Automotive Component Manufacturers Association of India

Facilitate Ease of Doing Business in India-Procedural Issues

1. Method of Accounting

As per existing provisions, inventories are valued at lower of actual cost or net realisable value as computed in accordance with ICDS issued by CBDT. Such valuation is to be further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on date of valuation. Including the value of cenvatable tax, duty, cess, etc. in the cost of inventories does not have any impact on the profit and loss account and is tax neutral. Besides it leads to huge amount of time and working for tax computation.

Recommendation

It is suggested that the above-mentioned provision be amended by deleting the clause (ii) of section 145A and adopt the basis of valuation of inventory as regularly followed by assessee in the books of account.

2. Time limit for speedy settlement of old cases

Currently, the Act prescribes time limit for completion of assessments and for preferring appeals against the orders. Further, the Act provides directory time limits for disposing of appeals against the orders of the assessing officers and appellate authorities and Courts. However, multiple provisions of re-assessments, revisions of assessment orders etc., results into prolonged litigation. In view of such prolonged litigations, a lot of old cases are pending at various forums and need to be resolved/ reach final conclusion.

Though there is a provision under the Act which entitles the assessee to obtain the refund if any with interest in case of delay in passing the effect order, but the assessees are put to hardship in terms of cash flow.

Recommendation

Further, for speedy settlement of old cases, the following is recommended:

- Instructions to be issued for settlement of old cases on priority.
- Providing mandatory time limits for disposing of cases at the appellate forums.
- Increasing the number of benches of Authority for Advance Rulings to decide contentious issues before-hand and to avoid future litigation.

3. Grant of all pending income tax refunds

At present, the refunds for a particular assessment year are not issued if that particular year is chosen for further scrutiny by the Income Tax Authorities. Such prolonged litigation, adjustment of refunds against demand for other years etc. makes it almost impossible to obtain refund. Even in situations where refunds are due basis the orders of higher appellate authorities, the tax authorities delay in issuing refund cheques/warrants, after the passing of order is giving effect to appellate orders.

Though there is a provision under the Act which entitles the assessee to obtain the refund if any with interest in case of delay in processing of refund. However, such refund is calculated only up to the date when the refund is granted. Given the same, the assessees are put to hardship in terms of cash flow and are deprived of interest on the delayed returns and also assessee does not earn any interest on the 'interest on refunds' for the period of such delay of issuing of refund warrants by the assessing officers.

Recommendation

- Provision should be made for granting of refund within a specified time frame.
- There should be clear guidelines for adjustment of refund from past year's tax demand.
- Interest on refunds should be calculated up to the date of actual issuing of "refund warrants" and not only up to the date of granting the refund/date of order.
- Rate of interest on income-tax refund should also be increased from 0.5% to 1%.

4. Time limit for TDS Assessments of payments made to non-residents

Currently there is no time limit specified by the Act for initiating and completion of TDS proceedings under section 201 of the Act in respect of payments made to non-residents. Thus, the TDS returns are scrutinized by the assessing officers for past years without any limit, which has resulted into enormous difficulty for the assessees, as it becomes practically difficult for storage and retrieval of data beyond four years of filing of the TDS Returns.

Certain judicial precedents exist wherein which the time-limit has been laid down by the Courts for initiation of proceedings under section 201 of the Act in respect of payments made to non-residents.

Recommendation

A specific time limit should be fixed to initiate and complete the TDS proceedings under section 201 of the Act in respect of payments made to non-residents which should not be more than four years from the relevant financial year.

5. Mandatory time limit to pass rectification order/ dispose rectification applications

Though the current provisions of the Act presecribe for a six month time period for the tax officer (AO) to pass a rectification order yet it has been observed that it takes years to obtain such rectifiction done after rigorous follow-ups. This at times causes genuine hardship for the taxpayers to obtain necessary certainity of tax calculations and increase unnecessary burder on the assessee to simultaneously file appeal so as to not lose chance of getting relief.

Recommendation

A specific time limit should be fixed to pass rectification order by the AO and if such time-limit is expired the application of the taxpayer should be deemed accepted.

6. Time limit for disposal of appeal by CIT(A)

The current provisions of the Act does not prescribe any time limit for CIT(A) to dispose pending appeals. This at times causes genuine hardship for the taxpayers to obtain justice specially when there is jurisprudence for the favourable outcome.

Recommendation

A specific time limit should be fixed to initiate and complete the appellate proceedings under section 250 of the Act. Further, such provisions should also provide for time limit within which the assessing officer has to dispose any request for matter remanded back to him.

7. Insertion of clarification to avoid multiple deduction of tax in relation to same transaction

The current provisions of the Act require for withholding of tax on specified payments made to residents and non-residents at rates specified.

There can be cases when an intermediary collects such income only for and on behalf of another person, in whose right the income arises and is taxed. In such a scenario, no tax should be required to be withheld for payment to intermediary, who only acts as a facilitator to pass on such income to the person in whose right in actually arises.

However, applying the bare meaning of the current provisions, the tax authorities apply withholding tax provisions at each payment occasion and even in cost to cost reimbursement arrangement entered due to commercial difficulties. This results into multiple deduction of taxes on the same transaction and thus have resulted increased cash outflow, which negatively impacts genuine transactions.

Recommendation

The stream of payment routed through an intermediary should suffer withholding only once. Hence a clarification may be provided in the Act or by way of circular to provide for non-deduction of tax in case of payments to be made to intermediaries.

Similar circular already exists in case of payments made to shipping agents of non-resident ship owners, wherein it is clarified that TDS provisions shall not be applied on shipping agents, as they only act as an intermediary i.e. for and on behalf of non-resident ship owners.

8. Prosecution proceedings for delay in remittance of tax to the credit of the Central Government under section 276B of the Act.

Notices are being issued for initiation of prosecution proceedings under section 276B even in cases where tax deductors have deposited the tax deducted by them along with interest voluntarily after the stipulated time period but before any notice has been served upon them. It is causing undue hardships to genuine tax deductors as voluntary remittance of TDS before issue of notice clearly indicates the absence of any malafide intention on their part. It is a settled law that prosecution proceedings are appropriate only in cases where deductors deliberately do not deposit TDS, since mens rea or a presence of guilty mind is a sine qua non for attracting prosecution provisions.

Section 276B of the Income-tax Act, 1961 neither prescribes any threshold limit beyond which the prosecution provisions would be attracted, nor does it prescribe any retention period, after the expiry of which, prosecution proceedings would be initiated. Thus, absence of threshold limit and retention period under this provision of the Income-tax Act, 1961 causes undue hardship even to genuine tax deductors.

Recommendation

It is suggested that the matter may be looked into and appropriate measures may be taken so that prosecution proceedings under section 276B are not initiated against genuine tax deductors, who have deposited the TDS voluntarily after the prescribed time limit but before service of any notice by the department.

Certain threshold limits may be prescribed to avoid prosecution on immaterial values and to avoid genuine errors in estimations.

9. Income Computation and Disclosure Standard [ICDS]

The Central Government, with the objective to bring increased consistency in computation and reporting of taxable income, ease of doing business in India, reduced litigation, notified 10 "Income computation and disclosure standards" (ICDS), which are effective from 1st April 2016. The ICDS prescribes computation and disclosure requirements for computing "income from business and profession" and "income from other sources".

It has been clarified that the ICDS are not meant for maintenance of books of account but are to be followed for computation of total income. However, the present version of ICDS has been drafted without considering the concerns and practical challenges faced by the taxpayers.

Given the same, effectively such ICDS will have a direct bearing on the maintenance of books of account or separate records/ documents to keep track of changes due to ICDS implementation.

Recommendation

Applicability of separate standards under Income Tax (ICDS) is not required since IND AS already specifies detailed accounting and disclosure requirements. Further, income for tax purposes, in any case, is calculated/paid as per provisions of Income

Tax Act 1961. Besides, this is resulting into unnecessary compliance burden on the assessees. Hence separate ICDS are not required.

10. Intimation of estimated income, tax liability and payment of taxes (New Rule 39A)

Under the current provisions of the ITL, a taxpayer is required to voluntarily discharge part of its tax liability by way of advance tax in four instalments on an estimated basis for the relevant tax year. The taxpayer is entitled to revise its advance tax instalments based on any variation in its estimate of income during the tax year. In case of any shortfall in such instalments as compared to the actual tax liability, the taxpayer is liable to pay interest at a specified rate on such shortfalls.

On 19th September 2017, CBDT has issued a draft notification for insertion of a new rule 39A to impose a compliance requirement on company taxpayers and persons governed by the tax audit provisions to furnish certain details/ information, such as income under different heads of income, various deductions, tax liability, advance tax, gross turnover/ receipt etc, for the relevant period of the tax year and the corresponding period of the immediately preceding tax year.

The Rule is similar to the compliance requirement in vogue in the pre-1988 ITL regime, before it was omitted with effect from 1 April 1988, to save the taxpayer and the Tax Authority from enormous paperwork.

Recommendation

- The provision was earlier omitted to escape enormous paperwork. Accordingly, its re-introduction after 30 years will defeat the purpose of earlier omission.

- The taxpayers are already paying interest on late or short payment of advance tax. Accordingly, Rule 39A will result in an additional and unnecessary compliance burden on the assessee which would act as a barrier to the Government's policy of facilitating ease of doing business.

11. Mechanism to avail customs duty concession/ exemption on goods imported under trade agreements

Customs duty exemption/ concessions are available on goods imported from various countries wherein India has signed an FTA/CEPA/PTA with such countries. However, in order to avail the customs duty benefits on imports from these

countries, the importer is required to present a Certificate of Origin (COO) to the customs at the time of clearance of imported goods.

It is pertinent to note that the overseas suppliers many a times are not able to provide the Certificate of Origin as and when the goods are imported and there might be a delay of 7 to 10 days. However, importers are forced to get the shipments cleared without availing the benefit due to urgency and/ or to avoid demurrage charges etc. In such a case, importer has to forego the benefit though the shipments are eligible for duty exemption.

Recommendations

The submission of Certificate of Origin to the Customs authorities at the time of import is a procedural requirement. It is therefore suggested that the importers may be allowed to claim the duty benefit as follows:

- Exemption ab initio be granted to the importer on submission of an indemnity bond with a condition of filing the Certificate of Origin within a set timeline

- Alternatively, the duty benefit may be granted post clearance by way of refund in case the Certificate of Origin is delayed. The above practice is followed in other countries as well.

12. Insufficient time for demurrage free customs clearance at airports

The goods imported at various airports throughout the country are required to be cleared within 3 days. In case the goods are not cleared within 3 days, the importer is required to pay demurrage charges.

It is pertinent to note that the goods cannot, in the normal course of business, be cleared within 3 days due to a plethora of procedural requirements and accordingly demurrage charges levied lead to increase in the cost of import.

Recommendations

The time for demurrage free customs clearance at airports be increased from 3 to 5 days to provide importer at least a reasonable time for carrying out customs clearance procedure.

13. Timeline for submission of Bill of entry and penalty for late filling of Bill of entry

Authorized person has to submit Bill of Entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

Where the bill of entry is not filed within the time specified in sub-regulation (1) and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges for late presentation of the bill of entry at the rate of rupees five thousand per day for the initial three days of default and at the rate of rupees ten thousand per day for each day of default thereafter.

Considering the delay in filing of Bill of Entry may be on account of system failure, shortage of officers or some other issue which may not be in hands of importer which unnecessarily increases the cost of transaction. Most of the times the delay is due to ICE-Gate (internet portal).

Recommendation

Considering the above issue request you to increase the timeline for submission of Bill of entry to 3 days from the current 1 day following the arrival of goods at the port of import. If the filing of B/E is delayed due to system error, then penalty should be waived off.

14. Simplification of AEO registration

The AEO scheme is a trade facilitation scheme for ease of doing business considering international development, holder of this certificate is entitled for privilege, benefits, exemption and relaxation on account of import and export. This certificate is issued for period after that to be renewed.

This scheme is based on principle of sharing role and responsibility of customs with trade and industry and objective is to delink payment and clearance, to accept paperless declaration, increases efficiency, self-certification, earliest refund and drawback, request based examination/inspection etc.

The Ministry of Finance vide Circular No. 26/2018 – Customs dated 10th August 2018 has prescribed various measures for simplification and rationalization of processing of AEO-T1 application including development of web-based application for AEO-T1wherein an online AEO website has been developed under the aegis of DIC for online filing and processing of AEO-T1 applications.

In terms of direction of the Chairman (CBIC), legal compliance verification in respect of all AEO-T1 certified entities as on 17th May 2019, is being sought as a one-time measure.

Recommendation

For registering a firm under AEO, lot of documents being asked by the department which are available on Custom's portal. Hence, to facilitate the importers, same data can be used and current AEO registration process can be simplified.

Further, where due to unavoidable reasons, sometimes where there is a delay in filling of BOE for clearance of goods (i.e. IGM amendment, incorrect documents, delay in arrival information of shipments etc.), in such bona-fide cases, Customs department should not impose fine due to late filing of BOE to the organizations which are eligible for AEO.

15. No adjustment of refund from the demand already stayed by the AO

Generally, all the big corporates are assessed by the income tax department and may have pending litigations where stay has been granted upon payment of partial demand. Even after payment of partial demand, the balance demand appears on the system resulting in non-granting of refund of other assessment years.

Recommendation

It is suggested that a provision should be placed for resolving the concern of corporates that where any stay has been granted until the disposal of appeal, the refunds arising to taxpayer for any other assessment year or any other matter should not be adjusted against stayed demand.

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