revenue Intelligence under 4A and officers of rank above them to as the proper officer in relation to functions of Section 109A.

- **Notification No. 20/2015-2020-DGFT dated 07.07.2022** is issued by the DGFT amending amends 'ITC(HS) 2022, Schedule-I (Import Policy)' in sync with the Finance Act, 2022 dated 30.

- The List of ITC(HS) codes introduced / deleted / amended / split / merged as per the Finance Act,2022 is annexed with the notification.

- The modifications/amendments in the Section Notes, Chapter-wise Main Notes, Supplementary Notes, Chapter heading, sub-headings and description of ITC(HS) codes as per the Finance Act, 2022 are annexed with (Annexure-II).

- The updated ITC(HS) 2022 shall be available on the website of DGFT **(https://dgft.gov.in)**.This shall come into force with immediate effect.

- **Trade Notice No. 13/2022-23-DGFT dated 30.06.2022** was issued by the DGFT drawing reference to DGFT Public Notice no.2 (RE-2012)/2009-14 dated 5 June 2012 through which electronic Bank Realization Certificate (c-BRC) was introduced.

- The existing eBRC platform (http://dgftebrc.nic.in/) is being managed by NIC-DGFT from 2012 onwards and has enabled us to capture details of realisation of export proceeds from the Banks directly through secured electronic mode and facilitated implementation of various export promotion schemes in an IT environment.

- The existing **eBRC** module is now being upgraded to a new IT platform and it is proposed to discontinue the earlier version of the platform **(http://dgftebrc.nic.in/)** from end of July 2022.

- Existing users of the **eBRC** module i.e. the AD Banks will need to migrate to the ne'' environment **(https://dgft.gov.in)** on an urgent basis so that services to the exporting community do not get impacted.

  In this regard **Help Manual** as well as **FAQs** have been made available to Bank Officials on the new portal after login. For any further assistance concerned Bank officials can send an email to the DGFT Helpdesk on **dgftedi@gov.in** with subject header as "Support on eBRC for……. Bank (Name of Bank)".

Direct Tax

Part-A Key Direct Tax updates

This section summarizes the Direct Tax updates under for the month of July 2022

1. Amendments to Special Economic Zone Rules, 2006 Work from Home permitted for IT/ITES SEZ units

Background

- In the current business environment, specifically in the Information Technology ('IT')/ Information Technology Enabled Services ('ITES') sector, allowing employees to Work from home ('WFH') has become an essential business requirement for rendering services to the clients on a sustainable basis.

- To enable the above, various rules and regulations were introduced in the SEZ legislation from time to time.

- However, there was no clarity on the duration of the approval and threshold of the number of employees that were permitted to WFH since the instructions were issued by jurisdictional SEZ authorities and that too on a short-term basis.

- Given the above, the MOCI vide Notification No. G.S.R. 576(E) dated 14 July 2022 has inserted new Rule 43A 'Work from Home' for providing clarification on the aforesaid issues.

Salient features

1. Category of employees:

- The MOCI has clarified that the following employees (including contractual employees) would be eligible for WFH or work from any place outside SEZ:
  - Employees of IT and ITES SEZ Units;
  - Employees, who are temporarily incapacitated;
  - Employees, who are travelling; and
  - Employees, who are working offsite

2. Process for obtaining approval:

- SEZ Unit is required to submit its proposal to the Development Commissioner ('DC') through email or physical application highlighting the following:
  - Stating the terms and conditions of WFH;
  - Date from which WFH permission is required;
  - Details of employees for whom WFH permission is sought;
- The proposal shall be submitted at least 15 days in advance to the DC except in the case of employees who are temporarily incapacitated or travelling.

- For any Unit where the employees are already working from home as on the date of this notification, it shall submit its proposal with the DC within 90 days from the date of commencement of these rules.

3. Number of employees permitted to WFH:

- The permission granted by DC shall cover a maximum of 50% of the total employees including contractual employees of the Unit.

- The DC is empowered to approve a higher number of employees for WFH for any bonafide reason to be recorded in writing.

4. Duration of approval:

- The approval shall be granted for 1 year.

- The DC may further extend the approval for a period not exceeding 1 year at a time, subject to the compliance of this rule by the Unit and its employees.

5. Assets permitted to be taken out for WFH:

- Unit, with prior permission from Specified Officer ('SO'), is allowed to provide the following assets to its employees for enabling WFH, without any payment of duties and Integrated Goods and Services Tax till the duration of WFH approval:

- Laptops;
- Computers;
- Video projection system(s);
- Other electronic equipment; and
- Secured connectivity (e.g. virtual private network, virtual desktop infrastructure) to establish a connection between the employee and work related to the project of the SEZ Unit

- Further, the Unit will be required to comply with the following conditions:

  - Maintain records for the goods removed temporarily;

  - Issue a certificate authorizing the employee by name and full specification of the equipment intended to be taken outside the SEZ. The copy of such certificate shall be endorsed by the SO.

  - Maintain a record of the certificate of authorization issued for the removal of Equipment view to remove such difficulty, the Circular clarifies that no taxes are required to be deducted u/s 194R on sales discount, cash discount or rebates allowed to customers.

6. Other conditions:

- Unit shall maintain the accurate attendance record for the entire period of permission for WFH and submit the same with DC from time to time.

- The work to be performed by the employees shall be as per the services approved for the Unit, and the work related to a project of the Unit.

- Export revenue of the resultant products or services shall be accounted for by the Unit to which the employee is tagged.

- Employee shall be un-tagged from the Unit when such person ceases to be a part of the project and the identity card of the employee shall be surrendered by the Unit as per Rule 70(2) of the Rules.

2. Central Government notifies inclusion of NFTs and exclusion of certain items from the scope of virtual digital asset

Background

- Finance Act 2022 introduced a new regime governing taxation of VDA under the ITL viz. definition of VDA, 30% tax on income arising from transfer of VDA, a new withholding provision @ 1% on consideration arising to a resident on transfer of VDA and amendment to apply gift taxation in the hands of recipient of VDA.
- For the purposes of the new regime, VDA is defined in a broad manner under three limbs as follows:
  - Limb A
    - It means any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called,
    - Providing a digital representation of value which is exchanged with or without consideration,
    - With the promise or representation of having inherent value or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to investment scheme; and
    - It can be transferred, stored, or traded electronically
  - Limb B
    - A NFT or any other token of similar nature, by whatever name called. But NFT itself is defined to mean such digital asset as the CG may, by notification in the Official Gazette, specify
  - Limb C
    - any other digital asset, as the CG may, by notification in the Official Gazette, specify
- Exclusions
  - Indian currency or foreign currency as defined under Foreign Exchange Management Act, 1999 (FEMA) is excluded from the ambit of VDA. Thus, any instrument regarded as Indian currency or foreign currency is not considered to be a VDA.
  - Separately, CG is empowered to exclude any digital asset from the definition of VDA subject to conditions as may be specified by CG.
- The definition of VDA was inserted w.e.f. 1 April 2022.
- On account of broad definition of VDA under Limb A, there was an apprehension whether it can potentially include non-crypto items like vouchers, reward points issued by shopping sites or credit card companies, airline miles, online subscription accounts, etc.
- In general parlance, NFTs are tokens which represent ownership in underlying tangible or intangible assets on blockchains, which can be bought and sold in a digital form. Unlike cryptocurrencies where the coins are homogenous, NFTs are non-fungible, i.e., non-interchangeable by nature such that each token is unique and has a value that is distinct from other tokens.

- Unlike crypto currencies or crypto assets which are not linked to any underlying assets, NFTs are linked to and derive their value from one or more underlying tangible or intangible assets such as digital pictures, videos, sport collectives, events, artwork or real estate. However, only the NFTs as notified by the CG are sought to be included in the scope of the definition of VDA. Until CG notifies a digital asset as VDA, Limb B of the definition would remain inactive. Since NFTs derive their value from underlying tangible or intangible asset which are EY Tax Alert P a g e | 3 covered within regular scheme of taxation, stakeholders represented to CG to keep NFTs outside the scope of the new regime by not notifying any digital asset under Limb B of VDA definition.

CG Notifications:

- On 30 June 2022, the CG issued two Notifications under the definition of VDA which defines scope of NFT and the digital assets excluded from the scope of VDA.
- The CG Notifications are issued in backdrop of new withholding tax applicable on transfer of VDAs arising to a resident which becomes applicable from 1 July 2022. Earlier, the Central Board of Direct Taxes (CBDT) had issued circulars on various issues arising on transfer of VDA undertaken through Exchange and on peer-to-peer basis.
- The CG Notifications are explained as under:

Notification No. 74:

- The CG has notified that following digital assets shall not be regarded as VDA for the purposes of ITL:
    - Gift card or vouchers, being a record that may be used to obtain goods or services or a discount on goods or services;
    - Mileage points, reward points or loyalty card, being a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate or promotional program that may be used or redeemed only to obtain goods or services or a discount on goods or services;
    - Subscription to websites or platforms or application

Notification No. 75:

- The CG has notified that a “token” which fulfils the definition of VDA under Limb A shall be NFT. But it shall not include a NFT whose transfer results in transfer of ownership of underlying tangible asset and the transfer of ownership of such underlying tangible asset is legally enforceable.

Foreign Exchange Management Act (FEMA)

Part-A Key FEMA updates

4.

This section summarizes the FEMA updates under for the month of July 2022

1. **Relaxation in Investment by Foreign Portfolio Investors ('FPI') in Debt**

- Reserve Bank of India ('RBI') has exempted investments made by FPI between July 08, 2022 and October 31, 2022 (both dates included) from the:
  - limit on short-term investments as prescribed for FPI in government securities and corporate bonds till maturity or sale of such investments (i.e. 30% of the total investment of that FPI in any category); and
  - minimum residual maturity requirement of one year for investments in corporate bonds
- FPIs permitted to invest in commercial papers and non-convertible debentures with an original maturity of up to one year during the aforementioned period. Such investments by FPIs shall be exempted from the limit on short-term investments till maturity or sale of such investments.

2. **Relaxation in settlement of all current account transactions including trade transactions with Sri Lanka**
   - RBI has permitted all eligible current account transactions including trade transactions with Sri Lanka to be settled in any permitted currency outside the Asian Clearing Union ('ACU') mechanism until further notice.

3. **Introduction of mechanism to settle international trade transactions in Indian Rupees (INR)**

- RBI, in order to boost Indian currency and provide further relaxation to importer/ exporter, has now decided to put in place an additional arrangement for invoicing, payment, and settlement of exports/ imports in INR.
- In light of the circular issued, AD bank in India may open Special Rupee Vostro Accounts of correspondent bank/s of the partner trading country to facilitate settlement of import/export transactions.
- Bank of a partner country may approach AD Bank in India for opening of Special Rupee Vostro Account and basis such request, AD Banks in India should obtain prior approval from the Foreign Exchange Department of RBI, Central Office at Mumbai to open such account.

  The aforesaid relaxation shall bring out the following benefits:

- Advance against Exports can be received in INR (subject to other conditions under Export Master Direction)
- Export receivables can be set-off in INR against import payables from the same overseas buyer and supplier and vice-versa (subject to other conditions under Export Master Direction)
- The surplus balance in Special Vostro Accounts can be used for:
  - Payments for projects and investments;

- Export/Import advance flow management;
- Investment in Government Treasury Bills, Government securities, etc. in terms of extant guidelines and prescribed limits, subject to FEMA and similar statutory provision.

- Apart from increasing interest of global trading community in INR, this move of RBI may facilitate cross border trade with countries having forex restrictions.

Part B- Case Laws

Goods and Service Tax

1. M/S AMWA MOTO LLP [West Bengal AAR-2022-VIL-175-AAR]

Subject Matter: Ruling wherein the AAR had held that electrically operated vehicle, commonly known as e-rickshaw, when sold without battery is classifiable as an "electrically operated motor vehicle' under HSN 8703 and fitting of battery in the vehicle, at or before the time of supply, is not a pre-condition for the same to be classified as electrically operated vehicle.

Background and Facts of the case

- The applicant is an entity engaged inter-alia in the business as wholesaler of electrically operated two wheeled vehicles.
- The company wants to enter into the business of manufacturing and reselling of electrically operated three wheeled vehicles in the state of West Bengal.
- Accordingly, the applicant has made an application for advance ruling on the following questions:
  - Whether a three-wheeled electrically operated vehicle, commonly known as e-rickshaw, when sold without battery is classifiable as an "electrically operated motor vehicle' under HSN 8703?
  - In case where the answer to question No 1 is in negative, what shall be the classification and the rate of tax?

Discussions and findings of the case

- The applicant had perused the definitions of E-rickshaw and battery operated vehicle as per the Motor Vehicles Act, 1988 and as per Central Motor Vehicles Rules 1989 respectively.
- Basis the definitions, the applicant observed that 'E-rickshaw' is a battery powered vehicle, thus automatically satisfying all the conditions of a battery operated vehicle as mentioned above in Rule 2(u). The definition of an 'e-rickshaw' or the 'battery operated vehicle' nowhere put a condition that the battery has to be supplied by the manufacturer. What it says that it should be installed in the vehicle so that it can supply traction energy to the electric motor.
- Further, the applicant referred to the Rule 3(a) of the General rules for the interpretation of First Schedule-Import Tariff to the Customs Tariff Act, 1975 which states that the heading which provides the most specific description shall be preferred to headings providing a more general description.
- The applicant also noted that Chapter 87 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) is related to 'Vehicles other than railway or tramway rolling-stock and parts and accessories thereof'.
- Under this heading, "Three-wheeled vehicles" falls under tariff item 87038040. So, if we analyse chapter heading 8703, a three-wheeled vehicle with only electric motor for propulsion falls under tariff item '87038040'.
- The applicant further contended that the purpose to sale an e-Rickshaw without battery pack is purely a commercial one and is meant only to lower the upfront cost of such vehicles as compared to equivalent ICE vehicles. Supply of such vehicles without battery pack does not alter the characteristics of such vehicles and it still remains a three-wheeled electric vehicle

with an electric motor which is supplied by the manufacturer.

- Basis the submissions, the Authority observed that e-rickshaw being a three-wheeled electrically operated vehicle would be classifiable under tariff item 8703 80 40. But the issue in our hand is not to decide the HSN code of e-rickshaw rather the issue, as we find, is confined to decide whether fitting of battery is a pre-condition or not so as to qualify an e-rickshaw as an electrically operated vehicle.

- The Authority perused the serial number 242A inserted through Notification No. 12/2019-Central Tax (Rate) dated 31.07.2019 which stated that for the purposes of this entry, "Electrically operated vehicles" means vehicles which are run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E- bicycles.

- The Authority also observed the Orissa Advance Ruling in case of Anjali Enterprises wherein it was held that "*if electrically battery operated cars exported, though not fitted with batteries at the time of export, the same is still classifiable 'battery powered road vehicles' and would run on battery when put to use. Hence, we hold that fitting of battery in the vehicle, at or before the time of supply, is not a pre-condition for the same to be classified as electrically operated vehicle*".

Ruling

- In light of the above observations, the Authority for Advance Ruling held that a three wheeled electrically operated vehicle, commonly known as e-rickshaw, when supplied without battery is also classifiable as an "electrically operated motor vehicle" under HSN 8703.

2. TOPLINK MOTORCAR PRIVATE LIMITED [West Bengal AAR: 2022-VIL-176-AAR]

Subject Matter: Ruling wherein the Authority for Advance Ruling has held that the demo vehicles are purchased all along for further supply with the condition that they will be kept for a specific period of time, therefore, purchase of demo vehicles and further supply of the same satisfies the condition laid down in section 17(5)(a)(A) of the CGST Act. Accordingly, the applicant is eligible to avail input tax credit on purchases of demo vehicles which can be set off against output tax payable under GST.

Background and Facts of the case

- The applicant is an authorized dealer of Hyundai Motor India Limited for supply of different ranges of motor vehicles and also carries on business activities as an authorized service station.

- It is submitted by the applicant that he purchases vehicles against tax invoices which are reflected in his books of accounts as capital assets and are used as demo cars for providing trial run to the customers to make them understand the features of the vehicles.

- Accordingly, the applicant has sought advance ruling in respect of the following question:

- Whether GST liability on sale of vehicle, spares, labour can be done by utilizing the input tax credit on purchase of demo vehicle, other expenses like repairs & maintenance, insurance etc?

Discussions and findings of the case

- The Applicant contends that the demo cars are used to show the features of a specific model, to allow test drive facility to the prospective buyers of such vehicles and

thus become an essential part of marketing and sales promotion to facilitate the sale of cars.

- Further, the applicant also relied on the following advance rulings, wherein the Advance Ruling Authority of Jharkhand, in respect of all the below -mentioned cases, has held that the said companies can claim and set off the input tax credit on demo vehicles along with repair, maintenance & insurance under GST for discharging their liability subject to certain conditions:
  - M/s Titania Products Private Limited (Order No. JHR/AAR/2020-21/01 dated 25.08.2020);
  - M/s Titan Motocorp (Order No. JHR/AAR/2020-21/03 dated 22.12.2020);
  - M/s Singhania Future Private Limited (Order No. JHR/AAR/2020-21/04 dated 22.12.2020).
- Moreover, the applicant had also relied on the advance ruling pronounced in the matter of Chowgule Industries (P) Ltd - 2020-VIL-06-AAR (Order No. GST-ARA-18/2019-20/B- 121 dated 26.12.2019) wherein the Advance Ruling Authority of Maharashtra has held that input tax credit on motor vehicles purchased for demo purposes can be availed.
- Furthermore, reliance is place by the applicant on the advance ruling given in the matter of M/s A.M. Motors wherein the Advance Ruling Authority of Kerala has held that input tax paid by a vehicle dealer on purchase of a motor car used for demonstration purpose of the customer can be availed as input tax credit on capital goods and set off against output tax payable under GST.
- After considering the submissions made by the applicant, the authority for advance ruling perused the conditions for claiming ITC stipulated under Section 16 of the CGST Act, 2017 and also perused the restrictions on claiming ITC provided under section 17(5)(1) of the CGST Act,2017.
- The applicant then observed that the demo vehicles are not used for transportation of passengers by the applicant. Moreover, merely providing test drive facility or to demonstrate the features of a vehicle to prospective buyers cannot be regarded as imparting training on driving the vehicle, hence, applicant would be entitled to claim ITC only when the conditions laid down under section 17(5)(a)(A) gets satisfied i.e., if it is established that the purchases of such demo vehicles are made for further supply of such vehicle.
- Further, the Authority contended that since the goods are capitalized in the books of accounts in lieu of booking the same as stock in trade, input tax credit on purchase of demo vehicles cannot be denied merely on the ground of capitalization.
- The Authority also contended that applicant maintains the stock of the demo vehicles for a specified period of time and thereafter supplies the same, may be at a price lower than the purchase value of the said vehicle. However, the provisions of the GST Act nowhere specifies that input tax credit shall not be available in respect of any outward supplies which is made at a price lower than its procurement value.
- Further, restriction imposed under section 17(5)(a)(A) shouldn't be applied on the ground that the supplies have been made after a certain period of time since there is no time limit prescribed in this regard for making such further supplies.

- Furthermore, the authority also observed that 17(5)(a)(A) restricts input tax credit in respect of motor vehicle for transportation of persons except when they are used for further supply of ‘such’ motor vehicles. In this respect, the authority held that he expression ‘such’ bears a wide connotation which does not put any restriction in respect of supply of demo vehicles.

Ruling

- In light of the above observations, the Authority for Advance Ruling held that the applicant is eligible to avail input tax credit on purchases of demo vehicles which can be set off against output tax payable under GST.

Customs and FTP

1. SUZUKI MOROTS GUJARAT PRIVATE LIMITED vs CC- Ahmedabad [CESTAT Ahemdabad- 2022-VIL-433-CESTAT-AHM-CU]

Subject Matter: Ruling wherein the Hon'ble Tribunal had allowed the appeal to classify Controller Assembly, Bolt, Nut, Screw, Rivet etc under chapter heading 9032 and 7318 and had remanded the matter back to the Commissioner (Appeals)

Background and Facts of the case

- The Appellant have imported Controller Assembly, Bolt, Nut, Screw, Rivet etc and filed Bills of Entry declaring the goods as "Components for Suzuki Vehicles" classifying the controller assembly under CTH 9023 and Bolt, Nut, Screw, Rivet etc under CTH 7318.
- The assessing officer had noticed that the goods were not declared under CTH 8708 even though the goods were meant for use in Motor Vehicles - Car i.e. Components of Motors Vehicles and hence contended it merit classification under CTH 8708.
- The issue of classification was adjudicated by the Assistant Commissioner vide Speaking Order No. 01/A.C./Suzuki/ICD-SND/2018-19 dtd. 14.03.2019 and held that the above items are correctly and appropriately classifiable under CTH 8708.
- Aggrieved by the order of Assistant Commissioner, appellants filed the appeal before Commissioner (Appeals).
- The learned Commissioner (Appeals) upheld the order of Assistant Commissioner and dismissed the appeal filed by the Appellant.
- Aggrieved, the appellant have filed this appeal before this CESTAT.

Discussions and findings of the case

- The appellant has contended that Bolts, Nuts, Screw, rivets, etc imported by the Appellant are made of steel. Chapter 73 of the Customs Tariff includes articles of Iron and Steel.
- Moreover, heading 7318 of the Customs Tariff specifically covers screws, bolts, nuts and similar articles, of Iron or steel. Thus, the appellant contended that the goods are correctly classifiable under heading 7318 of the Customs Tariff. The HSN Explanatory Notes to Heading 7318 expressly specify that nuts, bolts, etc are to be classified under Heading 7318, irrespective of its shape or end use.
- Further, the appellant submitted that the imported goods are parts of general use in terms of Section Note 2 of Section XV. Also, HSN Explanatory Notes to Section XV which provides that springs specialized for motor cars are to be classified under heading 7322 and not under heading 8708. Thus, it is evident that even if goods are specifically designed for motor vehicle the same will not be classified under Chapter 87 if they are explicitly excluded under Note 2 to Section XVII.
- The Appellant further held that HSN Explanatory Notes to Section Note 2 to Section XVII expressly states that nails, bolts, nuts washers, cotters and cotter -pins, springs will not be identifiable as articles of this Section.
- Furthermore, the Appellant submitted that as per Part (III) of HSN Explanatory Notes to Section XVII, goods may be classified as parts and accessories under this Section which cover chapter 87 only if they satisfy the conditions stipulated under the said explanatory note.

- Additionally, the appellant submitted that Controller Assy, AT must be classified under heading 9032 as it consists of all said three devises provided as per heading 9032.

- In respect of the Controller Assy, AT, the appellant also contended that as per Section Note 2 to Section XVII, which covers Chapter 87, articles of Chapter 90 are not to be classified as parts of goods covered under Chapter falling in this Section. Thus the imported goods do not satisfy all the three conditions prescribed in HSN to Section XVII and thus, cannot be classified under Heading 8708. Controller Assy, AT have specifically been provided under Heading 9032. Thus, according to Rule 3(a) they are rightly classifiable under Heading 9032.

- Post hearing the submissions, the Hon'ble Tribunal perused the HSN explanatory notes for CTH 8708 and observed that for classification of goods under chapter heading 8708 i.e. parts and accessories of Motor Vehicles, the conditions under CTH 8708 are required to be satisfied.

- Thus, the Tribunal observed that the lower authorities have not examined the legal aspects properly to come to conclusion for correct classification of the goods in question. Hence in their view the matter needs to be remitted back to the Commissioner (Appeals).

Direct Tax

1. Supreme Court follows strict interpretation of exemption provision to mandatorily require filing of declaration to withdraw S.10B benefit within due date

Subject Matter: This Tax Alert summarizes a Supreme Court (SC) ruling in the case of Wipro Ltd. (Taxpayer), dated 11 July 2022 wherein issue raised was whether a claim for exemption under section (S.) 10B made in original return of income (ROI) can be withdrawn by filing a declaration to opt out of the claim beyond the time specified in the provision.

Background of provisions under Income Tax Laws (ITL) dealing with claim of exemption under S.10B

- The Government of India had introduced an Export oriented unit (EOU) Scheme to boost exports and foreign earnings whereby units undertaking to export their entire production/services were eligible for certain direct and indirect tax benefits.
- In this regard, S. 10B (1)2 of the ITL, as part of Chapter III dealing with exemption of certain incomes from tax, provided an exemption to a 100% EOU to the extent of profits derived by it from such export, subject to certain conditions. The exemption was available for a period of ten consecutive tax years (TYs) beginning with TY in which such EOU begins to manufacture or produce articles or things or computer software, as the case may be. As per the ITL, a taxpayer is not eligible to carry forward any losses arising from such export, profits from which would have been deductible under section (u/s.) 10B.
- One of the preconditions provided for the claim of exemption u/s. 10B was that a taxpayer should furnish, along with ROI in prescribed form, the report of an accountant certifying that the exemption has been correctly claimed in accordance with the provisions of the ITL (Exemption Certificate).
- Further, an option was also given to the taxpayers to opt out of the provision by filing a declaration in this respect with the tax authority on or before the due date for ROI filing (Withdrawal Declaration). Where such option is exercised, the exemption provision ceases to apply to the taxpayers for any of the relevant TYs.

Facts

- The Taxpayer, a 100% EOU engaged in the business of running a call center and providing IT-enabled remote processing services, filed its ROI for TY 2000-01 on the last day available for such filing (viz. 31 October 2001) declaring loss and reserving its claim for exemption under S.10B of the ITL by filing an Exemption Certificate from an accountant. Note attached to the ROI stated that the Taxpayer is a 100% EOU entitled to claim exemption under S.10B and hence no losses are being carried forward.
- Subsequently, on 24 October 2002 (i.e., after almost a year had passed since the filing of the original ROI), the Taxpayer filed a Withdrawal Declaration with the tax authority withdrawing the claim of exemption.
- Thereafter, the Taxpayer filed a revised ROI on 23 December 2002 in which exemption under S.10B was not claimed, and the Taxpayer instead made a claim for carrying forward of losses.
- Tax authority rejected the claim made by the Taxpayer vide revised ROI, on the ground that the Withdrawal Declaration was not furnished within the due date of filing ROI. Accordingly, tax authority denied the claim of carry forward of losses.
- Being aggrieved by order of tax authority, the Taxpayer filed appeal to first appellate authority which was unsuccessful.

- However, on further appeal, Income Tax Appellate Tribunal (Tribunal) allowed the appeal in favor of the Taxpayer by accepting its claims.

- On further appeal by the tax authority, the High Court (HC) ruled in favor of the Taxpayer holding that while the requirement to file a Withdrawal Declaration is mandatory to opt out of exemption, the time limit prescribed for filing of such Withdrawal Declaration with the tax authority till the due date of filing of ROI is only a procedural requirement of directory nature and can be filed at any time till the completion of the assessment.

- Being aggrieved by HC's ruling, the tax authority filed appeal before the SC.

Tax authority's contentions

- Withdrawal Declaration is required to be filed within the statutory time limit prescribed in the ITL and is mandatory. The HC erred in considering the requirement as procedural.

- Revised ROI can be filed only to remove omission, mistake or arithmetical error and not for making an altogether new claim (as in the present case).

- There is a distinction between the provisions seeking exemption and the provisions for deduction. The plethora of rulings referred by the Taxpayer (infra) are inapplicable as they do not deal with Chapter III of the ITL (where S. 10B is placed) dealing with exemptions. As held by the SC in its earlier rulings, while the machinery provisions of a taxing statute may be interpreted liberally to effectuate its object and purpose, exemption provisions must be construed strictly.

Taxpayer's contentions

The Taxpayer's contentions were as follows:

- While the requirement to file the Withdrawal Declaration was mandatory to opt out of the exemption provision, the time limit for such only directory.
  - Reliance in this regard was placed on the SC decision in case of G.M. Knitting Industries Pvt. Ltd, which on similar lines permitted belated claim of additional depreciation in a case where such additional depreciation was claimable, subject to the filing of the prescribed form with the ROI. The SC ruling thereby endorses the view that option can be exercised at any time before completion of the assessment.
  - The Taxpayer's case in present matter stands on a better footing since the ITL itself gives an express and unequivocal statutory right to the Taxpayer to change its option by filing Withdrawal Declaration.

- Reliance was placed also on various judicial pronouncements rendered in the context of other deduction provisions of the ITL under Chapter VIA or rulings rendered in the context of S. 10B (which in turn relied on rulings on deduction provisions of the ITL under Chapter VIA) wherein it was held that submission of document is mandatory but the condition that the same should be filed with ROI is only directory. ,

- As against tax authority's contention that S. 10B is an exemption provision and hence requires strict interpretation, the Taxpayer contended that S.10B is a deduction provision and not an exemption provision as held by SC in case of Yokogawa India Ltd
.
- Validity of revised ROI is wholly immaterial and irrelevant as the Taxpayer could have validly exercised option by filing declaration during the course of assessment proceedings.

- The Exemption Certificate filed by the Taxpayer remains unaffected by the Withdrawal Declaration since the loss set

out in the certificate remained exactly the same. In any case, upon withdrawal of claim for exemption, such certificate becomes irrelevant.

- The only requirement under the ITL for carry-forward of losses is filing of an ROI showing the loss before the due date for submitting ROI. Since in the instant case, the loss was shown in the revised ROI, the date of filing for which relates back to the original ROI, this requirement wasmet.

Supreme Court's ruling

SC upheld tax authority's contentions that Taxpayer has not validly opted out of exemption provision and held as under:

- In a taxing statute, provisions are to read as they are and they are to be literally construed, more particularly in a case of exemption sought by a taxpayer.

- On a literal reading of the ITL, the wording is very clear and unambiguous to convey that for withdrawing benefit of S. 10B through Withdrawal Declaration, twin conditions of (i) furnishing the declaration in writing; and (ii) the same to be furnished before the due date of filing the ROI are required to be satisfied. One condition cannot be considered as mandatory and the other one as directory. Both are mandatory.

- Revised ROI can be filed only in cases of "omission" or "wrong statement" and the same cannot be filed for withdrawing a claim made under original ROI and making altogether a new claim. Also, a revised ROI filed can only substitute the original ROI and cannot transform it into a loss return so as to avail the benefit of carry forward and set-off of loss.

    a. If the claim made on submission of an Exemption Certificate is permitted to be withdrawn post ROI filing date, the Exemption Certificate would become falsified and stand to be nullified. Accordingly, the Taxpayer's submission that the withdrawal Declaration may be filed even during as assessment proceedings without filing revised ROI has no substance.

- The Taxpayer's reliance on SC ruling in case of G.M. Knitting Industries Pvt. Ltd (supra) as well as other rulings rendered in the context of Chapter VI-A is inapplicable since S. 10B is an exemption provision in Chapter III of the ITL which cannot be equated with the provisions of Chapter VIA or additional depreciation related provisions which operate in different fields with varied mechanisms. Provisions of Chapter III, being exemption provisions, are to be strictly and literally complied with and the same cannot be construed as a procedural requirement.

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