EY Tax and Regulatory Alert

December 2021

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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 December 2021

- **Notification No.37/2021** – Central Tax dated 1.12.2021 was issued by CBIC in order to amend Form GST DRC-03 to include payment of taxes ascertained through GST DRC 01A for payment vide the said form.

- Moreover, the tenure for the National Anti-profiteering Authority is also extended to five years from four years.

- **Notification 38/2021**- Central Tax dated 21.12.2021 was introduced in order to bring forth the following changes in the Central Goods and Service Tax Act,2017:

- Amendment in Section 7 of the Act**:** The scope of "Supply" provided under Section 7 of the CGST Act has been further widened to include transactions involving the supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for a consideration. For this purpose, the supplier and the recipient shall be deemed as two separate persons. Such amendment has been made applicable retrospectively from 1 July 2017.

- Amendment in Section 16 of the Act: Notified new clause (aa) in Section 16 (2) of the CGST Act, to provide that ITC on invoice/ debit note will be availed only when the details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies. Hence, now the additional ITC of 5% adhoc credit as per Rule 36(4) of the CGST Rules will not be available.

- Amendment to Section 74: In the explanation 1 of clause (ii) wherein the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125 shall be deemed to be concluded.

- The penalty under sections 129 & 130 for the other persons are kept outside the ambit of such conclusion of proceedings.

- Amendment to Section 75: Inserted explanation to Section 75 (12) of the CGST Act to extend the powers for the recovery of tax by including circumstances of non-payment of tax in GSTR-3B, details of which have been disclosed in GSTR-1.

- Amendment to Section 83: The powers of provisional attachment of property under Section 83 of the CGST Act has been increased to include any proceedings under Chapter XII (Assessment), Chapter XIV (Inspection, Search, Seizure & Arrest) or Chapter XV (Demands & Recovery).

- Amendment to Section 107: Notified a mandatory pre-deposit of 25% of the penalty, vide an amendment in Section 107 of the CGST Act, before filing an appeal against the order of adjudicating authority in relation to seizure and confiscation of goods and conveyances in transit.

- Amendment to Section 129: The provisions for release of detained goods has been amended to increase the quantum of tax and penalty to be paid in order to release the goods.

- Further, a timeline has been introduced for the proper officer detaining or seizing goods or conveyance to issue a notice to seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty.

- Further, interest can be computed without giving the person an opportunity of being heard.

- The time limit to pay the tax has been extended to 15 days.

- A proviso is also introduced for the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less

  Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer."

- Amendment to Section 130: The penalty payable under the said section is amended to be equal to hundred per cent. of the tax payable on such goods. Other amendment were also introduced.

- Substitution for New Section for Section 151: For section 151 of the Central Goods and Services Tax Act, the following section shall be substituted, namely: -

  151. Power to call for information.

  The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.".

- Amendment to Section 168: In section 168 of the Central Goods and Services Tax Act, in sub-section (2),- (i) for the words, brackets and figures "sub-section (1) of section 44", the word and figures "section 44" shall be substituted. (ii) the words, brackets and figures "sub-section (1) of section 151," shall be omitted

- Amendment to Schedule II: Paragraph 7 of the Schedule II shall be omitted and shall be deemed to have been omitted with effect from 1st July,2017.

- **Notification 39/2021**- Central Tax dated 21st December,2021: The following amendments were brought in the CGST Rules, 2017:

- Amendment to Rule 10A of the said rules: The said provision was extended to include the details of the bank account which is in name of the registered person and obtained on Permanent Account Number of the registered person

  Moreover, a proviso shall be inserted which states in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.

- Insertion of Rule 10B: The registered person, other than a person notified under sub-section (6D) of section 25, who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number in order to be eligible for the following:

- For filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23.

- For filing of refund application in FORM RFD-01 under rule 89.

- For refund under rule 96 of the integrated tax paid on goods exported out of India.

  In case the Aadhar number is not assigned to the person required to undergo Aadhar Authentication, a certain set of authentication documents as stated in this notification will be required to be submitted.

- Amendment to Rule 23: The said rule shall now be applicable subject to Rule 10B of the CGST Rules, 2017 .

- Amendment to Rule 45: In sub-rule (3), with effect from the 1st day of October, 2021, the period quarter shall be replaced with a specified period. Moreover, the specified period has been defined as:

(a) the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and

(b) a financial year in any other case.";

- Amendment to Rule 59: In sub-rule (6), with effect from the 1st day of January, 2022, the time limit of preceding two months has been reduced to the preceding month. Other amendments were also introduced.

- Amendment to Rule 89: The said rule shall now be applicable subject to Rule 10B of the CGST Rules, 2017.

  Moreover, after sub-rule (1), the following sub-rule shall be inserted, namely:-

  (1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

  Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force."

- Amendment to Rule 96: The said rule shall now be applicable subject to Rule 10B of the CGST Rules, 2017.

- Insertion of Rule 96B: with effect from the date as may be notified, Rule for "Bank Account for credit of refund" shall be inserted.

- The said rule states that for the purposes of sub-rule (3) of rule 91, sub-rule (4) of rule 92 and rule 94, "bank account" shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number:

- Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of December 2021

- Trade Notice No 27/2021-22 dated November 30.11.2021 was issued by DGFT to intimate the exporters that a new online common digital platform for issuance of Registration Cum Membership Certificate (RCMC) / Registration Certificate would be single point of access to all exporter/importers and issuing agencies.

- The objective of the platform is to provide an electronic, contact-less single window for RCMC/RC process including Application for Fresh/Amendment/ Renewal of RCMC/RC. The submission of online application is not mandatory for the exporter but a transition period would be given for the issuing agencies as well as the exporters.

- Applications for RCMC/RC may be submitted through the common portal wef 6th December,2021.

- Public Notice No. 43/2015-2020 dated 16.12.2021. was issued by DGFT in order to amend the HS code description of Tariff Number 85414011 from Solar cells whether or not assembled in modules or panels to Solar Cells not assembled for exports with effect from 27.03.2020.

- The MEIS rate for export of solar cells, assembled in modules or made up into panels under HSN Code 85414012 has been modified to 2%.

Direct Tax

Part-A Key Direct Tax updates

This section summarizes the Direct Tax updates under for the month of December 2021

1. Central Board of Direct Taxes (CBDT), vide Notification No. 137 of 2021 had notified e-Verification Scheme, 2021.

- The Scheme covers the following aspects:

  (i) calling for information u/s 133,
  (ii) collecting certain information u/s 133B,
  (iii) calling for information by the prescribed income-tax authority u/s 133C,
  (iv) exercise of power to inspect registers of companies u/s 134, and
  (v) exercise of AO's power u/s 135;

- This Scheme applies to processing or utilisation of the information in possession of Principal Director General of Income-tax (PDGIT) or Director General of Income-tax DGIT, or made available to them by: (i) DGIT (Intelligence and Criminal Investigation), (ii) CIT in charge of CPC for processing of returns, (iii) CIT in charge of CPC (TDS) for processing of statement of tax deducted at source, (iv) any other authority, body or person; The Scheme prescribes that CIT (e-Verification) shall collect the specified information as per the procedure laid down by PDGIT (Systems) or DGIT (Systems);

- Notification also prescribes for random allocation or transfer of the information as per the process to be devised by PDGIT (Systems) or DGIT (Systems) and to be approved by CBDT.

- The notices are to be issued, served, and responded to electronically and personal appearance shall be in exceptional cases through virtual mode.

- Further the Scheme prescribes that all the communication shall be exclusively in the electronic mode amongst the authorities and to the extent technologically feasible with any person or their authorized representative too.

- It also provides for digital authentication of electronic record by CIT (e-Verification) or the Prescribed Authority.

- For the purposes of this Scheme, an electronic record shall be authenticated by the any person or his authorised representative can also digitally authenticate the electronic record where he is required to digitally sign his return of income and, where not so required, by communicating through his registered e-mail address.

- DGIT (Intelligence and Criminal Investigation) shall, with the approval of CBDT, specify procedures and processes for effective implementation and functioning of the Scheme, on:

  (i) SOP and techniques of verification to be followed, by the prescribed authorities while verifying information,

  (ii) managing administration functions such as receipt, scanning, data entry, storage and retrieval of information and documents in a centralised manner,

  (iii) grievance redressal mechanism for handling grievances under the DIT (Intelligence and Criminal Investigation);

- DGIT (Systems) shall, with the approval of the Board, specify procedures and

processes for effective implementation and functioning of the Scheme for:

(i) mode and format for issue of acknowledgment of the response furnished by the addressee,

(ii) provision of web portal facility including login facility, tracking status of verification, display of relevant details, and facility of download, and

(iii) call centre to answer queries and provide support services, including outbound calls and inbound calls seeking information or clarification.

2. OECD releases Model Rules on the Pillar Two Global Minimum Tax: First impressions

- On 20 December 2021, the OECD released the GloBE Model Rules under Pillar Two, which cover both the Income Inclusion Rule (IIR) and the Undertaxed Payments Rule (UTPR).

- Generally, a multinational enterprise (MNE) Group and its Constituent Entities are covered under the scope of the GloBE rules if the annual revenue in the Consolidated Financial Statements of the Ultimate Parent Entity (UPE) is €750 million or more in two out of the four Fiscal Years immediately preceding the tested Fiscal Year.

- The Model Rules provide exclusions from the GloBE rules for specified categories of Entities. However, such entities are not excluded for purposes of determining whether the MNE Group meets the revenue threshold for being in scope of the Globe rules.

- The Excluded Entities are as follows:
  - Governmental Entities
  - International Organizations
  - Non-Profit Organizations
  - Pension Funds
  - Investments Funds that are the UPE of the MNE Group
  - Real Estate Investment Vehicles that are the UPE of the MNE Group

- Further entities that are owned by one or more of the Excluded Entities listed above also are excluded if specified ownership thresholds and activity conditions are satisfied.

Effective Tax Rate calculation and Top-up Tax

- The Model Rules provide complex rules for calculating the Effective Tax Rate and the Top-Up Tax, which are contained in Chapter 3 (Computation of Globe Income or Loss), Chapter 4 (Computation of Adjusted Covered Taxes) and Chapter 5 (Computation of Effective Tax Rate and Top-up Tax).

- Chapter 3 provides detailed rules on how to calculate the GloBE Income or Loss. The starting point is the Financial Accounting Net Income or Loss as determined under the accounting standard used in preparing the Consolidated Financial Statements of the UPE, before any consolidation adjustments for intragroup transactions. The Model Rules provide for limited adjustments to financial accounting income or loss, such as for excluded dividends and equity gains or losses. The Model Rules also provide that transactions between group entities in different jurisdictions that have not been recorded at arm's length for accounting purposes will need to be adjusted when calculating GloBE Income or Loss. In addition, detailed rules are provided regarding the exclusion of international shipping income that meets the specified qualification requirements.

- For the computation of Adjusted Covered Taxes, the starting point is the current tax expense accrued in the financial accounts, with some limited adjustments.

- An important development in the Model Rules is the inclusion of detailed rules for including certain deferred taxes in Adjusted Covered Taxes in order to address temporary book-tax timing differences. Once these two amounts have been determined, the Effective Tax Rate (ETR) of the MNE Group for a jurisdiction is calculated by dividing the sum of the Adjusted Covered Taxes of each Constituent Entity located in the jurisdiction by the Net GloBE Income of the jurisdiction (i.e., the positive amount equal to the GloBE income of all Constituent Entities in that jurisdiction reduced by the GloBE losses of all Constituent Entities in that jurisdiction). The Net GloBE Income is reduced by the Substance-based Income Exclusion for the jurisdiction (which is based on payroll costs and carrying value of eligible tangible assets) to get to the Excess Profit for the jurisdiction.

- The Top-up Tax Percentage is broadly the difference between the 15% minimum rate and the ETR. The Jurisdictional Top-up Tax for a jurisdiction is the Top-up Tax Percentage multiplied by the Excess Profit for the jurisdiction (with adjustments for additional current top-up tax and qualifying domestic top-up tax for the jurisdiction).

- Finally, the Top-up Tax of a Constituent Entity reflects the Jurisdictional Top-up Tax multiplied by the ratio of the Globe Income of the Constituent Entity for the jurisdiction to the Aggregate GloBE Income of all Constituent Entities for the jurisdiction.

Mechanics of the Top-up Tax

- The Model Rules describe the process for determining the amount of Top-Up Tax to be charged to a Parent Entity or to the Constituent Entities located in a UTPR Jurisdiction by attributing the Top-Up Tax of each Low-Taxed Constituent Entity to the Parent Entity under the IIR, and then by allocating the residual Top-Up Tax, if any, to UTPR Jurisdictions.

Income Inclusion Rule

- The UPE located in an implementing jurisdiction that owns (directly or indirectly) Ownership Interest in a Low-Taxed Constituent Entity at any time during the Fiscal Year is subject to tax in an amount equal to its Allocable Share of the Top-Up Tax of that Low-Taxed Constituent Entity for the Fiscal Year.

- The Model Rules address the application of the IIR to Intermediate Parent Entities of an MNE Group and to Partially-owned Parent Entities that own an Ownership Interest in a Low-Taxed Constituent Entity.

- For the application of these rules, a Low-Taxed Constituent Entity is an entity located a Low-Tax Jurisdiction or a Stateless Constituent Entity that, in respect of a Fiscal Year, has GloBE Income and is subject to an Effective Tax Rate that is lower than the 15% minimum rate.

Undertaxed Payments Rule

- The mechanics for the application of the UTPR in the Model Rules reflect significant changes from the Pillar Two Blueprint. The Model Rules provide that, under the UTPR, Constituent Entities of an MNE Group located in an implementing jurisdiction will be denied a deduction (or required to make an equivalent adjustment under domestic law) in an amount resulting in those Constituent Entities having an additional cash tax expense equal to the UTPR Top-up Tax Amount for the Fiscal Year allocated to that jurisdiction.

- The Total UTPR Top-up Tax Amount for a Fiscal Year is equal to the sum of the Top-up Tax calculated for each Low-Taxed Constituent Entity of an MNE

Group for that Fiscal Year, subject to specified adjustments.

- The UTPR Top-up Tax Amount that is allocated to an implementing jurisdiction is determined by multiplying the Total UTPR Top-up Tax Amount by the jurisdiction's UTPR Percentage determined each year as follows:

  50% (Number of employees in the jurisdiction/ Number of employees in all UTPR jurisdictions)
  +
  50% (Tangible assets in the jurisdiction/ Tangible assets in all UTPR jurisdictions)

Administration

- The Model Rules also include some administrative provisions. First, they provide an obligation to file a standardized information return (the GloBE Information Return) that will provide tax authorities with the information required to assess the tax liability under the Model Rules. The Model Rules also provide for the development of optional safe harbors in order to reduce the compliance and administrative burden and agreed administrative guidance. In this regard, the OECD has announced plans to host a public consultation event in February 2022 on the implementation framework that is to be developed to facilitate the coordinated implementation of the Model Rules.

Other items of note

- The Model Rules also include specific rules for the treatment of corporate restructurings and holding structures and tax neutrality and distribution regimes. They also include specific transition rules.

- The rules relating to mergers and acquisitions describe how to apply the consolidated revenue threshold to group mergers and demergers.

- The rules relating to tax neutrality regimes address the treatment of situations where the UPE of a MNE Group is subject to a tax neutrality regime (such as a tax transparency regime or a Deductible Dividend Regime), provide special rules in relation to certain distribution tax regimes, and provide special rules for controlled Investment Entities.

- The transition rules address the treatment of tax attributes upon transition into the new minimum tax regime (including on how to transition existing losses into the new regime), provide the transitional relief for the substance-based income carve-out specified in the October Statement, provide an exclusion from the UTPR for MNE Groups in the initial phase of their international activity, and provide for transitional relief in the timing of the filing obligation in the transition year.

- Finally, the Model Rules include a series of definitions used throughout the rules, as well as specific rules on how to determine the location of an entity and of a permanent establishment.

Implications

- The Model Rules provide a substantial update to the Pillar Two Blueprint. Implementation of the Model Rules will lead to significant changes to the overall international tax rules under which businesses operate and will introduce new filing obligation that will require gathering additional data and adaption of companies' internal processes and systems.

- It is important for companies to evaluate the potential impact of the proposed global tax changes and monitor activity in relevant countries related to the implementation of new rules through changes in domestic tax rules and bilateral

and multilateral agreements, especially given the very ambitious implementation timeline.

- In particular, companies should monitor developments in the US with respect to the GILTI rules as well as the announced plans for implementation of Pillar Two in the European Union (EU) through an EU Directive.

Regulatory

Part-A Key Regulatory updates

This section summarizes the Regulatory updates for the month of December 2021

1. Reserve Bank of India ('RBI') revises framework on External Commercial Borrowings ('ECB') and Trade Credits ('TC') on account of changes due to LIBOR transition

- Currently, the benchmark rate for Foreign Currency (FCY) ECB/TC is specified as 6-months LIBOR rate or any other 6-month interbank interest rate applicable to the currency of borrowing.
- In view of the imminent discontinuance of LIBOR, RBI has clarified that any widely accepted interbank rate or alternative reference rate (ARR) applicable to the currency of borrowing may be used as a benchmark rate.
- Further, in order to take into account differences in credit risk and term premia between LIBOR and the ARRs, for new foreign currency ECBs and TCs, the all-in-cost ceiling has been revised from 450 bps to 500 bps and from 250 bps to 300 bps, respectively, over the ARRs.
- For smooth transition of existing ECBs and TCs linked to LIBOR, the existing all-in-cost ceiling has been revised from 450 bps to 550 bps and from 250 bps to 350 bps respectively, over the ARRs.

  Source: A.P. (DIR Series) Circular No. 19 dated 08 December 2021

2. RBI introduced Legal Entity Identifier (LEI) for all Cross-border Transactions.

- The Legal Entity Identifier (LEI) is a 20-digit number used to uniquely identify parties to financial transactions worldwide to improve the quality and accuracy of financial data systems.
- The concept of LEI has been introduced by the Reserve Bank in a phased manner for participants in the over the counter (OTC) derivative, non-derivative markets, large corporate borrowers and large value transactions in centralized payment systems.
- RBI has clarified that AD Category I banks, with effect from October 1, 2022, shall obtain the LEI number from the resident entities (non-individuals) undertaking capital or current account transactions of ?50 crore and above (per transaction) under FEMA, 1999. As regards non-resident counterparts/ overseas entities, in case of non-availability of LEI information, AD Category I banks may process the transactions to avoid disruptions.
- Further, RBI has clarified, AD Category I banks may encourage concerned entities to voluntarily furnish LEI while undertaking transactions even before October 1, 2022. Once an entity has obtained an LEI number, it must be reported in all transactions of that entity, irrespective of transaction size.
- Also, RBI has directed AD Category-I banks to have the required systems in place to capture the LEI information and ensure that any LEI captured is validated against the global LEI database available on the website of the Global Legal Entity Identifier Foundation (GLEIF).

Part B- Case Laws

Goods and Service Tax

1. **M/s Bharat Oman Refineries Limited ("BORL") V. Commissioner Commercial Tax.**

   Subject Matter: Ruling wherein it was held that GST would be applicable on the notice period pay recovered from employees, premium of group medical insurance policy recovered by applicant from the non-dependent parents of employees would be covered under supply and other related matter.

   Background and Facts of the case

- The applicant is a company that owns and operates Bina Refinery in the Sagar district of Madhya Pradesh and is engaged in refining of Crude Oil in the refinery located in Madhya Pradesh.
- The applicant's employees who leaves the organization without serving the minimum 30 days' notice period as per the terms of employment, are required to pay an amount equal to the salary for the number of days for which they are not able to serve notice period.
- Moreover, the applicant has taken a "Group Medi-claim Insurance Policy" for all its employees that covers them, their spouse, children and dependent parents and this forms part of their CTC. Further, employees are also given an option to enroll their non-dependent parents for availing the benefit. In addition, retired employees can also avail this benefit. The applicant recovers such amount at actuals from their salary.
- As per the requirement of Factories Act, 1948, the applicant also provides canteen facility to its employees and recovers INR 700/- from each employee irrespective of whether he/she avails the said facility.
- Furthermore, the applicant also provides telephone connections in all the flats of its township and bear fixed monthly rental. Any amount over and above fixed rental is recovered from employees at actuals.
- Basis above, the applicant had sought advance ruling on the below mentioned questions:
  - Whether GST is applicable on payment of notice pay by an employee to the applicant-employer in lieu of notice period under clause 5(e) of Schedule II of GST Act?
  - Whether GST is applicable on the amount of premium of Group Medical Insurance Policy recovered at actuals from non-dependent parents of employees, and retired employees those who are covered under the said policy?
  - Whether GST is applicable on recovery of nominal amount for availing the facility of canteen at the refinery at Bina when it is not a supply as per clause 1 of Schedule III of GST Act
  - Whether GST is applicable on recovery of telephone charges from the employees over and above the fixed rental charges payable to BSNL?
  - Whether full ITC is available to the applicant in respect of question nos. II, III & IV, or ITC will be restricted to the extent of GST borne by the applicant-employer?

- Whether the provision of canteen services to all the employees without charging any amount (free of cost) will fall under para 1 of Schedule III of GST Act and will not be subjected to GST?

- If reply to Q.VI is yes, whether in view of explanation to Section 17(3) of GST Act, ITC shall be available to the applicant on the goods and services used in the activity of provision of free canteen services to the employees

Discussions and findings of the case

- In light of the above questions, the department held the following view points:

  - GST will not be applicable on payment of notice pay by an employee to 'applicant employer in lieu of notice period.

  - It also held that GST will not be applicable on the amount of premium paid towards Group medical policy of non-dependent parents recovered from employees & recoveries from retired employees.

  - GST will not be applicable on the recovery of nominal amount for availing the facility of canteen at the refinery at Bina when it is no supply as per clause 1 of Schedule III of CGST Act.

  - The jurisdictional officer also contended that GST will not be applicable on the recovery of telephone charges recovered from employees over and above the fixed rental charges payable to BSNL.

  - In regard to the availment of ITC, the officer held that ITC in relation to the canteen services will be available to the employee with the requirement of reversal u/s 42 & 43 as per para 1 of Schedule III and explanation to section 17(3) of CGST Act.

  - It also contended that ITC in respect of parental insurance and telephone charges recovered over and above the fixed rental charges would not be available to the applicant.

  - Further, it also held that provision of canteen services to all the employees without charging any amount will fall under paragraph 1 of Schedule III and will not be subjected to GST. Moreover, the ITC in respect of such canteen services will be available to the employees with the requirement of reversal u/r 42 & 43 of the CGST rules, 2017.

- On the contrary, the applicant is of the opinion that notice pay recovery to compensate the loss of applicant on account of absence of employee from his duties and have relied on the service tax regime Madras High Court judgement in the case of **GE T&D India Ltd. Vs. Dy. Commissioner of Central Excise, Chennai** wherein it was held that the employer has not tolerated any act of the employee but has permitted a sudden exit upon being compensated by the employee in this regard. Hence, the applicant contended that GST is applicable on payment of notice pay by an employee to an employer. However, the Authority observed that that the said case law is not applicable to the present case involving levy of GST. It also held that GST would be applicable in the present case and Section 7(1) defining supply is an inclusive definition and includes other activities also which can be covered in supply.

- The applicant had further contended that the premium of Group Medical Insurance Policy recovered by applicant from the non- dependent parents of employees & retired employees will fall within the ambit of supply and is liable to GST. However,

the authorities held that the insurance services provided by the applicant to the non-dependent parents of employees & retired employees as were not provided as an agent of the insurance company and thus, would not fall within the ambit of as pure agent as per Rule 33 of CGST Rules,2017. Thus, the said transaction will fall within the ambit of supply and is liable to GST.

- For the canteen services, the applicant is of the view that as it is mandatory under Factories Act, 1948 to provide canteen facility, it cannot do the business without providing such facility to its employees. Further, the said facility is part and parcel of employment contract between the employer and the employee, therefore no GST is payable on recoveries as per clause 1 of Schedule III of GST Act. Nevertheless, the authorities upheld the applicability of GST on nominal amount recovered for availing canteen services by employees while rejecting applicant's interpretation that said transaction is covered by clause I of Schedule III. It clarifies that herein employee is not providing any service rather employer is providing services to employees. The authorities upholds applicability of GST on nominal amount recovered for availing canteen services by employees while rejecting applicant's interpretation that said transaction is covered by clause I of Schedule III. It clarifies that herein employee is not providing any service rather employer is providing services to employees.

- The applicant relied on various rulings pronounced (POSCO India Pune Processing Centre (P) Limited 2019 102 taxmann.com 21 (AAR-Maharashtra, Jotun India Pvt. Ltd. (2019) 76 GST 691 (AAR-Maharashtra), Tata Motors Limited (2020) 119 taxamann.com 106 (AAR-Maharashtra) to content that as it is not in the business of providing telecommunication services nor is competent to provide such services, the said activity of recovery of telephone charges from the employees is not in the course or furtherance of business and thus not leviable to GST.

- However, the authority had held that the applicant is liable to pay GST on amount recovered from its employees towards telephone charges at actual rate.

- The applicant is of the view that since payment for health insurance and telecommunication services is made by them, then they are to be considered as recipient of services irrespective of the fact the payment is made by way of recoveries. Therefore, full ITC is available to the them on supply of above services. Moreover, the authorities had also held that the applicant shall be eligible to claim input tax credit in respect of premium paid to insurance company to the extent of its further supply. Further, it shall also be eligible to avail ITC of telephone charges as such services are not covered by the provisions of blocked credit. However, the applicant shall not be eligible for ITC on canteen services.

- Further, for canteen services provided to the employees free of cost, it is applicant's view that if they provide canteen services to all its employees on free of cost basis without any recovery as part of HR policy/ employment contract, it is covered under para I of Schedule III of CST Act, and is not liable to GST, as it is neither a supply of goods nor a supply of services. However, the authority had held that the transactions between employer and employee are covered by clause 2 of Schedule I. Therefore, canteen services provided to the employees are to be treated as supply, even if there is no consideration and value has to be determined as per Rule 28.

Ruling

Basis the above, the following ruling was held:

- In respect to question 1, GST is applicable on the notice period pay by employee to employer in lieu of notice period.

- In respect to question 2, Group medical insurance policy recovered by the applicant from non-dependent parents of employees & retired employees will fall within ambit of supply and will be liable to GST.

- In respect to question 3 and 6, the value of canteen services provided by the applicant to its employees shall be as per Rule 28 and not the nominal amount recovered from the employees.

- In respect to question 4, the applicant company is liable to pay GST on the amount recovered from its employees towards telephone charges at actuals.

- In respect to question 5 and 7, the applicant shall be eligible to claim ITC in respect to premium paid to insurance company to the extent of its further supply. However, the applicant shall not be eligible to claim ITC on canteen services. For the telephone charges paid to BSNL, the applicant shall be entitles to claim ITC as telephone charges are not blocked under section 17 of the Act.

2. M/s Adithya Automotive Applications Pvt Ltd. V. Commissioner of State Tax

Subject Matter: Ruling wherein it was held that body building activity on the truck chasis provided by the principal would not amount to manufacturing services attracting GST @ 18%. Moreover, Circular No.52/26/2018-GST would also not apply in the case of applicant.

Background and Facts of the case

- The applicant is engaged in the body building and mounting of body on the chasis of different models of Tippers, Tankers, Trucks and Trailers. The applicant receives chasis of these items from TATA Motors and other customers on the basis of returnable challan.

- The applicant has described the that said process includes Fabrication of steel sheets, hallow steel pipes, Round Steel pipes, angles and Channels of steel according to desired / required size followed by assembly/ joining of the above-mentioned fabricated pieces of iron and steel by way of welding with help of welding electrodes (copper coated wire) to give a shape of Tipper body. Thereafter the assembled structure of the Tipper body would be mounted/fixed on the chassis by welding with the help of welding electrodes. Subsequently, the final step involves fixing of hydraulic kit by welding with help of welding electrodes (copper coated wire) for lifting the tipper body as and when required and finally finishing.

- The applicant had further stated that the process for body building and mounting of the body involves procurement of miscellaneous inputs such as steel sheets, square tubes, windows, glasses, wiring harness, fittings inside body, paints, automobile parts from TATA Steels and other authorised steel/automobile dealers. These items are procured on payment of appropriate amount of GST which is claimed as ITC.

- The applicant is engaged in job work in terms of Section 2(68) of GST Act 2017 in relation to building and mounting of body on chassis, accordingly it is charging GST @ 28%.

- In light of the above, the appellant had sought advance ruling on the following questions:
  - Whether the body building activity on the chasis provided by the principal would amount to manufacturing services attracting 18% of GST?
  - Whether clarification of CBIC vide para no. 12.3 of Circular No.52/26/2018-GST dated 09.08.2018 clarifying 18% rate of GST in respect of building of body of buses would also apply in the case of applicant?

Discussions and findings of the case

- In this regard, the Authority had contended that Circular No.52/26/2018-GST dated 09.08.2018 specifying the rate of GST as 18% would be applicable only in the job work service cases. However, the Authority contested that the applicant builds the body on chassis by purchasing all materials required for body building of the vehicle. The applicant is receiving only chassis and all inputs/materials required for fabrication of the body has to be used by the applicant from its own account. Hence, the dominant character of work relates to supply of goods rather than supply of service. As such, this case is not covered under circular No. 52/26/2018-GST dated 09-08-2018.

- Further, reference was also drawn to the concept of composite supply and principle supply. It was observed that in the present case the inputs required for fabrication of vehicle-body on chassis are procured by the applicant and fabricated vehicle-body mounted on the chassis is supplied by the applicant. Therefore in this instant case , it is supply of body of the vehicle and the activity of fitting/mounting vehicle is an ancillary activity to the principle activity of supply of vehicle type. Hence, in terms of clarification issued by the CBEC vide Circular No.34/8/2018-GST dated 1/3/2018 the impugned activity is a composite supply, with principle supply being that of the body of the vehicle.

Ruling

- Basis above, it was held that body building activity on the chasis provided by the principal would not amount to manufacturing services attracting 18% of GST.

- Moreover, the clarification issued vide para no.12.3 of Circular No. 52/26/2018 GST dated 09.08.2018 clarifying 18% GST in respect of building of body of busses would not apply in case of the applicant.

Part B – Case Laws

Direct Tax

1. Delhi High Court (HC) in the case of Mon Mohan Kohli v. ACIT

Delhi HC quashes reassessment notices issued between April to June 2021 following old regime of reassessment

Issue before the High Court

- The present petitions are also on the similar issue i.e., on validity of reassessment notices issued between April to June 2021 following the old regime of reassessment under the garb of impugned Explanation in March Notification and April Notification issued under Relaxation Act despite the fact that new regime of reassessment enacted by FA 2021 w.e.f. 1 April 2021 was in force.

HC's ruling

- The HC held that the notices issued between April to June 2021 following the old regime of reassessment are invalid and, hence, liable to be quashed basis this key reasons:
  - Since the provisions for reassessment are being substituted w.e.f. 1 April 2021, reopening notices issued on or after that date be only under the new regime
- Power granted to CG under Relaxation Act is limited to extend time limit. CG had no authority to make or change law of the land or impede the implementation of law:
  - Relaxation Act does not empower CG to postpone the applicability of amendment made vide FA 2021 (i.e. to old regime of reassessment).
  - Therefore, issuance of the March Notification and April Notification is beyond the power delegated to CG.
- The March Notification and April Notification are ultra vires Relaxation Act:
  - The Explanation to the March Notification and April Notification which extend the applicability of old regime beyond 1 April 2021 is not only beyond the power delegated to CG under Relaxation Act but also in conflict with the provisions of the ITL as amended by FA 2021.
  - The delegated authority must act strictly within the parameters of the authority delegated to it. The delegated authority cannot override an Act either by exceeding the authority or by making provisions inconsistent with the Act.
- Procedural mechanism under the new reassessment regime should take effect retrospectively:
  - Provision dealing with procedural matters are presumed to be retrospective, unless such a construction is textually inadmissible.
  - Procedural law changes operative retrospectively because a procedural change is expected to improve matters for everyone concerned (or at least to improve matters for some, without inflicting detriment on anyone else who uses ordinary care, vigilance and promptness).
  - Amendment in time limit for reopening of assessment is procedural amendment and is applicable retrospectively to past years as well.

- Reference was made to Delhi HC decision in case of C.B. Richards Ellis Mauritius Ltd.

- For determining whether the amendment is a procedural or a substantive law one will have to examine the intent, purpose and scope of the amendment. Since, the intent, purpose and scope of the amendment introduced by FA 2021 was to protect the rights and interests of taxpayers as well as promote public interest, it may be applied retrospectively.

- Tax Authority's contention that new reassessment regime is not applicable to past years is contrary to Circular12 issued by CBDT and its own submission that the new reassessment regime is applicable from 1 July 2021.

- Tax authority cannot take shelter of COVID-19 for contending that the new provisions should not operate during the period April to June 2021:

- The enabling provision of Relaxation Act is expressly confined to and only supersedes the time limits in the ITL pertaining to reassessment and it does not exclude the applicability of provisions substituted vide FA 2021:

- The ambit of the non-obstante clause in the enabling section of Relaxation Act is expressly confined to and supersedes the time limits only for the completion or compliance of actions which are laid down in the Acts to which Relaxation Act applies and Relaxation Act only provides that these time limits shall stand extended as provided.

- Relaxation Act was enacted long before the FA 2021. Consequently, it is difficult to contend that any provision of Relaxation Act, or notification issued thereunder, can be so construed as amending or modifying or excluding the applicability of FA 2021 which was not in contemplation on date of enactment of Relaxation Act.

- A statute can be said to enact a legal fiction when it assumes the existence of something which is known not to exist. The extension of time for completing an assessment or issuing a reassessment notice provided under Relaxation Act has no element of legal fiction in it. The only effect and consequence of this extension of the time limit is that if the act in question is performed within the extended time limit, it will be considered to be legally compliant.

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