EY Tax and Regulatory Alert

November 2022

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1.	**M/S Mansukh Dyeing and Printing Mills (Supreme Court-TS-904-SC-2022)**	Hon'ble Supreme court ruled that revaluation of capital assets of a firm by credit to partner's capital accounts, post admission of partners would be taxable as capital gains. The taxpayer contended the non-applicability of Section 45(4) of the Income Tax Act, 1961 as no transfer was involved either by way of dissolution or on account of distribution of capital assets. Hon'ble SC held that such revaluation would fall under the category of "or otherwise" in terms of Section 45(4) and be regarded a transfer.

INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax

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

- **Notification No. 22/2022–Central Tax dated: 15.11.2022** was issued by the CBIC and had notified the following in Form GSTR-9, under the heading instructions in, in paragraph 7 as follows.

- Against Serial Number 10, 11, 12 and 13, for the words "April 2022 to September 2022", the figures, letters, and words "April 2022 to October 2022 up to 30th November 2022" shall be substituted.

- As a result, the last date of availing ITC and the last date to amend invoices pertaining to FY 21-22 has been extended till 30th November 2022.

- **Circular No. 14/2022–TNGST dated: 12.11.2022** was issued by the CBIC the summary of which are reproduced below:

- Roles and Responsibilities and Procedure to be followed by the Proper Officer: Primary responsibility for ensuring timely filing of returns rests with the Assessing Officer. With the help of sub-ordinates, he should secure compliance of the filing of returns. If return is not filed, the registered tax payers shall be contacted over phone, by sending SMS / emails / letters to them. They shall be persuaded by the Assessing Officer to see that the returns are filed.

- If persuasion is unsuccessful, a warning letter cum notice under Section 46 may be issued by the jurisdictional officer highlighting how non-filing would attract legal consequences like penalty, late-fee, interest etc.

- Continuous non-filing attracts action under Section 46 of the TNGST Act, 2017, and further under Section 62 of the TNGST Act, 2017.

- Action for field verification and a report on GST FORM 30 in the cases where the jurisdictional officer has bonafide belief that the non-filer may not be operational in the registered premises, procedure to be followed and action to be taken under Section 29 for cancellation of registration was also instructed.

- Assessment of Non-Filers: In respect of the registered person who fails to file returns under Section 39, even after expiry of time limit in the notice issued under Section 46, the Proper Officer shall proceed to assess the tax liability under Section 62 of the Act for the said person.

- Powers for cancellation for registration: The powers for cancellation for registration is vested with Proper Officer under Section 29(2) of the TNGST Act 2017 and Rule 21 of the TNGST Rules 2017, read with Notification no.18/2022 – Central Tax dated 28.9.2022 with effect from 01.10.2022, and in Notification no.19/2022 Central Tax dated 28.9.2022 with effect from 01.10.2022 as follows.

Sr No.	Event	Inititation of cancellation
1	Tax payers filing monthly returns in Form GSTR-3B	Not filed for a continuous period of six
2	Tax payer filing returns under QRMP scheme.	Not filed returns in GSTR-3B for 2 continuous tax
3	Composition tax payer filing return in GSTR-4	Beyond three months from the due date of

- **Circular No. 181/13/2022 GST dated 10.11.2022:** was issued by CBIC clarifying the refund related issues as follows:

- **Issue:** Whether the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of unutilized input tax credit on account of inverted duty structure, as amended vide Notification No. 14/2022-Central Tax dated 05.07.2022, will apply only to the refund applications filed on or after 05.07.2022, or whether the same will also apply in respect of the refund applications filed before 05.07.2022 and pending with the proper officer as on 05.07.2022.

- **Clarification: Vide Notification No. 14/2022-Central Tax dated 05.07.2022** amendment has been made in sub-rule (5) of rule 89 of CGST Rules, 2017, modifying the formula prescribed therein.
- The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022.

- Accordingly, it is clarified that the said amended formula under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of input tax credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after 05.07.2022.

- The refund applications filed before 05.07.2022 will be dealt as per the formula as it existed before the amendment made vide **Notification No. 14/2022-Central Tax dated 05.07.2022.**

- **Issue:** Whether the restriction placed on refund of unutilized input tax credit on account of inverted duty structure in case of certain goods falling under chapter 15 and 27 vide **Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022**, which has been made effective from 18.07.2022, would apply to the refund applications pending as on 18.07.2022 also or whether the same will apply only to the refund applications filed on or after 18.07.2022 or whether the same will be applicable only to refunds pertaining to prospective tax periods.

- **Clarification: Vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022**, under the powers conferred by clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, 2017, certain goods falling under chapter 15 and 27 have been specified in respect of which no refund of unutilized input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such specified goods (other than nil rated or fully exempt supplies).

- The restriction imposed **vide Notification No. 09/2022-Central Tax (Rate)dated 13.07.2022** on refund of unutilized input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 would apply prospectively only.

- Accordingly, it is clarified that the restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after 18.07.2022 and would not apply to the refund applications filed before 18.07.2022.

- **Circular No.182/14/2022-GST dated 10.11.2022** The Hon'ble Court has directed that the common portal be opened for filing prescribed forms for availing Transitional Credit through **TRAN-1 and TRAN-2** for two months from **01.10.2022 to 30.11.2022** for the aggrieved registered assessee (henceforth, referred as 'applicant').

- The Transitional Credit claimed by the applicant shall be credited in his electronic credit ledger to the extent allowed by the jurisdictional tax officer through an order after carrying out necessary verifications.

- As per the Hon'ble Court's order, the said verification has to be carried out within 90 days after completion of the above window of two months, i.e., **within 90 days from 01.12.2022 i.e., up to 28.02.2023.**

- **Circular No. 165/21/2021-GST dated 17.11.2022**: It is observed that from the present wording of S. No. 4 of Circular No. 156/12/2021 dated 21st June 2021, doubt arises whether the relaxation from the requirement of dynamic QR code on the invoices would be available to such supplier, who receives payments from the recipient located outside India through RBI approved modes of payment, but not in foreign exchange.

- It is mentioned that the intention of clarification as per **S. No. 4** in the said circular was not to deny relaxation in those cases, where the payment is received by the supplier as per any RBI approved mode, other than foreign exchange.

- Accordingly, to clarify the matter further, the Entry at **S. No. 4 of the Circular No. 156/12/2021 dated 21st June 2021** is substituted as below.

- "*Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier."*

Customs and Foreign Trade Policy (FTP)

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

- **CircularNo.23/2022-Customs dated:03.11.2022** was issued by the CBIC whereby the attention of field formations is drawn to Board's Circular No.14/2021-Customs dated 07.07.2021 in consequence of which an initial Anonymized Escalation Mechanism (AEM) was introduced by the Directorate of System's' ICEGATE Advisory dated 02.08.2022.

- The undersigned is directed to say that keeping in view that the said AEM operates after IGM number with date is recorded in bill of entry (i.e. after arrival of goods), the Board hereby sensitizes the Pr.Chief/Chief Commissioners, in their roles as Zone and / or NAC heads, to the necessity of their monitoring to ensuring that an aspect lodged in the said AEM is not allowed to linger and that all successive actions are quickly taken without loss of time no sooner the aspect has been lodged in said AEM.

- They should devise whatever means are necessary for doing this. The Pr. Chief/Chief Commissioners should also keep note of the root cause(s) that needed to be redressed and the administrative/systemic actions to be adopted to achieve that redress, so that sustained improvements are made towards expediting customs clearances.

- Attention is also drawn to Board's Circular No. 16/2022-Customs dated 29.08.2022 regarding phased implementation of Standard Examination Orders.

- To harmonize the examination orders across FAGs, the Board had decided to implement system-generated centralized examination orders in a phased manner. The Phase 1 referred to case of risk-based

selection for examination after assessment (second check examination).

- Initially, in Part 1 of this phase, the goods under Assessment Group 4 in all Customs Stations were covered with effect from 05.09.2022. Based on the feedback received, from the National Customs Targeting Centre (NCTC), regarding the readiness for further rollout of the implementation of Standard Examination Orders through the Risk Management System, the Board has decided that in Part 2 of Phase 1, from 15.11.2022 the goods under Assessment Group 5 (Chapter 84) shall also be covered. Accordingly, the Circular No. 16/2022-Customs stands modified.

- **Notification No. 41/2015-2020-DGFT dated 07.11.2022** was issued by the DGFT that in exercise of powers conferred by Section 3 & 9 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the Policy Condition No.7(ii) of Chapter- 27 of Schedule-I (Import Policy) of ITC (HS), 2022:

- The importer can apply for registration not earlier than **60th day and not later than 5 days** before the expected date of arrival of import consignment. The Automatic Registration Number shall remain valid for a period of 75 days.

- Importer shall have to enter the **Registration Number** and **expiry date of Registration** in the Bill of Entry to enable Customs for clearance of consignment.

- **Notification No. 43/2015-2020-DGFT dated 09.11.2022** was issued by the DGFT that in exercise of powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, read with paragraph 1.02 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby makes the following amendments in the Foreign Trade Policy 2015-20, with immediate effect, in sync with the RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022:

- **2.46 Import for export:** Goods, including capital goods (both new and second hand), may be imported for export provided:

- Export is against freely convertible currency or as per 2.52(d)(ii) of FTP.

- Goods imported against payment in freely convertible currency would be permitted for export only against payment in freely convertible currency, unless otherwise notified by DGFT.

- Goods imported under Para 2.52(d)(i) would be permitted for exports only against payments as per Para 2.52(d)(ii), unless otherwise notified by DGFT.

- 2.53 Applicability of FTP Schemes for Export Realizations in Indian Rupees Export proceeds realized in Indian Rupees against exports to Iran are permitted to avail exports benefits/fulfilment of Export Obligations under the Foreign Trade Policy (2015-20), at par with export proceeds realized in freely convertible currency, subject to compliance of para 2.18 of the FTP.

- Export proceeds realized in Indian Rupees as per para 2.52(d)(ii) are permitted to avail exports benefits/fulfilment of Export Obligations under the Foreign Trade Policy (2015-20).

- **3.20 Status Holder**: All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder.

- Status recognition will depend on export performance. An applicant shall be categorized as status holder on achieving export performance during the current and previous three financial years (for Gems & Jewelry Sector the performance during the current and previous two financial years shall be considered for recognition as status holder) as indicated in paragraph 3.21 of Foreign Trade Policy.

- The export performance will be counted on the basis of FOB of export earning in freely convertible foreign currencies or in Indian Rupees as per para 2.53 of the FTP.

- **4.21 Currency for Realization of Export Proceeds:** Export proceeds shall be realized in freely convertible currency or in Indian Rupees as per para 2.53 of FTP, except otherwise specified. Provisions regarding realization and non-realization of export proceeds are given in paragraph 2.52, 2.53 and 2.54 of FTP.

- **Public Notice No 32/2015-20 dated 20.10.2022** was issued by Department of Commerce, DGFT to amend Annexure-IV of Appendix-2A, in continuation to and Public Notice 23/2015-20 dated 29.08.2022 as follows:

- Condition (o) in Annexure IV of Appendix 2A, shall be amended as under:

  "In addition to the requirements as above, the TRQ authorization for items under Tariff head 7108 shall also contain Importer-Exporter Code (IEC) of nominated agencies as notified by RBI (in case of banks) or DGFT for other agencies, or qualified jewelry as notified by International Financial Services Centres Authority (IFSCA). Additionally, TRQ authorization shall also contain GST Identification Number (GSTIN) of the jewelry manufacturer to whom TRQ is being issued. The said TRQ importer shall follow the procedure set out in the Customs Import of Goods at Concessional Rate of Duty or for specified end use) Rules, 2022 read with ***Customs Circular No. 18/2022-Customs dated 10.09.2022."***

- Further, Condition (p) under Annexure IV of Appendix 2A, shall be inserted as under:

  The IGCR procedure applies to the importer till supply of gold (falling under 7108) to end-use recipient and filing of monthly statement. The restrictions on job work are only relating to the case where it is undertaken on the goods belonging to importer and does not apply to the end use recipient who receives the goods on supply. Therefore, on receipt of goods under 7108, the TRQ holder may utilize the same for manufacture with or without job work.

- **Public Notice No 35/2015-20 DGFT dated 09.11.2022** was issued by the Director General of Foreign Trade that in exercise of the powers conferred under Para 1.03 and 2.04 of the Foreign Trade Policy, 2015-2020, the Director General of Foreign Trade hereby makes the following amendments in Para 5.11 of the Handbook of Procedures 2015-20, with immediate effect, in sync with the RBI's A.P. (DIR Series) Circular No. 10 dated 11th July 2022:

  "Export proceeds shall be realized in freely convertible currency or in Indian Rupees as per para 2.53 of FTP, except for deemed exports supplies under Chapter 7. Exports to SEZ units /Supplies to developers/ co-developers irrespective of currency of realization would also be counted for discharge of Export Obligation. Realization in case of supplies to SEZ units shall be from foreign currency account of the SEZ unit".

- Amendment in Para 5.11 of the HBP are notified, to permit the Invoicing, payment and settlement of exports and imports in

INR for Export Proceeds under EPCG Scheme, in sync with RBI's A.P. (DIR Series) Circular No. 10 dated 11th July 2022. This shall come into force with immediate effect.

- **Trade Notice No. 20/2022-23-DGFT dated 31.10.2022** was issued by the Director General of Foreign Trade stating that Members of Trade and Industry may note that for resolution/examination of exporter grievances related to scroll out of shipping bills, generation of e-scrips and transfer of e-scrips under RoDTEP Scheme, mechanism of "ICEGATE Helpdesk", which is available to the exporters 24*7 is functional.

- In this, an exporter can lodge a grievance either by voice interaction by calling at **Toll Free No. 1800-3010-1000.**

  Or

  E-mailing at **icegatehelpdesk@icegate.gov.in**.

- Thereafter, a unique ticket/incident number is generated which the exporter receives for record/follow up.

- In case the RoDTEP grievance continues, the exporter may approach the higher authority at email:jsdbk-rev@nic.in.

Part B- Case Laws

Goods and Service Tax

1. **M/s RSB Transmissions Private Limited vs Union of India and Ors. (High Court of Jharkhand - 2022-VIL-745-JHR)**

Subject Matter: Judgment wherein the Hon'ble Jharkhand High Court has held that mere deposit in the Electronic Cash Ledger (ECL) does not amount to discharge of tax liability. No person can make payment of tax prior to filing of GSTR 3B return, and therefore, the tax liability gets discharged only upon filing of GSTR-3B i.e., upon debiting from ECL. Further, interest shall be calculated for a period starting from the due date of filing GSTR-3B till the date GSTR-3B is actually filed.

Background and Facts of the case

- M/s. RSB Transmissions Private Limited (hereinafter referred to as the Petitioner) is an assesee registered under the GST Act bearing GSTIN 20AABCR3925R127.

- The Petitioner filed a writ petition posing a question as to whether amount deposited as tax through valid challans in Electronic Cash Ledger prior to the filing of the GSTR 3B returns could be treated as discharge of the tax liability in respect of which the GSTR-3B return is being filed later, and whether interest could be levied on delayed filing of GSTR-3B in such circumstances.

Discussions and findings of the case

- The Petitioner has contended that the interest cannot be levied upon delayed filing of return but only on delayed payment of tax.

- The Petitioner further contended that no interest could be levied on tax, which was deposited in Electronic Cash Ledger prior to the due date of filing of GSTR 3B returns. Interest can only be levied when the Government is deprived of the tax beyond the due date for payment of tax.

- However, the Department contended that any deposit made in the modes prescribed under Section 49(1) are mere deposits towards tax, interest, penalty, fee or any other amount and such deposit does not mean that the amount is appropriated towards the Government exchequer.

- Such deposited amount available in the Electronic Cash Ledger is used for making payment towards tax, interest, penalty, fees or any other amount and does not amount to payment of the tax liability.

- Moreover, the Department contended that no person can make payment of tax prior to filing of GSTR 3B return, though such deposits may be made or are lying in his Electronic Cash Ledger. Tax liability gets discharged only upon filing of GSTR 3B return and, if there is a delay in furnishing GSTR-3B, interest liability will arise.

Judgment

- In light of the above, the Hon'ble High Court has held mere deposit of amount in the Electronic Cash Ledger on any date prior to filing of GSTR-3B return, does not amount to payment of tax due to its State exchequer.

- The Court further observed that Electronic Cash Ledger is just an e-wallet where cash can be deposited at any time by creating the requisite Challans. A registered assessee can claim its refund any time and therefore, the same does not qualify as discharging of tax liability.

- The Court observed that there is a distinction between ITC available in the Electronic Credit Ledger and Electronic Cash Ledger. Cash is just in the nature of

deposit in the Electronic Cash Ledger, whereas the ITC is available in favour of the assessee on account of tax already paid.

- The Court held that liability to pay interest arises on delayed filing of GSTR-3B return for the period starting from due date of filing GSTR-3B till the date tax is actually debited from Electronic Cash Ledger.

2. M/s Yokohama India Private Limited vs The State of Telangana (High Court for the state of Telangana- 2022-VIL-733-Tel)

Subject Matter: Judgment wherein the Hon'ble Telangana High Court has held that an assessee cannot be permitted to carry out rectification in the GSTR-1 beyond the statutorily period prescribed under Section 39(9) of CGST Act, 2017.

Background and Facts of the case

- M/s Yokohama India Private Limited (hereinafter referred to as "the Petitioner"), is engaged in the business of manufacture and sale of passenger car tyres with a manufacturing facility in the State of Haryana.
- The Petitioner had submitted its GST returns timely. However, in the GSTR-1 form, the Petitioner committed a bonafide mistake and the details of the distributor were wrongly mentioned resultantly one of the distributors was not able to utilize the input tax credit.
- The Petitioner made a representation for rectifying the said mistake after the expiry of due date as prescribed under Section 39(9) of CGST Act, 2017. Resultantly, Authority did not consider the above representation and did not allow the rectification.
- Accordingly, the Petitioner filed the present writ-petition.

Judgment

- The Hon'ble High Court relying upon the ratio laid down by Apex court in the case of Union of India vs. Bharti Airtel Ltd. (2021 (54) G.S.T.L. 257 (S.C) - 2021-VIL-87-SC) and held that rectification can be carried out as per the time stipulated under Section 39(9) of CGST Act, 2017 only. Beyond the statutorily prescribed period, an assessee cannot be permitted to carry out rectification which would inevitably affect obligations and liabilities of other stakeholders because of the cascading effect in the electronic records.
- Therefore, the Petitioner was not allowed to rectify the returns.

3. Oasis Realty vs. Union of India and Ors. (High Court of Bombay - 2022-VIL-674-BOM)

Subject Matter: Judgement wherein the Hon'ble Bombay High Court held that input tax credit available in the electronic credit ledger can be utilised for payment of pre-deposit while filing an appeal before the Appellate Authority.

Background and Facts of the case

- M/s Oasis Realty (hereinafter referred to as "the Petitioner") filed a writ petition on the issue whether pre-deposit under Section 107(6) of MGST Act, 2017 can be paid utilizing the credit available in Electronic Credit Ledger

Discussions and findings of the case

- Petitioner contended that the amount available in the ECL can be utilized for payment of pre-deposit. However, GST

Authorities contended that Section 49(4) of the MGST Act puts and embargo against the usage of the credit available in the ECL only for payment of output tax and therefore said amount cannot be utilized for payment of pre-deposit

Judgment

- The Hon'ble Bombay High Court observed that pre deposit is a pre-condition to file an appeal under Section 107 of the MGST Act.
- The Court held that the term 'tax' includes CGST, IGST, SGST or UTGST and given that pre-deposit is tax itself, the amount available in the ECL can be utilized towards payment of pre-deposit.
- The High Court referred to a Circular F. No. CBIC-20001/2/2022-GST dated July 6, 2022. issued by the CBIC, which clarified that any amount towards output tax payable, as a consequence of any proceedings instituted under the provisions of GST laws, can be paid by utilization of the amount available in the ECL

4. M/s Tara Genset Engineers (Regd.) (Authority for Advance Rulings for the State of Uttarakhand - 2022-VIL-297-AAR)

Subject Matter: Ruling wherein the Uttarakhand GST Authority for Advance Ruling has observed that in a supply of rental service of Diesel Generator (DG) Set, the price of the Diesel i.e., the fuel, to run such DG Set, shall form part of value of supply in view of Section 15 of the CGST Act, 2017, as for the purpose of levy of GST, cost of all the inputs, has to be included in the value of supply. Hence, the reimbursement of expenses as cost of the diesel, for running of the DG Set is nothing but the additional consideration for the renting of DG Set and attracts GST @18%.

Background and Facts of the case

- M/s Tara Genset Engineers (hereinafter referred to as "the Applicant") is a partnership firm engaged in the business of Renting of DG Set to various customers.
- The Applicant installed diesel Generator on hire basis for per month rent with reimbursement of diesel cost on usages of the DG Set and was also discharging the tax @ 18% on DO Set hiring charges and also on reimbursement of diesel cost incurred for running DG Set.
- However, the recipients of such service were of the opinion that the taxes collected by the applicant pertaining to the reimbursement of diesel charges for running the Diesel Generator was erroneous as the said commodity diesel does not come under the purview of GST. Accordingly, the recipients requested the Applicant to reimburse the wrongly collected taxes
- Therefore, the Applicant filed the Advance Ruling Application seeking ruling on whether GST is applicable on the cost of the diesel incurred for running DG Set in the Course of Providing DG Rental Service?"

Ruling

- The Authority observed that Section 15 of the CGST Act, 2017 mandate that the value of supply shall include among other things, any other amount that the supplier is liable to pay in relation to such supply, but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the good or services or both.
- The Authority further observed that without the fuel, the Diesel Generator (DG) Set cannot be operated to generate/ produce "Electricity", i.e., intended purpose of installing DG set on hire is not achieved. The rental service of Diesel Generator (DG) Set has the integral component of running the Diesel Generator and for this to undertake, "Diesel" is required. The running condition of Diesel Generator (DG) Set

cannot be achieved without the fuel i.e., the "Diesel".

- The Authority held that that the recipient is not paying for the diesel only but for the services of DG Set which have been hire on rent and the diesel is an integral part of the supply of DG Set rental service. There is no separate contract for supply of diesel and even single invoice is issued for the supply of rental service of DG Set although both the components are shown separately.
- Hence, the reimbursement of expenses as Wcost of the diesel, for running of the DG Set is nothing but the additional consideration for the renting of DG Set and attracts GST @18%.
- The Authority relied upon following Advance Ruling
  - 2021-VIL-282-AAR
  - 2022-VIL-280-AAR.

5. **M/S Bambino Pasta Food Industries Private Limited (Authority for Advance Ruling for the State of Telangana - 2022-VIL-293-AAR)**

Subject Matter: Ruling wherein the Telangana GST Authority for Advance Ruling has observed that expenditure made towards corporate responsibility under section 135 of the Companies Act, 2013, is an expenditure made in the furtherance of the business and therefore held that the tax paid on purchases made to meet the obligations under corporate social responsibility is eligible for input tax credit under GST law.

Background and Facts of the case

- M/s Bambino Pasta Food Industries Private Limited (hereinafter referred to as “the Applicant”) is a manufacturer of Vermicelli and pasta.
- The Applicant filed for advance ruling application to know the admissibility of ITC on the Corporate Social Responsibility (shortly known as CSR) expenditure spent by it.

Discussions and findings of the case

- Applicant contended CSR activity is to be considered as "used or intended to be used in the course or furtherance of business" because any Company, which meets the criteria for CSR, is mandatorily required to incur in CSR activities to be in compliant with the Companies Act, 2013.
- The Applicant further contended CSR expenses are not incurred voluntarily, accordingly, and therefore doesn't qualify as 'gift' and thus its credit is not restricted under Section 17 (5) of the CGST Act, 2017.
- Further, the Applicant contented that CSR is not a free supply of goods/services because it is said to be done in course and furtherance of business.

Judgment

- The Authority observed the expenditure made towards corporate responsibility under section 135 of the Companies Act, 2013, is an expenditure made in the furtherance of the business. Hence, the Authority held that the tax paid on purchases made to meet the obligations under corporate social responsibility will be eligible for input tax credit under CGST and SGST Acts.

Direct Tax

1. M/S Mansukh Dyeing and Printing Mills (Supreme Court- TS-904-SC-2022)

Subject Matter: Hon'ble Supreme court ('SC') ruled that revaluation of capital assets of a firm by credit to partner's capital accounts, post admission of partners would be taxable as capital gains. The taxpayer contended the non-applicability of Section 45(4) of the Income Tax Act, 1961 as no transfer was involved either by way of dissolution or on account of distribution of capital assets. Hon'ble SC held that such revaluation would fall under the category of "or otherwise" in terms of Section 45(4) and be regarded a transfer.

Background

- In the year 1992-93, M/s Mansukh Dyeing and Printing Mill (hereinafter referred to as "the taxpayer") admitted four new partners who contributed small amounts of capital to the Taxpayer.
- The Taxpayer revalued land and building (held as capital assets) and credited huge gains on revaluation to capital accounts of all the partners in their PSR and two of the existing partners withdrew small amounts from their capital balance.

Discussions and facts of the case

- The tax authority invoked old section 45(4) on the basis that huge gains on revaluation of capital assets credited to partners' capital accounts was "in effect" a distribution of those capital assets by the Taxpayer to the partners, as the enhanced capital balance immediately became available to all the partners for withdrawal.
- Taxpayer contended that old section 45(4) was inapplicable as there was neither a transfer by way of distribution of capital assets by the Taxpayer to the partners, nor any transfer on account of dissolution of the Taxpayer or otherwise. The Taxpayer contended that there can be no income just due to revaluation of capital assets in the books of the Taxpayer, unless the capital assets themselves are also transferred.

Judgment

- SC held that, in the present case, credit of revaluation gain to partners' capital accounts can be said to be in effect distribution of the capital assets valued at their fair market value (FMV).
- SC further held that the partners' capital accounts stood enhanced upon revaluation, which became available for withdrawal and in fact some of the partners had withdrawn such amounts subsequently from their capital accounts. Therefore, as per SC, such revaluation could be said to be a "transfer", falling in the category of "or otherwise", in terms of old section 45(4).
- SC also affirmed a Bombay High Court ruling in case of A.N. Naik Associates, which held that the word "or otherwise" covers not only distribution of capital assets on dissolution but also subsisting partners transferring the firm's capital assets in favor of a retiring partner. SC distinguished its earlier ruling in case of Hind Construction which regarded revaluation of goods to be non-taxable as inapplicable to the present case, as its earlier ruling dealt with pre-amended provisions where the term "or otherwise" was absent.

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