

EY Tax and Regulatory Alert

December 2022

Prepared for ACMA

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1.	Checkmate Services P. Ltd. (Taxpayer) v. CIT	Ruling wherein Supreme Court held that during the pendency of rectification proceedings even though they were initiated beyond the period of limitation, the reassessment proceedings cannot be initiated without first passing a specific order for withdrawal of time-barred rectification proceedings.

INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax

This section summarizes the regulatory updates under GST for the month of December 2022

▶ **GST Update on 48th GST Council meeting dated 17.12.2022**-The key takeaways of GST Council are summarized as follows:

▶ **Non applicability of GST on residential dwelling**-The recent GST council put an end to the moot question prevailing in the minds of taxpayer by clarifying that now no GST shall be payable where the residential dwelling is rented to a registered person if it is rented in his/her personal capacity for use as his/her own residence and on his own account and not on account of his business. This clarification tends to put an end to unwanted litigations.

▶ **Decriminalization under GST**- It is decided to increase the minimum threshold of tax amount for launching prosecution under GST from Rs. 1 Crore to Rs. 2 Crores. However, the same shall not be applicable in case of issuance of fake invoices without supply of goods or services or both.

▶ Further, it is decided to reduce the compounding amount from the present range of 50% to 150% of tax amount to the range of 25% to 100%.

▶ Following offences prescribed under Section 132 (1) (g)/(j)/(k) of CGST Act, 2017 are also decriminalized:

- 1.obstruction or preventing any officer in discharge of his duties
- 2.deliberately tempering of material evidences
- 3.failure to supply the information

▶ **Sanctioning of refund to unregistered persons**-Now the GST Council has taken a welcome initiative by recommending that an amendment should be made under CGST Act, 2017 along with issuance of Circular to prescribe

the procedure for filing application of refund by these unregistered persons.

▶ **Para 7, 8(a) and 8(b) of Schedule III of CGST Act, 2017**-The GST Council in order to put a full stop to never ending disputes and ambiguities now clarified that the said para are effective from 01.07.2017 i.e retrospectively. However, it is further clarified that no refund of tax paid shall be available in cases where any tax has already been paid in respect of such transactions/ activities during the period 01.07.2017 to 31.01.2019.

▶ **Clarification as regards to Rule 37(1) of CGST Rules, 2017**-It is recommended that the said rule shall be applicable retrospectively w.e.f. 01.10.2022 wherein only proportionate reversal of ITC is to be done related to the amount not paid to the supplier vis a vis the value of the supply including tax payable thereon. Furthermore, the council has also recommended to insert Rule 37A in CGST Rules, 2017 wherein it is clarified that mechanism shall be prescribed for reversal and subsequent re-availment of ITC. This is being done to ease the compliance process related to the condition for availment of ITC as per Section 16(2)(c) of CGST Act, 2017.

▶ **Issuance of Circular to remove any ambiguity and doubts**: It is recommended that Circulars are to be issued in respect of following matters to put an end to litigations and discussions. This will prove to be beneficial for business houses and taxpayers at large;

- Procedure for verification of ITC in cases involving difference in ITC availed in FORM GSTR-3B vis a vis that available as per FORM GSTR-2A during FY 2017-18 and 2018-19.
- Clarifying the manner of re-determination of demand in terms of sub-section (2) of section 75 of CGST Act, 2017.
- Clarification in respect of applicability of e-invoicing with respect to an entity.
- For clarifying the issues related to the place of supply of services of transportation of goods in terms of the proviso to sub-section (8) of section 12 of the IGST Act, 2017 and availability of ITC to the recipient of such supply.

- ▶ **Insertion of Rule 88C and Form GST DRC-01B:** It has also been recommended to insert Rule 88C and Form GST DRC-01B in CGST Rules, 2017 wherein intimation shall be sent to the taxpayers by the common portal regarding the difference between liability reported by the taxpayer in FORM GSTR-1 vis-a-vis the liability reported in FORM GSTR-3B for a tax period.
- ▶ In case any such difference exceeds a specified amount and/ or percentage, the taxpayers would be required to either pay the differential liability or provide an explanation of these differences.
- ▶ Furthermore, clause (d) is also to be inserted in sub-rule (6) of rule 59 of CGST Rules, 2017 regarding restriction in furnishing of GSTR-1 for a subsequent tax period in case the taxpayer has neither deposited the amount specified in the intimation nor has furnished a reply explaining the reasons for the amount remaining unpaid.
- ▶ **Amendment in definition of “NRTP” and “OIDAR”:** It is clarified that the definition of “non-taxable online recipient” under section 2(16) of IGST Act, 2017 and definition of “Online Information and Database Access or Retrieval Services (OIDAR)” under section 2(17) of IGST Act, 2017 shall be amended. This is done so as to reduce the interpretation differences and litigations on matters related to taxation of OIDAR Services.
- ▶ **Facilitate E-commerce for micro enterprises:** In alignment with the same and after considering the requirement of time for development of such functionality on the portal, it is recommended that the scheme may be implemented w.e.f. 01.10.2023.
- ▶ **Amendment in Rule 108(3) and 109 and insertion of Rule 109C of CGST Rules, 2017:** It is recommended to amend the necessary rules so as to clarify the requirement of submission of certified copy of the order appealed against and the issuance of final acknowledgment by the appellate authority. This is decided so as to facilitate timely processing and filing of appeals and reduce the compliance burden on the concerned assessee.
- ▶ Further, it also recommended to insert a Rule 109C of CGST Rules, 2017 and FORM GST APL-01/03 W to provide a facility to taxpayer for withdrawal of appeal application upto a certain stage. This is done to reduce the litigations at the level of appellate authority.
- ▶ **Changes in various tax rates-** GST on ethyl alcohol supplied to refineries for blending with motor spirit (petrol) is changed from **18% to 5%**.
- ▶ **Streamlining compliance procedure:** It has been recommended that PAN-linked mobile number and e-mail address has to be captured and recorded in FORM GST REG-01 and OTP-based verification to be conducted at the time of registration of such PAN-linked mobile number and email address.
- ▶ **Notification No. 23/2022 – Central Tax dated: 23.11.2022** was issued by the CBIC that the Central Government, on the recommendations of the Goods and Services Tax Council, hereby empowers the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002 (12 of 2003), to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
- ▶ This notification shall come into force with effect from 1st day of December 2022.
- ▶ **Notification No. 25/2022 – Central Tax dated: 13.12.2022** was issued by the CBIC extending the time limit furnishing the details of outward supplies in FORM GSTR-1 for the tax period November, 2022 in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tiruvannamalai, Ranipet, Vellore, Villupuram, Cuddalore, Thiruvarur, Nagapattinam, Mayiladuthurai and Thanjavur in the State of Tamil Nadu, till the thirteenth day of the month succeeding the said tax period.

- ▶ **Trade Circular No. 1/2022 - Central Tax dated: 21.11.2022** was issue by CBIC regarding the correct reporting of Ineligible credit/blocked credit and reversal thereof in form GSTR-3B.
- ▶ The procedure to be followed for furnishing of information regarding input tax credit availed, reversal thereof and ineligible input tax credit in Table 4 of FORM GSTR-3B is described as below.
- ▶ Total ITC (eligible as well as ineligible) of the taxpayer will be auto-populated from statement in FORM GSTR 2B in different fields of Table 4A of FORM GSTR 3B (except for the ineligible input tax credit on account of limitation of time period as specified in section 16 (4) of the CGST and KSGST Act, 2017 or where the recipient of an intra-State supply is located in a different State than that of place of supply).
- ▶ The taxpayer shall not deduct the amount of ineligible input tax credit directly by editing the total amount of input tax credit auto populated in Table 4A of FORM GSTR 3B.
- ▶ If the taxpayer has to declare any amount of ineligible input tax credit under any of the provision, they should strictly adhere to the ensuing instructions in this regards.
- ▶ Out of the amounts available in Table 4A of FORM GSTR 3B, if the taxpayer have any ineligible input tax credit which is to be reversed on account of Rule 38 (reversal of credit by a banking company or a financial institution) or Rule 42 (reversal of credit on inputs and input services if the same is used for non business purpose or used for the outward supply of exempted goods or services)
- ▶ The taxpayer shall report reversal of ITC which are not permanent in nature and can be reclaimed in future subject to fulfilment of specific conditions, such as on account of Rule 37 (non-payment of consideration to supplier within 180 days) of CGST and KGST Rules, 2017 , Section 16(2)(b) (non receipt of goods or services or both in the same tax period in which the invoice has been received) and Section 16(2)(c) (non payment of tax by the supplier) of the CGST and KSGST Act, 2017 in Table 4 (B) (2) of FORM GSTR 3B.
- ▶ Such input tax credit may be reclaimed in the appropriate table in Table 4 (A) of FORM GSTR 3B on fulfilment of necessary conditions. Further, all such reclaimed input tax credit shall also be shown in Table 4 (D) (1) of FORM GSTR 3B. Table 4 (B) (2) of FORM GSTR 3B may also be used by the taxpayer for reversal of any input tax credit availed in Table 4(A) of FORM GSTR 3B wrongly in any previous tax periods due to any inadvertent/clerical mistakes.
- ▶ Accordingly, the “Net ITC Available” in Table 4 (C) of FORM GSTR 3B will be as per the formula (4A – [4B (1) + 4B (2)]) and the same will be credited to the electronic credit ledger of the taxpayer and also in Table 6 of FORM GSTR 3B to set-off the out put tax dues, if any.
- ▶ Input tax credit not available, on account of limitation of time period as specified in Section 16 (4) of the CGST and KSGST Act, 2017 or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply, may be reported by the taxpayer in Table 4 D (2) of FORM GSTR 3B. Such details are available in Table 4 of FORM GSTR-2B.

Or

- ▶ Rule 43 (reversal of credit on capital goods if the same is used for non-business purpose or used for the outward supply of exempted goods or services) of the CGST and KGST Rules, 2017, as the case may be, the same shall be declared in Table 4 (B) (1) of FORM GSTR 3B.
- ▶ In addition to that, if the taxpayer has any input tax credit which is blocked as per Section 17(5) of the CGST and KSGST Act, 2017 the same shall also be declared in Table 4 (B) (1) of FORM GSTR 3B.
- ▶ If any taxpayer has availed ineligible or blocked credits and in cases where the time limit prescribed under Section 39(9) of the Act for rectification by filing FORM GSTR 3B is over, they may reverse such input tax credit on his own ascertainment by filing FORM GST DRC-03, electronically on the common portal, in accordance with prevailing Acts and Rules, to avoid further litigations and proceedings such as Show Cause Notices demanding tax, interest, imposition of penalty etc.

Customs and Foreign Trade Policy (FTP)

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

▶ **CircularNo.24/2022-Customs dated:28.11.2022**

was issued by the CBIC whereby Kind reference is invited to Board's Circulars 09/2015-Cus dated 31.03.2015, 03/2016-Cus dated 03.02.2016 and 10/2016-Cus dated 15.03.2016, regarding the Indian Customs' Single Window. In brief, vide the above referred Circulars –

▶ Six Partner Government Agencies (PGAs) were brought on board the Single Window Interface for Facilitating Trade (SWIFT). This platform enabled importers to lodge their clearance documents online through ICEGATE at a single point, facilitated risk- based inspection and an Online NoC from the PGAs could be obtained, without the trader having to approach these agencies.

▶ These agencies were Food Safety and Standards Authority of India (FSSAI), Plant Quarantine (PQ), Animal Quarantine and Certification Services (AQCS), Central Drugs Standards Control Organization (CDSCO), Wildlife Crime Control Bureau (WCCB), and a lab module for the Textile Committee (TC) to provide its NOC for live consignments.

▶ Under SWIFT, the FSSAI and PQ are connected through online message exchange with their own systems, while the remaining four PGAs use ICES for providing online NoC. Further, vide Circular No. 01/2017-Cus dated 04.01.2017, the facility for automatic routing of Bills of Entry (BOEs) of WCCB for NoC in exports in SWIFT was introduced.

▶ Further, the facility of eSANCHIT, was enabled for the importers/exporters to upload all Licenses, Permits , Controls and Orders(LPCOs) issued by the PGAs and other documents on ICEGATE, via Circular no. 40/2017-Cus dated 13.10.2017 and extended to exports across the country, vide Circular No 43/2018-Cus dated 08.11.2018.

▶ The facility of eSANCHIT was leveraged for uploading of authorizations and LPCOs issued by PGAs in PDF format, thus dispensing with the requirement of importers and exporters to separately upload these documents, in phases vide Circular nos. 44/2018-Cus dated 13.11.2018, 13/2019-Cus dated 03.06.2019, 19/2019-Cus dated 16.07.2019, 03/2020-Cus dated 15.01.2020, 11/2020-cus dated 10.02.2020 and 24/2020-Cus dated 14.05.2020.

▶ To enhance transparency and better informed compliance, the Compliance Information Portal (<https://cip.icegate.gov.in/CIP/#!/home>) was launched on 04.08.2021 on a single platform to provide all necessary information related to Customs laws, procedures along with applicable duties and taxes on each Customs Tariff Item, as also the information about necessary permissions to be obtained from any PGA for import or export of goods.

▶ To further enhance SWIFT, the Digital Import Clearance System of AQCS-ICS has been developed by AQCS for purposes of improved functioning. This would enable migrating from Online NoC through ICES to online message exchange mode, similar to that of FSSAI and PQMS.

▶ The AQCS-ICS shall be introduced from 01.12.2022. For this, the following changes will be made in the Customs System:

▶ To enhance the ambit of paperless processing and to facilitate risk-based inspection, changes in the Integrated Declaration as follows:

▶ The importer must upload the Veterinary Health Certificate issued by the exporting country with Document Code 853AQ1 for the concerned Customs Tariff Items (CTIs) listed in Annexure A (SI.No 1) of this Circular.

▶ The importer must upload the Laboratory reports/certificate of analysis (COA) with Document Code 001AQ1, for the concerned CTIs listed in Annexure A (SI.No 2) of this circular.

▶ The Importer must quote the IRN generated in eSanchit pertaining to Sanitary Import Permit with document Code 911DF1, issued and uploaded by

AQCS, for the concerned CTIs listed in Annexure A (Sl.No 3) of this Circular to obtain the NoC.

- ▶ The importer must give the following declaration under Statement Code AQ002 at item level for the CTIs listed in Annexure B of this Circular: "I certify that the invoice issued by Authorised officer of Manufacturer in the exporting country contains a declaration that the product has undergone the irreversible process of tanning in terms of O.M vide F.No. L-110110/17/2017-Trade-Part(1) (E-15243) dated 17.12.2021.
- ▶ **Risk-based Inspection:** Based on the above additional data being received through integrated declaration, risk-based selectivity criteria shall be introduced in stages for CTIs requiring NoC from AQCS along with the integration of AQCS-ICS with ICEGATE.
- ▶ **Post Filing requirements for NoC by AQCS:** All documents required to be submitted to AQCS to obtain NoC, will normally be uploaded during Integrated Declaration. Under circumstances where additional documents are required by AQCS from the importer post-filing, the importer may submit the same by logging in via ICEGATE. Till the time that the integration of AQCS-ICS with ICEGATE is complete, the importer may log in to the AQCS-ICS portal to submit the additional documents.
- ▶ **Electronic transmission of NoC to Customs:** The Online NoC will be automatically transmitted to ICEGATE, and importers will also have complete visibility as soon as it is issued (or rejected) by PGA officers. Any further queries by PGA officers as well as real time tracking of the status of processing of applications can be accessed through ICEGATE portal and as well as the AQCS-ICS Portal.
- ▶ With the introduction of AQCS-ICS, there is no change in the role or functioning of Customs officers. The Customs officers would be able to access the details of the BOEs referred by ICES to AQCS-ICS. The electronically received Release Order (RO) regarding the BOEs referred to AQCS-ICS shall be accepted by the Customs. The documents referred before the implementation of this Circular will continue to be processed in ICES.
- ▶ **Circular No. 25/2022 - Customs dated: 09.12.2022** was issued by the CBIC that In order to leverage the vast network of post offices across the country and enable MSME's (Micro, Small and Medium Enterprises) to export to global markets using e-commerce or other regular channels, the CBIC in collaboration with the Department of Posts (DoP) has developed a dedicated Postal Bill of Exports (PBE) Automated System for postal exports.
- ▶ Postal Exports (Electronic Declaration and Processing) Regulations, 2022 (herein after referred to as the Regulations) have accordingly been notified by the Board vide Notification No. 104 dated 9th December 2022. These regulations are meant to facilitate the processing of commercial postal exports by automating the entire procedure and seamlessly connecting the postal network to the notified Foreign Post Offices or FPOs.
- ▶ For exporting a parcel through the postal route, an exporter or his agent is presently required to come to any of the twenty-eight FPOs to file the export declaration and hand over his consignment for export. In the new system, the exporter will not be required to visit an FPO, rather he will be able to file PBE online from home/office and deposit the parcel in a nearby post office for export.
- ▶ The export parcel so deposited by the exporter will be moved by the DoP to an FPO for customs clearance. The system of export clearance will operate on a digital platform while harnessing the existing post office network spread across the country and will be amenable to being scaled up to cover small exporters/producers located in remote areas.
- ▶ An overview of the functionalities offered by the PBE Automated System and the various steps prescribed under the Regulations for undertaking a postal export of commercial nature are elaborated below
- ▶ **Access:** The Postal Bill of Exports (PBE) Automated System can be accessed by the trade using the link <https://dnk.cept.gov.in/customers.web>. This link

will direct the user to the login page of 'Dak Ghar Niryat Kendra –Customer Portal'.

- ▶ Similarly, the Customs officers can access the export documentation uploaded by the exporter for according Customs clearance by going to the link.

<https://ips.cept.gov.in/customs.web/login.aspx>.

- ▶ This link will direct the Customs officer to the login page of 'Dak Ghar Niryat Kendra — Customs Portal'. Step-by-step detailed guidance on the work flow, both for exporters and Customs officers. shall be provided by I/oP on the aforesaid portals.

- ▶ **Registration:** Regulation 4 mandates registration of an exporter on the PM Automated System. On initial logging into the portal, every exporter is required to register himself. The first step of the registration process is OTP based authentication (with the OTP being shared on registered mobile number) and thereafter involves capturing certain mandatory identifiers corresponding to the exporter's personal and business profile including Name, Address, IEC number and GSTIN etc. and uploading of KYC documents.

- ▶ A username and password are assigned to access the System. In its present form, the PBE Automated System also provides for registering details of the authorised agent where required.

- ▶ **Booking of Postal Article for Export:** To book an export article, the exporter is required to login using his username and password. The exporter can fill the required fields of PRE form (III or IV as prescribed under the Regulations) such as description of consignment, export destination, sender's and receiver's details etc. under the 'Article Booking' sub menu. If the exporter chooses to utilize services of an authorized agent, then the exporter shall also fill in the agent's name, address and customs broker licence number.

- ▶ On completion of the said an Article Booking ID reference and a PI3E number will be auto generated. The exporter can then print the CN 23 form or the Harmonised label, as appropriate, corresponding to the export. The portal also facilitates upload of bulk information for multiple articles as also upload of supporting

documentation such as licenses, certificates etc. essential for Customs purposes.

- ▶ **Procedure at the Booking Post Office:** Once the article(s) is booked on the portal, the exporter or his authorised agent has to physically deliver the export article(s) to the nearest or the most convenient hooking post office (bpo). Postal authorities shall authorize certain post offices as the hpo's and corresponding FPOs as provided under sub-regulation (1) of regulation 6.

- ▶ On receipt of the export goods at the bpo counter, the declaration on the package with respect to net weight of the article and the destination country name will be verified by the postal authorities, who shall also collect necessary payments.

- ▶ KYC documents will also be obtained from the customer bringing the article to bpo. Postal authorities shall be responsible for onward secure transfer of the export package to the corresponding FP(.) for further processing and export.

- ▶ The Regulations also prescribe a period of five years for retention of records pertaining to postal exports by the exporter or his authorised agent and their production before Customs when required.

- ▶ The role and responsibilities of the authorised agent are also covered under regulation 9 that mandate observance of all conditions stipulated under the Customs Broker Licensing Regulations, 2018.

- ▶ To facilitate transition and stabilization of the prescribed modality of postal exports automation, the manual procedure provided under the earlier notified Exports by Posts Regulations, 2018 [Notification No. 48/2018-Customs (N.T.)] read with Circular No. 14/2018-Customs, both dated 4th June 2018, will continue to be in operation till such time as specifically suspended by the Board.

- ▶ **Notification No. 46/2015-2020 Dated: 30.11.2022** was issued by the DGFT that In exercise of the powers conferred by Section 5 and Section 14A of the Foreign Trade (Development and Regulation) Act, 1992, as amended, read with Para 1.02 of the Foreign Trade Policy 2015-2020, the Central Government hereby makes the amendment in Appendix 3 (SCOMET Items) to Schedule -2 of ITC (HS) Classification of Export and Import Items 2018, as enclosed in the Annexure to this Notification.
- ▶ The updated Appendix 3 (SCOMET Items) to Schedule- 2 of ITC (HS) Classification of Export and Import Items, 2018 as annexure to this notification would be uploaded on the web-portal of DGFT under heading “Regulatory Updates” and Sub-heading “Import, Export and SCOMET policy”.
- ▶ **Notification No. 47/2015-2020 Dated: 07.12.2022** was issued by the DGFT wherein In exercise of the powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with Para 1.02 of the Foreign Trade Policy 2015-20, the Central Government hereby notifies a revised Appendix 4R under Para 4.59 of Foreign Trade Policy, 201520 for exports made from 15.12.2022.
- ▶ The revised Appendix 4R will be applicable for exports made from 15.12.2022 to 30.09.2023. To adhere to the Scheme budgetary framework, necessary changes and revisions as per Para 4.54 of FTP 2015-20 (as amended from time to time) will be made thereafter.
- ▶ The revised RoDTEP Appendix 4R containing the eligible RoDTEP export items, rates and per unit value caps, wherever applicable is available at the DGFT portal www.dgft.gov.in under the link ‘Regulatory Updates >RoDTEP’.
- ▶ RoDTEP scheme to include chemicals, pharma, iron & steel sector.
- ▶ **Public Notice No. 39/2015-2020 Dated 30.11.2022:** was issued by the DGFT wherein the Validity of Pre-Shipment Inspection Agency (PSIAs) as listed in the Appendix 2G of A&ANF, has been extended from 03.12.2022 to 31.12.2022.
- ▶ **Public Notice No. 44/2015-2020 Dated 22.12.2022:** was issued by the DGFT wherein the list of agencies authorised to issue Certificate of Origin (Preferential) under India-Australia Economic Cooperation and Trade Agreement (IndAus ECTA) is notified.
- ▶ **Trade Notice No. 23/2022-23 Dated: 22.12.2022** was issued by the DGFT informing that the electronic platform for Certificates of Origin (eCoO) is being expanded to facilitate issuance of Preferential Certificates of Origin for exports to Australia under India-Australia Economic Cooperation and Trade Agreement (Ind-Aus ECTA) with effect from 29th December 2022.
- ▶ On submission and approval of applications online under the above-mentioned Trade Agreement, the e-CoO system shall generate one copy i.e., electronic copy. The electronic copy shall bear the image signature of the issuing officer and stamp of the issuing agency. The authenticity of any eCoO may be verified by scanning the QR code on the certificate, or by keying in the certificate number under the ‘**Verify Certificate**’ link on <https://coo.dgft.gov.in>
- ▶ The Indian Exporter may please take note of the following points regarding the eCoO application process being notified herewith:
 - ▶ Digital Signature Certificate (DSC) would be required for the purpose of electronic submission. The digital signature would be the same as used in other DGFT applications.
 - ▶ The digital signature may be Class III and should have the IEC of the firm embedded in the DSC.
 - ▶ Any new applicant exporter would be required to initially register at the portal. The password would be sent on the email and mobile number of the IEC holder. In case the IEC holder desires to update their email on which communication is to be sent, the same may be done by using the ‘IEC Profile Management’ service on the DGFT website <https://dgft.gov.in>
 - ▶ Once registration is completed, the IEC branch details would be auto-populated as per the DGFT-IEC database. Applicant is required to ensure that updated IEC details are available in the DGFT

system. Necessary steps may be taken to modify the IEC details, when required.

▶ For further guidance on registration and application submission, the Help manual & FAQs may be accessed on the landing page at <https://coo.dgft.gov.in>.

▶ For any further assistance you may utilize any of the following channels

1.Raise a service request/suggestion ticket through the DGFT Helpdesk service.

2.Call the toll-free DGFT Helpdesk numbers.

3.Send an email to DGFT CoO Helpdesk at coo-dgft@gov.in

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Part B- Case Laws

Goods and Service Tax

1. M/s Tata Motors Limited, (GST AAR Maharashtra vide GST-ARA-83/2020-21/B-112 dated 01 December 2022)

Subject Matter: Ruling wherein the Maharashtra Authority of Advance Ruling (M-AAR) has held that Garbage Tipper Vehicle for the transport of the goods would fall under tariff item 8704 and would attract tax at 28%

Background and Facts of the case

- ▶ M/s Tata Motors Limited (hereinafter referred to as the Applicant) is manufacturer and seller of vehicles, chassis for vehicles and parts thereof of commercial as well as passenger vehicles
- ▶ Further, the Applicant is planning to manufacture Tata Ace Garbage Tipper vehicles & its variants (hereinafter referred to as Garbage Tipper vehicle), which will be supplied to Municipal Corporations, Municipalities, Urban Development Bodies, Gram Panchayats and to contractors to whom operation & maintenance contract has been awarded by these Govt. bodies (hereinafter referred to as Govt. Bodies). The Garbage Tipper vehicle has exclusive use of collection of garbage and is also exclusively sold to Govt. Bodies
- ▶ The applicant has sought advance ruling on the following questions:
 - (a) Whether Garbage Tipper vehicle manufactured for garbage applications and sold exclusively for Govt. Bodies are classifiable under Tariff Item 8705.90.00 of the First Schedule to the Customs Tariff Act, 1975 as Special Purpose Motor Vehicles or is classifiable under any other appropriate Tariff item?
 - (b) Whether said Garbage Tipper Vehicles would attract IGST at the rate of 18% under

Sr. No. 401A under Schedule III of IGST Rates specified under Notification No. 1/2017- Integrated Tax (Rate), dated 28.06.2017

- ▶ (c) If answer to question (b) above is in negative, what IGST rate would be applicable on the above-mentioned Garbage Tipper vehicles?

Discussions and findings of the case

- ▶ The Applicant contended that the Chapter sub-heading 8705 covers special purpose vehicles and defines Special Purpose Vehicles as other than those principally designed for the transport of persons or goods.
- ▶ Also, the explanatory notes to the heading 8705 covers range of motor vehicles, the primary function of a which is not the transport of persons or goods namely trucks used for cleaning streets, gutters, airfield runways, break-down lorries, crane lorries, fire fighting vehicles, concrete-mixers lorries, spraying lorries, mobile workshops, mobile radiological units etc.
- ▶ The Applicant also contended that Garbage Tipper Vehicle has 60:40/ 70:30 partition for segregation of dry waste & wet waste as per National Green Tribunal (NGT) guidelines, therefore vehicle cannot be said to have principally designed to carry persons or goods thereby would merit classification under heading 8705
- ▶ The Applicant relied upon the case of *Maniar & Co. Vs. CCE, Ahmedabad (2000 (119) ELT 418)* where it was held that Dumper placer, which is used to carry the garbage collected in the containers placed at various collection points in the city or town is a Special Purpose Vehicle hence classified under heading 8705

- ▶ Therefore, the Applicant contended that Garbage Tipper Vehicle vide tariff 8705 90 00, taxable at the rate of 18%, in accordance with Notification No. 1/2017-Integrated Tax (Rate), dated 28.06.2017 as amended.
- ▶ The Maharashtra AAR observed that the certificate issued by ARAI (Automotive Research Association of India) explicitly mentions vehicle as Goods Carrier. Thus, AAR perceives that such vehicle cannot be termed as a Special Purpose Vehicle

Therefore, AAR concluded that the said vehicle would get covered under heading 8704 90 90 i.e., Motor Vehicles for the transport of goods and taxable at 28% under Sr. No. 166 of Schedule IV of CGST Rates notified by Notification No. 1/2017-CGST Tax (Rate), dated 28.06.2017 as amended

Ruling

- ▶ In light of the above, the Maharashtra AAR held that Garbage Tipper Vehicle would be classifiable under tariff 8704 90 90 and would attract tax at the rate of 28% under Sr. No. 166 of Schedule IV of CGST Rates notified by Notification No. 1/2017- CGST Tax (Rate), dated 28.06.2017

2. M/s. Manappuram Finance Ltd. v. Assistant Commissioner, Central Tax and Excise (2022 (12) TMI 411 – Kerala High Court)

Subject Matter: High Court quashed the orders rejecting the refund and restore the application of refund of tax for notice pay recovery. Further, held that the circular only clarifies the existing law. Hence, the benefit of the circular shall be extended to the taxpayers retrospectively as well.

Background and Facts of the case

- ▶ M/s. Manappuram Finance Ltd. (hereinafter referred to as the Petitioner) is a non-

banking finance company and is registered under GST.

- ▶ The Petitioner has applied for refund of tax paid on notice pay recovery however the adjudicating authority passed the order rejecting such refund claim. Further, the appellate authority upheld the orders of the adjudicating authority.

Discussions and findings of the case

- ▶ The Petitioner contended that Central Board of Indirect Taxes and Customs (CBIC) vide Circular No.178/10/2022-GST dated 03 August 2022 has explicitly specified that GST is not required to be paid on notice pay received from employees.
- ▶ Further, it is also submitted that though such Circular was issued only on 03 August 2022, the said Circular should be treated as applying to all past transactions as well, as it is settled law that the beneficial Circular must be applied retrospectively.
- ▶ Petitioner has placed reliance on the case law Madras High Court in GET & D India Ltd v. Deputy Commissioner of Central Excise; 2020 (35) G.S.T.L. 89 (Mad.) where it was held that notice pay received from employees does not amount to a rendition of service for the purposes of the Finance Act, 1994.
- ▶ The Hon'ble High Court observed that, the fact that the Circular was issued only after the issuance of order of the first appellate authority is no reason to hold that the petitioner is not entitled to the benefits of the Circular. And since the Circular only clarifies the existing law, the question as to whether the Circular has any retrospective effect need not be considered.

- ▶ The Hon'ble High Court relied upon Supreme Court Order in case of Suchitra Components Ltd. v. Commissioner of Central Excise; (2006) 12 SCC 452, where it was held that the provisions of a Circular will have to be deemed to apply retrospectively.

Judgement

- ▶ In light of the above, the Hon'ble High Court held that the circular only clarifies the existing law. Hence, the benefit of the said circular shall be extended to the taxpayers retrospectively as well. High Court quashed the orders rejecting the refund and restore the application of refund of tax.

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Direct Tax

1. SC holds initiation of reassessment proceedings invalid during pendency of rectification proceedings despite being time-barred

Subject Matter: Ruling wherein Supreme Court held that during the pendency of rectification proceedings even though they were initiated beyond the period of limitation, the reassessment proceedings cannot be initiated without first passing a specific order for withdrawal of time-barred rectification proceedings.

Background

- ▶ The Taxpayer, an Indian company engaged in export activities, filed a NIL return for the subject tax year (TY) 1994-95 after claiming incentive deduction for export proceeds.
- ▶ However, in the subsequent tax year, the Taxpayer claimed bad debt against the same export proceeds thereby indicating that the same were not realized in foreign currency (which was one of the pre-requisite conditions to claim export incentive).
- ▶ Accordingly, the tax authority-initiated rectification proceedings in respect of TY 1994-95 seeking to deny the export incentive and thereby imputing a tax liability. However, such rectification proceedings were initiated beyond the limitation period and, hence, time barred.
- ▶ However, such rectification proceedings were not withdrawn by the tax authority and, hence, ostensibly, were still pending.
- ▶ Subsequently, in respect of the same item, viz. disallowance of export incentive, the tax authority suo moto-initiated reassessment proceedings which were resisted by the Taxpayer on the ground that the Income Tax Act (ITA) does not permit parallel reassessment proceedings in the course of pendency of the rectification proceedings.

▶ Such a contention of the Taxpayer was, however, rejected by the tax authority whereupon the matter travelled to the Tribunal, and subsequently the High Court (HC). While the Tribunal ruled in favor of the Taxpayer, the HC held that the rectification proceedings being admittedly time-barred, there would arise no question of pendency of proceedings and, thereby, the subsequent reassessment proceedings were maintainable.

▶ Being aggrieved by the HC ruling, the Taxpayer preferred the instant appeal before the SC.

Revenue's contentions

The SC ruled in favor of the Taxpayer and quashed the reassessment proceedings based on the following principles:

▶ The SC held that during pendency of rectification proceedings, it was not permissible for the tax authority to undertake reassessment proceedings under the ITA.

▶ According to the SC, there was nothing on the record of the tax authority to suggest that the tax authority had withdrawn the rectification notice being beyond the period of limitation under the ITA. Since no specific order was made by the tax authority regarding the withdrawal of rectification proceedings, the same could be said to be pending even if beyond limitation period.

▶ The SC further held that the HC committed an error when the HC presumed that the rectification proceedings turned invalid due to the issuance of notice beyond limitation period since the matter of validity of rectification proceedings was not the subject matter of appeal before the HC.

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