EY Tax and Regulatory Alert

November 2023

Prepared for ACMA

Contents

S. No.	Particulars	Description
Part A	**Key Tax Updates**	
1.	**Goods and Services Tax (GST)**	Key Circulars and Notifications • Notification No. 05/2023 -Integrated Tax Dated: 26.10.2023 • Notification No. 53/2023 -Central Tax Dated: 2.11.2023 • Circular No. 202/14/2023 -Central Tax Dated 27.10.2023 • Circular No. 203/15/2023 -Central Tax Dated 27.10.2023 • Circular No. 204/16/2023 -Central Tax Dated 27.10.2023 • Circular No. 206/18/2023 -Central Tax dated 31.10.2023 • GSTN Advisory for the procedures and provisions related to the amnesty for taxpayers who missed the appeal filing deadline for the orders passed on or before March 31, 2023: • GSTN Advisory for ITC Reversal on Account of Rule 37(A): • GSTN Advisory for Comprehensive Guide and Instructions for Direct API Integration with any of the 6 IRPs for E-Invoice Reporting
2.	**Customs and Foreign Trade Policy**	Key Circulars and Notifications • Circular No. 28/2023 -Customs Dated 8.11.2023 • Trade Notice No. 32/2023 Dated 6.11.2023 • Trade Notice no 33/2023-24 Dated 10.11.2023

Part B	**Judicial Precedents**	
	Goods and Services Tax (GST)	
1.	**M/s Honda Cars India Ltd. vs. Commissioner of Central Excise, Raigad [SK/250/RGD/2013-14 dated 25th September 2013]**	Ruling wherein it was held that the enhanced value of MRP adopted for calculation of customs duty does not entail dual MRP. Accordingly, the Explanation 2(a) below section 4A of Central Excise Act, 1944 would not come into play.
	Customs and FTP	
1.	**Shri Sumit Arora & M/S Unistar Technoplast Pvt. Ltd Vs The Commissioner Of Customs, Ludhiana [60586-60588/2023 dated 07th November 2023]**	Ruling wherein it was held that the “Steel Balls” are rightly classifiable under CTH 84829900
	Direct Tax	
1.	**Shobha Harish Thawani v. JCIT**	Mumbai Tribunal upholds penalty under black money law for non-disclosure of foreign assets in tax return
2.	**Amazon Web Services India (P.) Ltd**	Delhi HC permits tax withholding net of equalization levy liability
3.	**Concentrix Daksh Services India Pvt. Ltd.**	Delhi Tribunal affirms filing of Form 10-IC only in the first year of claiming a concessional tax regime under S.115BAA

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 2023

- **Notification No. 05/2023 -Integrated Tax Dated: 26.10.2023** was issued by the CBIC in order to allow the suppliers to SEZ unit/ developer to pay Integrated tax on the supplies to SEZ (except for supply of specified tobacco related products) and claim refund of tax so paid. The notification has a retrospective effect from 1 October 2023.

- Accordingly, except for supply of specified tobacco related products, the options available for making zero-rated supplies to SEZ (i.e., both rebate and refund route) remains the same before and after 1 October 2023.

- **Notification No. 53/2023 -Central Tax Dated: 2.11.2023** was issued by CBIC to notify a special procedure for certain taxable persons who failed to appeal within the stipulated time against orders passed under section 73 or 74 upto 31.03.2023, or whose appeals were rejected for being late as per section 107.

- Further, the persons can file an appeal using FORM GST APL-01 by January 31, 2024. Moreover, if an appeal is already pending and meets specific conditions of the Notification regarding pre-deposit, it is considered filed under this notification.

- Moreover, no appeal under this notification shall be admissible in respect of a demand not involving tax.

- **Circular No. 202/14/2023 -Central Tax Dated 27.10.2023** was issued by CBIC for clarifying the admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services as per the provisions of clause (6) of section 2 of the Integrated Goods & Services Tax Act, 2017.

- One of the pre-condition for considering export of services u/s 2(6) of the IGST Act is that the consideration should be realized in convertible foreign exchange or in the Indian National Rupee (INR) where permitted by the Reserve Bank of India (RBI).

- It is pertinent to highlight that as per RBI Circular No. 10 dated 11th July 2022 regarding the International Trade Settlement in Indian National Rupees (INR), it has been decided that Indian exporters, undertaking exports of goods and services, can be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent Bank of the partner country.

- Further, as per the Para 2.52(d) of the Foreign Trade Policy, settlement of trade transactions in the INR shall take place through the Special Rupee Vostro Accounts opened by AD banks in India. The Indian exporters would be paid the export proceeds in INR from the balance in such Vostro Accounts of the partner country.

- Hence, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of clause (6) of section 2 of IGST Act, 2017, subject to the conditions/restrictions mentioned in Foreign Trade Policy 2023.

- **Circular No. 203/15/2023 -Central Tax Dated 27.10.2023** was issued by CBIC in order to clarify the place of supply in certain cases:

- **Place of supply in case of supply of service of transportation of goods, including through mail and courier:** Upon omission of sub-section 9 of Section 13 of the IGST Act, 2017 with effect from 01.10.2023, it is clarified that the place of supply would be governed by Section 13(2) of the IGST Act, i.e., the general provision.

  Thus, the place of supply would be the location of the recipient if the same is available. If the said location is not available, it would be the location of supplier of service.

- **Place of supply in case of supply of services in respect of advertising sector:**

a. Supply of space or supply of right to use the space on hoarding: The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Therefore, where the arrangement is for granting the right to use the space, the place of supply would be the location of hoarding/structure.

b. Place of supply of service by way of display of advertisement at a specified location: In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property.

   This is purely in the nature of advertisement services in respect of which the Place of Supply shall be determined in terms of Section 12(2) of the IGST Act 2017.

c. Place of supply in case of supply of the co-location services: Where the arrangement of the supply of co-location services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves supplying of various services by the supplier related to hosting and information technology infrastructure services, the place of supply would be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act 2017, i.e., location of recipient of co-location service.

   However, where the agreement is restricted to providing physical space without hosting and IT infrastructure, the place of supply would be the location of the immovable property.

- **Circular No. 204/16/2023 -Central Tax Dated 27.10.2023** is issued by CBIC for clarifying issues pertaining to taxability of personal guarantee and corporate guarantee in GST.

- It has been clarified that as per the Reserve Bank of India's directive (Para 2.2.9(C) of the RBI's Circular No. RBI/2021-22/121 dated 9th November 2021), companies are prohibited from offering any form of compensation, whether as commission, brokerage fee, or otherwise, to directors for granting a Personal Guarantee (PG) in favour of banks to secure credit limits.

- Hence, the open market value for providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration shall be treated as zero and no tax shall be payable on such supply by director to the Company.

- Further, it is clarified that corporate guarantees provided by one company on behalf of another related company or a holding company to secure credit facilities, even when provided without consideration shall be treated as supplies of service between related parties as per Schedule I of the CGST Act.

- Further, consequent to insertion of the sub-rule 2 in rule 28 of CGST Rules, in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value of such supply of services, will henceforth be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not.

- It is further clarified that the sub-rule (2) of Rule 28 shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (1) above.

- **Circular No. 206/18/2023 -Central Tax dated 31.10.2023** has been issued by CBIC to issue the following clarifications:

- Whether leasing of motor vehicles without operators fall within the ambit of the definition of 'same line of business'?

- Services of transport of passengers by any motor vehicle (SAC 9964) and renting of motor vehicle designed to carry passengers with operator (SAC 9966), where the cost of fuel is included in the consideration charged from the service recipient attract GST at the rate of 5% with input tax credit of services in the same line of business.

- It is clarified that input services in the same line of business means only transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966). Leasing of motor vehicles without operator will attract GST at the same rate as supply of motor vehicles by way of sale.

- Applicability of GST on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants

  - Renting of immovable property and /or maintenance of premises along with supply of electricity constitutes composite supply under the GST law. Here renting of immovable property is the principal supply which is bundled along with the supply of electricity which is an ancillary supply. Hence, GST applicable on renting of immovable property will be applicable on electricity charges reimbursed by lessees/occupants even if it is billed separately.

  - However, if electricity is supplied by Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, such electricity charges will not form a part of their value of supply.

- Whether District Mineral Foundation Trusts (DMFTs) are eligible for GST exemption as applicable to Governmental Authority

  - DMFT are bodies set up by the State Governments and can be considered as Governmental Authorities. Therefore, they are eligible for the same exemption available to other Governmental Authorities.

- **GSTN Advisory for the procedures and provisions related to the amnesty for taxpayers who missed the appeal filing**

deadline for the orders passed on or before March 31, 2023: Amnesty scheme for belated appeals has been notified vide Notification No. 53/2023-CT dated 02.11.2023 based on recommendations of 52nd GST Council's meeting held on 07.10.2023. In this regard, the GSTN has advised / clarified as follows:

- Taxpayers can now file appeal in FORM GST APL-01 on the GST portal on or before January 31, 2024 for the order passed by proper officer on or before March 31, 2023.
- Taxpayers should make payments for entertaining the appeal by the Appellate officer as per the provisions of Notification No. 53/2023.
- The GST Portal allows taxpayers to choose the mode of payment (electronic Credit/Cash ledger), and it's the responsibility of the taxpayer to select the appropriate ledgers and make the correct payments.
- Appellate Authority shall check the correctness of the payment before entertaining the appeal and any appeal filed without proper payment may be dealt with as per the legal provisions.
- If a taxpayer has already filed an appeal and wants it to be covered by the benefit of the amnesty scheme would need to make differential payments to comply
- Payment should be made against the demand order using the 'Payment towards demand' facility available on the GST portal.
- The navigation step for making this payment is provided: Login >> Services >> Ledgers >> Payment towards Demand.
- **GSTN Advisory for ITC Reversal on Account of Rule 37(A):** Vide Rule 37A of CGST Rules, 2017 the taxpayers have to reverse the Input Tax Credit (ITC) availed on such invoice or debit note, the details of which have been furnished by their supplier in their GSTR-1/IFF but the return in FORM GSTR-3B for the said period has not been furnished by their supplier till the 30th day of September following the end of financial year in which the Input Tax Credit in respect of such invoice or debit note had been availed.
- To facilitate the taxpayers, such amount of ITC required to be reversed on account of Rule 37A of CGST Rules for the financial year 2022-23 has been computed from system and has been communicated to the concerned recipient. The email communication to this effect has been sent on the registered email id of the taxpayer.
- Thereby, the taxpayers are advised to take note of it and to ensure that such ITC, if availed by them, is reversed as per rule 37A of CGST Rules before 30th of November, 2023 in Table 4(B)(2) of GSTR-3B while filing the concerned GSTR-3B.
- **GSTN Advisory for Online Compliance Pertaining to ITC mismatch -GST DRC-01C:** GSTN has developed a functionality to generate automated intimation in Form GST DRC-01C which enables the taxpayer to explain the difference in Input tax credit available in GSTR-2B statement & ITC claimed in GSTR-3B return online as directed by the GST Council. This feature is now live on the GST portal.
- Upon receiving an intimation, the taxpayer must file a response using Form DRC-01C Part B. The taxpayer has the option to either provide details of the payment made to settle the difference using Form DRC-03, or provide an explanation for the difference, or even choose a combination of both options.
- In case, no response is filed by the impacted taxpayers in Form DRC-01C Part B, such taxpayers will not be able to file their subsequent period GSTR-1/IFF.

- **GSTN Advisory for Comprehensive Guide and Instructions for Direct API Integration with any of the 6 IRPs for E-Invoice Reporting:** The GSTN, has released an extensive guide along with detailed instructions for facilitating the direct API integration process with any of the 6 Invoice Registration Portals (IRPs) dedicated to E-Invoice Reporting.

- During its 43rd meeting, the GST Council approved the proposal put forth by the GSTN to collaborate with private industry players and set up additional e-invoice registration portals. This initiative aims to augment the country's e-invoice registration capabilities, supplementing the existing single Invoice Registration Portal (IRP) operated by the National Informatics Centre (NIC).

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of November 2023

- **Circular No. 28/2023 -Customs Dated 8.11.2023** was issued by CBIC to allow advance assessment of Courier Shipping Bills.

- It was clarified that based on the inputs from the stakeholders and with a view to further enhancing the ease of doing business, it has been decided by the Government to provide for advance assessment of Courier Shipping Bills on the Express Cargo Clearance System (ECCS).

- The Directorate General of Systems has confirmed the enabling of appropriate technical changes in the ECCS export workflow for this purpose.

- **Trade Notice No. 32/2023 Dated 6.11.2023** was issued by DGFT in order to introduce a new facility of centralized Video Conference facility at DGFT HQs for the benefit of the exporting community.

- Effective from 08.11.2023, a centralized Video Conference (VC) facility will be available at the DGFT headquarters every Wednesday between 10 am to 12 noon. Senior officers from DGFT HQs shall remain present during these VCs to address the matters which could not be resolved by various DGFT Regional Authorities (RAs) despite concerted efforts.

- This facility is also intended as a platform for Trade and Industry representatives to bring forward suggestions for improvements and raise concerns pertaining to DGFT systems and procedures.

- The interested parties may avail this facility by registering on the DGFT portal at www.dgft.gov.in and selecting the 'Centralised VC with HQs' option under 'services'. The first preference shall be given to those who have requested a slot by logging in and registering. Thereafter, based on availability of time, the VC shall be made open to allow all waiting members in the VC lobby to enter.

- **Trade Notice no 33/2023-24 Dated 10.11.2023** was issued by DGFT to announce the pilot launch of the upgraded Electronic Bank Realization Certificate (eBRC) system for self-certification by exporters.

- A soft launch of the revamped eBRC system is proposed with effect from 15th November 2023. Starting from given date, each bank will set its cut-off date based on their readiness after completing User Acceptance Testing (UAT). IRMs dated on or after this bank-specific cut-off date will be sent to DGFT for exporters' selfcertification.

- For IRMs generated before this date, banks will generate eBRCs and submit them to DGFT, as per the legacy eBRC process. Both the upgraded and legacy eBRC systems will operate simultaneously until all banks transition to the upgraded eBRC system. The DGFT Website will host the list of banks with their respective IRM cut-off dates for reference of all stakeholders.

- Further, for prompt data exchange, it is stated in the notice that all banks must integrate using Application Programming Interface (API). Exceptions, if any, would require a detailed justification. Banks are accordingly required to transition to API integration with the upgraded eBRC systems latest by 31st January 2024.

Part B- Case Laws

Goods and Service Tax

1. M/s Honda Cars India Ltd. vs. Commissioner of Central Excise, Raigad [SK/250/RGD/2013-14 dated 25th September 2013]

Subject Matter: Ruling wherein it was held that the enhanced value of MRP adopted for calculation of customs duty does not entail dual MRP. Accordingly, the Explanation 2(a) below section 4A of Central Excise Act, 1944 would not come into play.

Background and Facts of the case

- M/s Honda Cars India Limited (hereinafter referred to as "the petitioner"), amongst other activities, is involved in the procurement of automobile parts, both imported and domestic. These parts undergo quality checks and repackaging before being sold.

- The goods are subject to regulations that require them to have labels indicating the maximum Retail Selling Price (RSP). After import, the petitioner carries out deemed manufacture through checks and repackaging, making the goods excisable.
- The Petitioner had filed an appeal against the demand of Rs. 49,41,692 for the period from December 2011 to July 2012.

- Further, for imports after March 18, 2010, the petitioner, on the instructions of customs, was discharging additional customs duty of 2.5 times of FOB value less permissible abatement higher than the declared RSP in certain cases. This benefitted both customs officials and the appellant, increasing revenue for customs and allowing the appellant to take credit for additional duties.

- However, central excise authorities intervened, claiming that a specific provision applies when the RSP is enhanced for customs assessment. This leads to a demand for payment, prompting the current appeal.

Discussions and findings of the case

- The Hon'ble Tribunal, Mumbai observed that affixing of 'retail selling price (RSP)' on specified goods under the statutes were made mandatory with an intention to protect the customers against potential overcharging at the retail level, under the threat of prescribed penalties and detriments. Neither the custom officials nor the Central Excise officials were in any position to determine the final selling price of the goods.

- The Petitioner emphasized on the show cause notice, issued on August 22, 2013 to the petitioner for the period from August 2012 to March 2013 wherein it was observed that the higher MRP is to be considered only when more than one MRP are affixed on the package of the articles. However, there were no allegations regarding the two MRP that were on the packaging of the contested products.
- It was observed that the MRP stated on the packages upon their factory clearance, and not the MRP stated on the bill of entry upon their importation, is the subject of the Central Excise Duty on the goods falling under section 4A of the Central Excise Act, 1944.

- It was further observed that the goods imported by the Petitioner after clearance from customs control are 'repacked'. This activity of 'repacking' qualifying as manufacturing erases the 'import' that had taken place earlier to be superimposed with production of excisable goods in the hands

of the manufacturer and subject to valuation under section 4A of Central Excise Act, 1944 for assessment to duties of central excise.

Ruling

- In light of the above, the Hon'ble Tribunal clarified that since there were no two prices, the Explanation 2(a) below section 4A of Central Excise Act, 1944 would not come into play.

- Accordingly, the Impugned Orders are set aside nullifying the demand imposed in the order.

Customs and FTP

1. Shri Sumit Arora & M/S Unistar Technoplast Pvt. Ltd Vs The Commissioner Of Customs, Ludhiana [60586-60588/2023 dated 07th November 2023]

Subject Matter: Ruling wherein it was held that the "Steel Balls" are rightly classifiable under CTH 84829900

Background and Facts of the case

- M/s Unistar Technoplast Private Limited (hereinafter referred to as "the petitioner"), is engaged in the import of 'steel balls' classifying the same under CHT 84829900. However, Revenue is of the opinion that the Impugned Goods were correctly classified by the Petitioner under CHT 87149990 previously and hence issued a show cause notice to reclassify the goods under CHT 87149990.
- This lead to a demand for payment of differential duty and penalty. Accordingly, the petitioner filed an appeal against the show cause notice dated 06th September 2022 for recovery of differential amount of duty along with imposition of penalty.

Discussions and findings of the case

- The Petitioner contended that the impugned steel balls are not only used in the automobile industry, but are also used ceiling fans, ball bearings, automotive sub-assemblies, valves, LPG regulators, skating shoes, spray paint cans, drawer's slide, door locks, toys, agitators, sewing machines etc., and had also obtained a certificate in this regard from a Chartered Engineer.

- Further, the petitioner submitted the impugned goods are also imported from Customs station at Sonepat and Delhi; however, no dispute has been raised on the classification; also, no dispute was raised against other importers all over the Country.

- On the contrary, the department has contended that the goods merit classification under tariff entry 87149990.

- The Hon'ble Tribunal observed the relevant Section Note 2 and 2(a) to Section XVI of CTH 1975 wherein it was specified that parts of Chapter 84 or 85 are to be classified in their respective headings.

- Further, it was also observed that according to Notes to Section XVII, the parts of certain goods of Chapter 84 such as Ball or roller bearings (heading 84.82) are to be excluded from the said section.

- Furthermore, the Hon'ble Tribunal emphasized that when deciding the classification of goods, the heading which provides the most specific description shall be preferred to headings providing a more general description and that classification shall be determined according to the terms of headings.

Ruling

- In light of the above, it was observed that the Impugned Goods were appropriately classified under CTH 8482, which is a specific heading.

- Thus, it was held that the classification of the Impugned Goods made by the Petitioner is correct. Accordingly, the Impugned Orders are set aside.

Direct Tax

1. Pluralsight LLC - Bangalore Tribunal rules that subscription received by a taxpayer for merely giving access to database for viewing does not amount to royalty

Background and Facts of the case

- Pluralsight LLC (Taxpayer), a foreign entity, was engaged in the business of providing an online technology learning platform on its website. It earned subscription fees by facilitating viewing of online videos by customers who made such subscriptions for their employees or affiliates' employees. The customers can only view the videos using the provided login credentials and are not allowed to download, store, transmit or edit such videos. Furthermore, the customers do not get any right on the content or the infrastructure facilities but are allowed to download certain ancillary course material which cannot be shared, transferred, sold or exploited in any manner.

- During the relevant tax year, the Taxpayer received subscription fee from the subscribers in India, which were not offered to tax in India. However, the tax authority contended that such a fee was in the nature of royalty under the Indian Tax Laws (ITL) and also under India-US Double Taxation Avoidance Agreement (DTAA).

Tribunal's Ruling:

On appeal, the Tribunal held that the subscription fees received by the Taxpayer are not taxable as royalty due to following reasons:

- The subscription fees received by the Taxpayer do not amount to payment for the "use of or right to use copyright" but rather payments for access to copyrighted products, i.e., the videos on the Taxpayer's database. Reliance was placed on the principle laid down by the Supreme Court's decision in the case of Engineering Analysis and Mumbai Tribunal's decision in the case of Elsevier Information Systems GmbH.

- The subscription fees cannot be said to be for imparting of any information concerning industrial, commercial or scientific experience of the Taxpayer as it receives subscription fees merely to grant access to the database of videos and is not for imparting any information concerning the Taxpayer's own knowledge or experience of creating or maintaining the database. In this regard, reliance was placed on the Mumbai Tribunal ruling in the case of the American Chemical Society and AAR ruling in the case of Factset Research Systems Inc.

- The Taxpayer has merely granted the access to the database of videos and the same does not amount to the use or right to use any equipment whatsoever. The subscribers have no access, right or control of any manner over the server on which the Taxpayer maintains the database.

2. Amazon Web Services India (P.) Ltd - Delhi HC permits tax withholding net of equalization levy liability

Background and Facts of the case

- In the facts of the case, Amazon Web Services India (P.) Ltd (Taxpayer), an Indian Company (ICo), entered into an agreement with a US company (USCo), for resale of cloud services to USCo's customers, on a principal-to-principal basis. In this regard, ICo made payments to USCo for the purchase of web services for onward resale. USCo discharged equalization levy (EL) at 2% on the gross consideration received from ICo on the basis that the contract was in the nature of online provision of services.

- In this backdrop, ICo approached the tax authority for a certificate permitting NIL withholding of tax in respect of the reseller fee paid to USCo. The tax authority denied such certificate on the basis that USCo had a permanent establishment (PE) in India and hence the EL provisions would not be applicable and determined the profits attributable to the Indian PE at 40% of the gross reseller fee paid by ICo and applied the applicable tax rate of 40% - leading to an effective withholding tax rate of 16% on the gross reseller fee.

- Aggrieved, the Taxpayer filed a writ petition before the Delhi High Court (HC).

High Court's Ruling:

- The HC held that the issue of whether USCo has a PE in India is already under dispute in USCo's case and remanded the matter back to the tax authority for fresh consideration.

- Further, considering the fact that:
  (i) a significant period had already been elapsed
  (ii) the issues to be examined under remand were contentious, wherein the examination by the tax authority would take time
  (iii) the instant case only pertained to withholding of tax and not final determination of income

- The HC followed its own earlier interim order in case of Google Asia Pacific Pte Ltd. and directed ICo to withhold tax at a total of 10% as reduced by 2% EL that had already been paid by USCo.

3. Concentrix Daksh Services India Pvt. Ltd. - Delhi Tribunal affirms filing of Form 10-IC only in the first year of claiming a concessional tax regime under S.115BAA

Background and Facts of the case

- In the case of Concentrix Daksh Services India Pvt. Ltd. (Taxpayer), the issue before the Delhi Tribunal was whether Form 10-IC is required to be filed afresh for every year of claim made for availing the benefit of concessional tax regime (CTR) of 22% under Section (S.)115BAA of the Indian Tax Laws.

- The Taxpayer had claimed the CTR benefit for the tax year 2019-20, being the first year, by filing Form 10-IC. In the subsequent tax year, i.e., 2020-21, it filed its return of income claiming CTR benefit, however the benefit was denied by the tax authority on the ground of non-filing of fresh Form 10-IC. This was upheld by the first appellate authority as well.

Tribunal's Ruling:

- On appeal, the Tribunal directed the tax authority to allow the CTR benefit by holding that Form 10-IC is required to be filed only once in the initial year of claiming CTR benefit and not in subsequent years on the basis of the following reasons:

- S.115BAA clearly provides that the option exercised to claim CTR benefit cannot subsequently be withdrawn. The Central Board of Direct Taxes (CBDT) has clarified this aspect in the FAQs issued on CTR.

- The CBDT instructions for filing ITR 6 specifically provide that Form 10-IC shall be filed only in the first year of opting for the CTR.

Our offices

Ahmedabad
2nd floor, Shavlik Ishaan
Near. C.N Vidyalaya
Amba wadi
Ahmedabad – 380 015
Tel: +91 79 6608 3800
Fax: +91 79 6608 3900

Bengaluru
12th & 13th floor
"U B City" Canberra Block
No.24, Vital Malia Road
Bengaluru - 560 001
Tel: +91 80 4027 5000
+91 80 6727 5000
Fax: +91 80 2210 6000 (12th floor)
Fax: +91 80 2224 0695 (13th floor)

Ground Floor, 'A' wing
Devisee Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru – 560 025
Tel: +91 80 6727 5000
Fax: +91 80 2222 9914

Chandigarh
1st Floor
SCO: 166-167
Sector 9-C, Madhya Marg
Chandigarh - 160 009
Tel: +91 172 671 7800
Fax: +91 172 671 7888

Chennai
Tidal Park
6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salami
Tar Amani, Chennai – 600 113
Tel: +91 44 6654 8100
Fax: +91 44 2254 0120

Delhi NCR
Ground Floor, 67, Institutional Area,
Sector 44,
Gurugram, Haryana – 122 003
Tel: +91 124 464 4000 Fax: +91
124 464 4050

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Atrocity New Delhi – 110 037
Tel: +91 11 6671 8000
Fax +91 11 6671 9999

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
NOIDA - 201 304
Gautam Bodh Nagar, U.P.
Tel: +91 120 671 7000
Fax: +91 120 671 7171

Hyderabad
Oval Office
18, labs Centre
Hitech City, Madhapur
Hyderabad – 500 081
Tel: +91 40 6736 2000
Fax: +91 40 6736 2200

Jamshedpur
1st Floor,
Shanti Niketan Building
Holding No. 1, SB Shop Area
Bistoury, Jamshedpur – 831 001
Tel: + 91 657 663 1000

Kochi
9th Floor "ABAD Nucleus"
NH-49, Maraud PO
Kochi - 682 304
Tel: +91 484 304 4000
Fax: +91 484 270 5393

Kolkata
22, Camaca Street
3rd Floor, Block C"
Kolkata - 700 016
Tel: +91 33 6615 3400
Fax: +91 33 6615 3750

Mumbai
14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (west)
Mumbai - 400 028
Tel: +91 22 6192 0000
Fax: +91 22 6192 1000

5th Floor Block B-2
Nylon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: +91 22 6192 0000
Fax: +91 22 6192 3000

Pune
C—401, 4th floor
Pinch-hit Tech Park
Yeravda (Near Don Bosco School)
Pune - 411 006
Tel: +91 20 6603 6000
Fax: +91 20 6601 5900

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

For more information, please visit
www.ey.com/india

EY refers to the global organization and may refer to one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/india.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 22 Camaca Street, 3rd Floor, Block C, Kolkata - 700016

- This work product has been prepared by EY LLP on the basis of a scope of work agreed with the Automotive Components Manufacturers' Association of India (ACMA), and does not purport to be all-inclusive or to contain any information that a prospective reader may expect or desire. Accordingly, if made available to ACMA's members or any other person or entity, this work product is solely for their information and should not be used, circulated, quoted, relied upon, or otherwise referred to for any other purpose, nor included or referred to in whole or in part in any document without EY LLP's prior written consent.
- The information in this document has been printed on the basis of data from various EY subscribed databases, media reports, publicly available information, internal data and other reliable sources believed to be true. While every effort is made to ensure the accuracy and completeness of information contained, EY LLP takes no guarantee and assumes no liability for any errors or omissions of the information.
- Due to the dynamic nature of the subjects covered by this document, readers of this document are cautioned that (a) any information contained in this document may not be current after the date hereof, and (b) any forward-looking statements are not predictions and may be subject to change without notice.
- Information in this publication is intended to provide only a general outline of the subjects covered, on the basis of a scope of work agreed with ACMA. It should neither be regarded as comprehensive nor sufficient for making decisions, nor should it be used in place of professional advice. EY LLP accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.
- This disclaimer forms an integral part of this work product.

EY contacts for ACMA Knowledge Partnership:

- Rakesh Batra, National Automotive Sector Leader – rakesh.batra@in.ey.com / +91 124 464 4532