

EY Tax and Regulatory Alert

February 2024

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 February 2024

▶ **Advisory for furnishing bank account details by registered taxpayers under Rule 10A of the Central Goods and Services Tax Rules, 2017:**

All Registered Taxpayers are required under the provisions of CGST Act, 2017 and the corresponding Rules framed thereunder to furnish details of their bank account/s within 30 days of the grant of registration or before the due date of filing GSTR-1/IFF, whichever is earlier.

▶ Taxpayers are therefore advised to promptly furnish their bank account details, who have not provided it so far if 30 Days period is shortly going to expire to avoid disruption in business activities and the subsequent suspension of GSTIN.

▶ Further, it is stated that the failure to furnish the bank account in the stipulated time would result in Taxpayer Registration getting suspended after 30 days and intimation in FORM REG-31 being issued to the Taxpayer. The Taxpayer would also be debarred from filing any further GSTR-1 /IFF.

▶ If the taxpayer updates their bank account details in response to the intimation in FORM REG-31, the suspension will be automatically revoked. However, if the bank account details are not updated even after 30 days of issuance of FORM REG-31, the registration after suspension may also be taken up for cancellation process by the Officer.

▶ **Advisory for enhanced E-Invoicing Initiatives & Launch of Enhanced**

<https://einvoice.gst.gov.in> portal: GSTN announces the launch of the revamped e-invoice master information portal <https://einvoice.gst.gov.in>. This enhancement is

part of ongoing effort to further improve taxpayer services.

- ▶ New Features of the revamped E-Invoice Master Information Portal are as follows:
- PAN-Based Search
 - Automatic E-invoice exemption List
 - Global Search Bar
 - Local Search Capabilities
 - Revamped Advisory and FAQ Section
 - Daily IRN Count Statistics
 - Dedicated Section on Mobile App
 - Improved Accessibility Compliance and UI/UX
 - Updated Website Policy

▶ **Notification No 06/2024- Central Tax dated 22.02.2024** is issued in order to notify "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the common portal based on consent under sub-section (2) of Section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017).

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of February 2024

- ▶ **Notification No.05/2024 -Customs (NT) Dated 19.01.2024:** was issued to exempt deposits under Section 51A of the Customs Act 1962 as per Notification No .18/2023-Customs (N.T.), Dated 30th March, 2023 for the period 1st April 2023 till 29th February 2024.
- ▶ This notification was issued in order to extend the timeline stipulated under Notification No. 87/2023 -Customs (NT) Dated 29.11.2023 from 19 January 2024 till 29 February 2024.
- ▶ **Notification No. 06/2024 -Customs(NT) Dated 19.01.2024:** was issued to notify that the exemption from deposits under Section 51A of the Customs Act 1962 in line with Notification S.O. 1512(E). No. 19/2022-CUSTOMS (N.T.), F. No. 442/02/2017-Cus IV(Pt), Dated 30th March, 2022 shall come into force from 01 March 2024.
- ▶ This notification was issued in order to extend the timeline stipulated under Notification No. 88/2023 -Customs(NT) Dated 29.11.2023 from 20 January 2024 till 1 March 2024.
- ▶ **Notification No.06/2024 -Customs Dated 29.01.2024:** was issued to amend 50/2017 - Customs in order to extend the validity of exemptions lapsing on 31st March 2024 up to 30th September, 2024.
- ▶ Vide the said notification, the concessional standard rate of Basic Customs Duty (BCD) and nil integrated tax on import of Lithium ion cell for use in the manufacture of battery or battery pack of electrically operated vehicle or hybrid motor vehicle shall not have effect after 30th September 2024.
- ▶ **Notification No.07/2024 -Customs Dated 29.01.2024:** was issued to amend various

notifications in order to extend the validity of exemptions lapsing on 31st March 2024 up to 30th September,2024

- ▶ Certain notifications whose validity is extended are enlisted below:-
 - Notification No. 16-Cus, dated the 23rd January, 1965: This notification relates to Baggage (Transit to Customs Stations) Regulations, 1967
 - Notification No. 80-Cus, dated the 29th August, 1970: Exemption to articles and component parts as replacement of defective articles imported earlier as private personal properties.
 - Notification No. 134/94-Cus., dated 22nd June, 1994: Goods imported for carrying out repairs, reconditioning, reengineering, testing, calibration or maintenance (including services).
 - Notification No. 50/96-Cus., dated 23rd July, 1996: Exemption to specified equipment, instruments, raw materials, Components, pilot plant and computer software when imported for R & D projects.
 - Notification No. 52/2017-Customs, dated the 30th June, 2017: Seeks to prescribe effective rate of duty on goods specified in the notification.
- ▶ **Circular No. 01/2024 -Customs Dated 01.02.2024:** was issued for authorization of Booking post offices and their corresponding Foreign Post offices in terms of postal Export (Electronic Declaration and Processing) Regulations, 2022.
- ▶ In terms of Regulation 6(1), the Department of Posts vide OM dated 23.01.2024 had authorized 14 more Booking Post offices to accept consignments for export. Thereby, the said circular was issued for Department's information, necessary

action and implementation.

▶ **Public Notice No. 47/2023-24 -Customs Dated 30.01.2024:** was issued in respect of grievance redressal and problem solving at the end of BIS and Line ministry.

▶ Vide the said public notice, the following is clarified by the Department:

- If there is any query in respect of mandatory compliance of applicability of BIS, stakeholders are advised to visit the URL www.bis.gov.in/product-certification/products-under-compulsory-certification.
- If there is any query in respect of labelling and marking on the product, stakeholders are advised to visit URL www.bis.gov.in/product.certification/product-specific-information-2/product-manualsmk/ and to look out for the product manual of respective Indian Standard.
- If the trade is having issues/queries related to the applicability of Quality Control Order (QCO) on a particular product or implementation of QCO or any matters connected therewith or incidental thereto (like extension in the date of implementation of QCO, exemptions as on the date of implementation of the Order etc.), they may approach the concerned Line Ministry/Department of the Central Government that has issued the QCO.

▶ **Public Notice No. 03/2024 -Customs Dated 05.02.2024:** was issued in relation to waiver of late fee for delayed filling of Bills of Entry due to erratic functioning of ICEGATE -reg.

▶ Considering the erratic functioning of ICEGATE, the trade has been facing difficulties in filling bills of entry. In view of this, it was decided to waive late fee for the bills of entry filed for the cargo arrived at Chennai Air Cargo/ Airport from 03.02.2024 to 04.02.2024 in terms of Section 46(2) of the Customs Act, 1962 under Bill of Entry Regulations, 2018.

▶ This particular public notice shall be considered as a Standing Order for the purpose of Officers and staff of the department.

▶ **Public Notice No. 01/2024 -Customs Dated 06.02.2024:** was issued for liquidation of pending drawback claims in various queues in EDI systems of Customs House, Tuticorin.

▶ It was observed that several duty drawback claims were pending disbursement for want of submission of reply by Exporters to the queries raised and such claims are shown pending in "Query raised to Exporter" queue. As soon as the query is replied by the Exporter, the claim is immediately processed and the drawback is disbursed by the Department.

▶ The Department has observed that the drawback claims have been pending in "Exporter" queue (shipping bill date prior to 01.10.2023 on account of non-submission of reply by the exporters). All such exporters were therefore, required to reply to the query on EDI system to the Assistant commissioner (Drawback) Customs House, Tuticorin on or before 28.02.2024. Further, it is stated that the exporter or their representative can also explain to the Assistant Commissioner (Drawback) the response to queries during office hours on all working days during the above period.

▶ If the query is not replied satisfactorily before 28.02.2024 with requisite documents/declarations, the drawback claims shall be processed as per records available/as per applicable rates.

▶ **Public Notice No. 09/2024 -Customs Dated 12.02.2024:** was issued in relation to Imports from North Korea (KP) / Exports to North Korea (KP) -reg.

- ▶ Notification No 52/2015-20 dated 07.03.2018 was issued by DGFT to outline prohibitions on imports from the Democratic People's Republic of Korea(DPRK)/ and exports to DPRK/ North Korea.
- ▶ Further, the prohibitions in relation to direct or indirect imports/exports from/to DPRK are also stipulated in Para 2.18 and Appendix I of the Foreign Trade Policy 2023.
- ▶ In this regard, instances have come to the notice of the Department wherein the Country of Origin/ Destination has been erroneously mentioned as DPRK (North Korea) (KP), and yet such import/export consignments were cleared without requisite amendments.
- ▶ Thereby, the Department has clarified that in cases of bonafide errors in data entry, the Customs Clearance (OOC/ LEO) is to be allowed only after amending the Bill of Entry/ Shipping Bill to delete incorrect reference to DPRK (North Korea) and mentioning the correct Country of import/ export (other than North Korea).
- ▶ **Public Notice No. 13/2024 dated 23.02.2024:** Office of the Principal Commissioner of Customs (NSI), Maharashtra, has issued procedure in relation to filing and processing of Bill of Entry amendment requests.
- ▶ Importer/Customs Brokers can now directly file amendment requests online via Common Portal and upload the required documents as per the format prescribed in the enclosed Public Notice at e-Sanchit. Documentary evidence in existence at the time of filing of the bill of entry, as detailed in Annexure-II of enclosed Public Notice, including, for instance Bill of Lading, commercial invoice, Certificate of Origin, shall be considered to verify the amendment request.
- ▶ Categories of amendments and the approval process:
 - ▶ Self approval/auto approval : Amendment viz. "supplementing of Bill of Lading details

in the Bill of Entry", presented under the second proviso to the sub section (3) of Section 46 of the said Act, may be done by the Importer/Customs Broker on the Common Portal. Accordingly, the additions made in the supporting documents table and Bill of Lading details in advance/prior bills of entry are auto approved. Since all such amendments would be auto approved by the Customs Automated System, these would not be subject to levy of fees under the Levy of Fees (Customs Documents) Regulations, 1970, as amended. Accordingly, the process of pre-approval of request in physical/e-office file before making amendment request online or through Service Centre is henceforth discontinued.

- ▶ Approval by the officer : All other amendments in a bill of entry including the deletion/modification in supporting documents require approval by the proper officer (i.e. AC/DC of the Group concerned).
- ▶ Further, the amendment requests have been classified in 3 broad categories:
 - ▶ Category I: All changes emanating from Import General Manifest 'IGM' amendment
 - ▶ Category II: Minor amendments on account of typographical errors
 - ▶ Category III: Major amendments on account of wrong upload/non-upload of documents.
- ▶ Further, Additional/Joint Commissioner of the Group concerned have been empowered to consider the cases in which Importers/Customs Brokers request for the conversion of a bill of entry from Home Consumption

to Warehousing or vice versa;

- ▶ Where Importers/Customs Brokers request for amendments after Out of Charge, especially in respect of RMS fully facilitated bill of entry. In such cases, the Importer/Customs Broker needs to file a request for the conversion of a bill of entry as per Section 46 (5) of Customs Act 1962 read with Notification 26/2022-Customs (N.T.) dated 31 March 2022 or Out of Charge cancellation as per Standing Order 16/2020 dated June 16, 2020. Subject to the satisfaction of the proper officer, once the conversion of bill of entry or the cancellation of OOC is approved, the corresponding amendment will be carried out, following the above-mentioned set out procedure by filing the amendment request online via Common Portal or Service Centre and uploading the required documents in e-Sanchit.
- ▶ **Notification No. 59/2023 -DGFT Dated 12.02.2024:** was issued by DGFT related to addition of Mundra Port and ICD Garhi Harsaru for import of new vehicles.
- ▶ Mundra Port and ICD Garhi Harsaru were added to the existing list of 16 ports/ICDs through which import of new vehicles is permitted under Policy Condition 2(II)(d) of Chapter 87 of ITC (HS) 2022, Schedule 1 (Import Policy).
- ▶ **Public Notice No. 38/2023 -DGFT Dated 31.01.2024:** was issued by DGFT to enlist 4 chambers/ agencies under Appendix 2E of the FTP 2023 to authorize to issue Certificate of Origin (Non- Preferential) who were earlier de-listed by the DGFT.
- ▶ The said chambers were enlisted in the states of Karnataka, Gujarat, Jammu and Kashmir and Uttar Pradesh respectively.
- ▶ **Public Notice No. 40/2023 -DGFT Dated 12.02.2024:** was issued by DGFT to amend Para 4.36 of the Handbook of Procedures, 2023 to ease clubbing provisions in respect of Advance

Authorization Scheme, for ease of doing business.

- ▶ As per the amended Para 4.36, only such authorizations shall be clubbed which have been issued within 24 months from the date of issue of earliest authorization that is sought to be clubbed, whether such authorization's are valid or not. This is further subject to condition that upon clubbing only imports made within 30 months from the date of issue of earliest authorization shall be considered. Any imports made beyond 30 months of earliest authorization shall be regularized under Para 4.49 of the HBP.
- ▶ Further, clubbing of only exports made within 48 months from the date of issue of earliest authorisation shall be considered. Any exports made beyond 48 months of earliest authorisation shall not be acceptable for clubbing.
- ▶ **Public Notice No. 43/2023 -DGFT Dated 14.02.2024:** was issued by DGFT to amend Para 2.51 of Handbook of Procedures, 2023.
- ▶ In accordance with the said public notice, import of metallic waste and scrap from 06 safe countries/ region without PSIC is now permitted from 11 designated ports including through Adani Gangavaram Port.
- ▶ As a result, the total number of sea ports where import of scrap would take place have been increased from the existing 18 to 19 and PSIC exempted sea ports have increased from 10 to 11 for import of metallic waste and scrap under Para 2.51 of HBP 2023.

Foreign Exchange Management Act

This section summarizes the regulatory updates for the month of February 2024

1. Ministry of Finance ('MoF') permitted direct listing of shares by Indian public companies on International Exchanges in GIFT-IFSC

- ▶ MoF vide notification dated 24 January 2024 amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ('NDI Rules') by permitting direct listing of shares by the eligible Indian companies on permissible international stock exchanges in Gujarat International Finance Tec-City - International Financial Services Centre ('GIFT- IFSC') in India.
- ▶ The amended NDI Rules provides a new chapter and a new schedule pertaining to direct listing of equity shares of companies incorporated in India on international exchanges scheme ('Direct listing scheme').
- ▶ The key highlights of the Direct listing scheme are provided below:
 - ▶ **Eligibility:** Public Indian companies (listed and unlisted) for issuance of fresh equity shares or offer for shares by existing shareholders.
 - ▶ Issue and listing of equity shares shall be in dematerialized form ranking pari-passu with existing equity shares.
 - ▶ Presently, the permissible international exchanges are the stock exchanges in GIFT-IFSC i.e. India international exchange and NSE international exchange.
 - ▶ **Permissible holder/ investors:** any person resident outside India in terms of Foreign Exchange Management Act, rules and regulations made thereunder ('FEMA'). In case the Permissible holder is a citizen or an entity/ beneficial owner of a country which shares land border with India, prior Government approval is required.
 - ▶ Further, the issuance is subject to compliance with specific conditions, prohibited activities, and sectoral cap. The foreign investment shall not exceed prescribed limits under NDI Rules.

▶ Pricing:

- ▶ Listed public company: shall not be less than the price offered to domestic investors
- ▶ Unlisted public company: Issue price for initial listing of equity shares shall not be less than fair market value under NDI Rules.
- ▶ Subsequent issuance and transfer of equity shares for the purpose of additional listing shall be as per applicable pricing norms of the international exchange and the permissible jurisdiction.
- ▶ Additionally, the eligible Indian companies would have to comply with other applicable laws i.e. Companies Act, 2013, Securities Exchange Board of India, 1999, Depositories Act, 1996 etc.

Source: Gazette Notification issued by Ministry of Finance dated 24 January 2024

2. Foreign Direct Investment ('FDI') Policy liberalized in the Space sector

- ▶ Union cabinet has approved the amendments in FDI policy for space sector i.e. Satellites - Establishment and operation which was earlier under 100% Government route sector.
- ▶ Now, the sector has been divided further into three categories with defined limits for foreign investment in each sub sector. The same has been provided below:
 - ▶ Satellites – Manufacturing & Operation, Satellite Data Products and Ground Segment & User Segment: **Upto 74% under automatic route and beyond 74% under government route.**
 - ▶ Launch Vehicles and associated systems or subsystems, Creation of Spaceports for launching and receiving Spacecraft: **Upto 49%**

under automatic route and beyond 49% under government route.

- ▶ Manufacturing of components and systems/ sub-systems for satellites, ground segment and user segment: **100% under automatic route.**

- ▶ The proposed amendment will be effective on the date of issuance of FEMA notification by the official gazette.

Source: Press release by Ministry of Finance dated 21 February 2024

DIRECT TAX

This section summarizes the regulatory updates under DT for the month of February 2024

1. CBDT issues order giving effect to the Budget proposal of remitting petty tax demands

Background

- ▶ The FM, in her Speech of Interim Budget 2024-25, announced withdrawal of petty, non-verified, non-reconciled or disputed direct tax demands up to INR25000 pertaining to the period up to tax year 2009-10 and up to INR10000 for tax years 2010-11 to 2014-15. This was announced keeping in mind the government's vision of improving ease of living and doing business and to improve taxpayer services and the withdrawal is expected to benefit about 10 million taxpayers.
- ▶ In order to give effect to the announcement made during the budget speech, the CBDT has issued an order vide F No. 375/02/2023-IT-Budget dated 13 February 2024 providing the criteria and procedure for withdrawal of outstanding demand under the relevant Acts.

Details of withdrawal of small tax demands

- ▶ The CBDT order broadly provides below guidelines/ conditions based on which the tax demands will be withdrawn and same will be implemented by Directorate of Income Tax (Systems)/ Centralized Processing Centre (CPC), Bengaluru, preferably within two months.
- ▶ The tax demands to be waived will be those created/modified/raised for tax years up to 2014-15.
- ▶ The monetary limit of outstanding tax demands which are to be remitted or extinguished are as follows:

Tax years	Demand outstanding (monetary limits)
Up to tax year 2009-10	Each demand entry up to INR25000
Tax years 2010-11 to 2014-15	Each demand entry up to INR10000

- ▶ Tax demands to be remitted, extinguished under this Order includes demands raised under the relevant Acts which are outstanding as on 31 January 2024.
- ▶ The tax demands will include principal amount of tax, interest, surcharge, cess, penalty or fee levied under the relevant Acts.
- ▶ However, remission/ extinguishment of outstanding demands qua a particular taxpayer cannot exceed the maximum ceiling limit of INR100000. This maximum ceiling limit is computed taking into consideration all outstanding demand entries for all the relevant tax years. While computing the maximum ceiling limit, following points shall also be considered:
 - ▶ It includes principal component of tax demand and any interest, penalty, fees, cess or surcharge under the relevant Acts.
 - ▶ Any demand entry exceeding the individual monetary limit shall not form part of the maximum ceiling limit.
 - ▶ Remission/ extinguishment of demand will be undertaken in a chronological manner, i.e., demand entries from the earliest tax year will be considered first and then the subsequent tax years, subject to the monetary limits prescribed per demand entry.

- ▶ Fractions of demand shall be ignored for computing the maximum ceiling. This is irrespective of whether such individual demand falls within monetary limit of demands or not.
- ▶ Interest levied under the relevant Acts on account of delay in payment of demand shall not be considered.
- ▶ The demand waived will not be regarded as income of the taxpayer and hence no additional tax liability shall arise in the hands of the taxpayer pursuant to remission or waiver of tax demands.
- ▶ There shall be no remission/extinguishment of outstanding demands with respect to tax deduction at source (TDS) and tax collection at source (TCS) provisions of the ITA.
- ▶ Post the remission/extinguishment of demands, no interest on account of delay in payment of demand shall be levied under any relevant Acts.
- ▶ No audit will be required pursuant to Rule 19(1) of General Financial Rules, 2017 for remission/extinguishment of outstanding demands.
- ▶ Withdrawal/ remission of tax demands under this Order will not give any right to the taxpayers to claim credit or refund of waived amount and such waiver shall also not grant immunity from any ongoing criminal proceedings or litigations in the case of a taxpayer.
- ▶ Below illustration depicts the operation of the above Order:

Tax Year	Demand Amount	Eligible amount for waiver	Cumulative waiver	Remarks
1976-77	24,590	24,590	24,590	Entire amount eligible as the demand is equal to or lower than INR25000
1984-85	27,410	Nil	24,590	Tax demand is more than INR25000 and hence not eligible for waiver
1997-98	22,400	22,400	46990	Entire amount eligible as the demand is equal to or lower than INR25000
2010-11	12,000	Nil	46,990	Tax demand is more than INR10000 and hence not eligible for waive
2011-12	9,500	9,500	56,490	Entire amount eligible as within the limit of INR10000
2014-15	12,100	Nil	56,490	While the limit of INR100000 is not reached, Tax demand is more than INR10000 and hence not eligible for waiver
2015-16	6,500	Nil	56,490	While the limit of INR100000 is not reached, Tax demands only up to tax year 2014-15 covered and hence not eligible for waiver

(Amount in INR)

2. Under interim budget, sunset date extended to 31 March 2025 for eligibility of certain tax exemptions.

- Sunset dates under the Income-tax Act, 1961 extended from 31 March 2024 to 31 March 2025 for the following:

S. No.	Provision	Criterion for which extension is granted
1.	Exemption to specified income earned by Investment division of non-resident International Financial Services Centre (IFSC) Banking Unit	Date of commencement of operations to claim exemption by Investment Division of Offshore Banking Unit in IFSC
2.	Exemption of income of a Non-Resident (NR) by way of royalty or interest on account of lease of an aircraft/ship paid by a unit of an IFSC	Date of commencement of operations for IFSC unit to enable NRs to claim exemption on aircraft/ ship lease
3.	Capital gain exemption on transfer of leased ship/aircraft by a IFSC unit	Date of commencement of operations for IFSC Unit.
4.	Exemption to Sovereign Wealth Fund (SWF)/Pension Fund (PF)/ wholly owned Subsidiary of Abu Dhabi Investment Authority (ADIA) on specified investments	Date for investment by SWF/PF/ subsidiary of ADIA for exemption
5.	Deduction of 100% of profits of eligible start up from eligible business for a period of three consecutive tax years out of 10 tax years beginning from the tax year in which the eligible start-up is incorporated.	Date of incorporation for eligible start-ups to claim deduction

- Contrary to industry expectations, sunset date of 31 March 2024 for commencement of manufacture/production by new domestic manufacturing companies and resident co-operative societies for availing a concessional base tax rate of 15% not extended.
- Sunset date for notification of Faceless scheme for undertaking transfer pricing assessment, dispute resolution proceedings and appeals to Tribunal extended from 31 March 2024 to 31 March 2025.

Part B- Case Laws

Goods and Service Tax

1. M/s. Eicher Motors Limited vs. The Superintendent of GST and Central Excise [W.P.Nos.16866 & 22013 of 2023 and W.M.P.No.32200 of 2023]

Subject Matter: Ruling wherein the Hon'ble Madras High Court has held that interest under section 50 of the CGST Act, 2017 would not be payable if amount equal to tax has been deposited in and is available as balance in Electronic Cash Ledger.

Background and Facts of the case

- ▶ M/s Eicher motors Limited (hereinafter referred to as 'Petitioner') is a renowned manufacturer and engaged in manufacture of mid-sized motorcycles led by the iconic brand Royal Enfield, with its manufacturing unit in Tamil Nadu.
- ▶ The Petitioner as on 01 July 2017 had an accumulated balance CENVAT credit ready to be transitioned to GST regime, however on account of technical glitches and other difficulties the Petitioner was unable to file its GST TRAN-1.
- ▶ Consequently, the transitional credit did not reflect in Electronic Credit Ledger and thus the Petitioner was unable to file its GST return in form GSTR-3B for July 2017 and subsequent returns from August 2017 to December 2017. The Petitioner however had duly deposited GST liability in time without any delay for the period July 2017 to December 2017 by depositing the tax amounts both in the Electronic Credit Ledger and Electronic Cash Ledger within the due date for each month in terms of CGST Act, 2017.
- ▶ Subsequently, the Petitioner had revised its TRAN-1 return in December 2017 and the transitional credit was now available in Electronic Credit Ledger, enabling Petitioner to file its return in form GSTR-3B for the period of July 2017 to

December 2017. The said returns were filed on 24 January 2018.

- ▶ In May 2023, after a lapse of 6 years, a recovery notice was issued upon the Petitioner wherein a demand of interest on account of belated filing of GSTR-3B during the period July'17 to Dec'17 was imposed. The said recovery proceedings were initiated directly without issuance of any show cause notice. In this regard, the Petitioner had also filed a detailed response in May 2023, however the said proceedings were not withdrawn by Revenue.
- ▶ Aggrieved by the recovery proceedings, the Petitioner had filed an appeal before High Court of Madras, wherein the Court vide its Order dated 07 June 2023 had granted stay of recovery proceedings subject to the payment of 30% of the interest amount demanded by the Revenue.
- ▶ Aggrieved by the said interim order dated 07 June 2023 issued by HC, the Petitioner had preferred an appeal before the Division Bench of Hon'ble Madras High Court.

Discussions and findings of the case

- ▶ The Petitioner contended that Section 49(1) of CGST Act, 2017 read with Reserve Bank of India (RBI) FAQ dated 14 April 2020 makes it clear that money is transferred from petitioner's account to Government's account at the time of payment into the Electronic Credit Ledger.
- ▶ The Petitioner further asserts that explanation (a) to Section 49 of CGST Act clarifies that deposit into ECL is nothing but deposit in Government's account maintained with RBI. Since there is no element of withholding of tax, there is no basis to levy interest by the Department.
- ▶ The Petitioner relied on the Supreme Court Rulings in the case of Munshi Ram vs. Balkar Singh [2016 SCC OnLine P&H

11166] and CIT vs. Modipon Ltd [2017 (356) ELT 481 (SC)] in this regard.

- ▶ However, the Department contended that Such deposit in ECL is not tax paid to the Government unless the said amount is debited while filing the monthly GSTR-3B returns.
- ▶ The Hon'ble Madras High Court observed and noted as follows:
 - ▶ GST amount can be remitted to the Government well before filing of return vide form GSTR-3B by way of payments through form GST PMT-06 and that the said form GST PMT-06 provides for details in relation to payment made by taxpayer such as remitting bank, beneficiary name, beneficiary account number, name of beneficiary bank, beneficiary bank's IFSC code and the GST amount.
 - ▶ It further noted that the beneficiary bank name as per form PMT-06 is Reserve Bank of India ('RBI'), wherein the Government maintains its GST account and that the date of deposit through form GST PMT-06 is the date of credit of GST to the Government account.
 - ▶ The monthly return i.e., GSTR-3B is merely a statement wherein details in relation to payment of tax and tax payable are reported; and thus, before filing of GSTR-3B tax payments should have been made vide form PMT-06 before the due date in terms of provisions of GST Act i.e., 20th of subsequent month.
 - ▶ Once the GST amount is paid vide form PMT-06, the said amount is first credited in the bank accounts of RBI i.e., Government immediately upon deposit; thereafter, only, it will be deemed to be credited in Electronic Cash Ledger. Thus, the Electronic Credit Ledger and Electronic Cash Ledger are mere statements for the purpose of recording accounting entries.

▶ The Hon'ble High Court relied upon the matter of **M/s Modipon Ltd. [2017 (356) ELT 481 (SC)]**, wherein Hon'ble Supreme Court held that the advance deposit of central excise duty in Personal Ledger Account (PLA) account constitutes actual payment of duty within the meaning of Section 43B of the Central Excise Act. In this regard, the High Court noted that the deposits made to the PLA, is squarely applicable to the present case, as in the present case, the issue is with regard to the Electronic Cash Ledger, which is equivalent to PLA.

▶ The High Court also relied upon the decision in the matter of **Vishnu Aroma Pouching Private Limited vs Union of India [2020 (38) G.S.T.L. 289 (Guj.)]**, wherein Hon'ble Gujarat High Court had taken a similar view that the taxpayer shall not be liable to interest as the tax amount has already been credited to the Government within the prescribed time limit, i.e., before due date, the question of payment of interest would not arise.

Ruling

▶ In light of the above, the Hon'ble High Court quashed the Order passed by the Superintendent of GST and held that as long as the GST, which was collected by a registered person, is credited to the account of the Government, vide form GST PMT-06, not later than the last date for filing the monthly returns i.e., 20th of subsequent month, to that extent, the tax liability of such registered person will be discharged from the date when the amount was credited to the account of the Government.

▶ Accordingly, the High Court held that since the tax amount has already been credited to the Government within the prescribed time limit, i.e., before due date, the question of payment of interest would not arise.

2. M/s Supreme Paradise vs Assistant Commissioner (ST), North 1 Circle, Tirupur [TS-32-HC(MAD)-2024-GST]

Subject Matter: Ruling wherein the High Court ('HC') held that post-supply discounts is not to be included as subsidy while computing transaction value of supply in hands of dealer.

Background and Facts of the case

- ▶ M/s. Supreme Paradise (hereinafter referred to as 'Petitioner') operates in the retail sector, specifically in mobile phone sales. The Petitioner upon the directions of mobile phone manufacturer provides for discounted price to its customers for a particular season and receives such post-sales volume discount from the mobile phone manufacturer.
- ▶ Revenue had issued notices upon the Petitioner in form DRC-01 wherein it was suggested to pay GST on such post-sale volume discounts received from mobile phone manufacturer as part of the transaction value while making further supplies to its customers. In this regard, the Petitioner has duly made its submissions in response to said notices.
- ▶ Subsequently, Revenue had issued orders upon the Petitioner directing to pay GST on such post-sale volume discounts received from mobile phone manufacturer.
- ▶ Aggrieved by the above Orders, the Petitioner had filed writ petition before the Madras High Court. M/s Ingram Micro India Pvt. Ltd (hereinafter referred to as "the Petitioner") is a registered person under GST and had claimed Input Tax Credit (ITC) under Section 16 of the CGST Act.

Discussions and findings of the case

- ▶ The key observations of the HC are:
 - ▶ Section 15(2)(e) will come into play only when a part of the consideration for the supply is subsidized by a third-party.

- ▶ The subsidy will get embedded into the "transaction value" only if the subsidy is given by a third-party and is disguised as a discount.
- ▶ Further, Section 15(3)(b) of the CGST Act is relevant only for determining the transaction value of the supplier where discount is offered to a recipient after the supply is affected.
- ▶ Thus, the discount offered to the assessee can impact only the transaction value of the manufacturer. For transaction value of the supply made by assessee, the price which has been actually paid or payable for the supply will be considered.
- ▶ Where the manufacturer offers discounts to assessee, such discount cannot form part of the transaction value of further supply by assessee to its customer. The Department submitted that the total trade payables of the company were taken into consideration because the petitioner did not provide a proper break up of net trade payable relating to the State of Tamil Nadu.

Ruling

- ▶ Basis above, the HC held that such post-supply discount is not to be included as subsidy while computing value of supply in the hands of dealer.

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