EY Tax and Regulatory Alert

October 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 October 2021

- **Notification No. 35/2021- Central Tax dated 24.09.2021** issued by CBIC states that the details of bank account submitted in registration certificate shall be in name of the registered person and obtained on PAN of the registered person. Further, in case of a proprietorship concern, the PAN of proprietor shall also be linked with the Aadhaar number of proprietor.

- Aadhaar authentication of the registered person is made mandatory for the following purposes:

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

- Filing of refund application in FORM RFD-01 under rule 89 and rule 96.

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

  In case Aadhaar number is not assigned to person undergoing authentication, he is required to furnish certain documents for identification purposes which are elucidated in the notification.

- Relaxation in filing of **job work** returns (Form ITC-04) w.e.f. **October 1, 2021** (as recommended in 45th GST Council meeting) as follows:

- Half yearly return (as against quarterly return) for taxpayers with aggregate turnover during preceding FY above INR 5 crores.

- Yearly return (as against quarterly return) for taxpayers with annual aggregate turnover during preceding FY up to INR 5 crores.

- A registered person shall not be allowed to file FORM GSTR-1, if he has not filed FORM GSTR-3B for the preceding month.

  - In case where tax was wrongfully paid considering the transaction as intra-State supply instead of inter-State supply under Section under Section 77 of the CGST Act, 2017, refund can be filed electronically in Form GST RFD-01 before expiry of two years from the date on which this sub-rule came into force.

- **Circular No 162/18/2021- GST dated 25.09.2021** was issued by the CBIC to specify the clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the Central Goods and Services Tax Act, 2017.

- CBIC had clarified that the term 'subsequently held' referred to under Section 77(1) of the CGST Act and Section 19 of the IGST Act covers all the cases viz. Inter-State or Intra-State supply made by a taxpayer, later found Intra-State or Inter-State respectively, either by taxpayer himself or tax officer as a result of any scrutiny /assessment /audit /investigation , adjudication, appellate or any other proceeding.

- The refund can be claimed before expiry of 2 years from date of payment of tax under correct head as per amendment in Rule 89 of CGST Rules, 2017 r/w section 77 of CGST Act, 2017 and section 19 of IGST Act, 2017.

- Further , in case where the taxpayer has made the payment in the correct head before the date of issuance of Notification No.35/2021-Central Tax dated September 24, 2021, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e., from September 24, 2021.

- Moreover, in case a refund application filed is pending or disposed off before issuance of Notification No.35/2021-Central Tax dated September 24, 2021, it will be dealt according to Rule 89 (1A) of the CGST Rules, 2017.

- CBIC had also clarified that refund would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.

- **Instruction No 02/2021-22** was issued by CBIC in order to instruct the jurisdictional officers to issue the show cause notices, wherever required, for FY 2017-18, 2018-19 & 2019-20 as the time limit to file the Annual Return is already over and as a result, the time limit of three years/five years for issuance of orders under Section 73 & Section 74.

- The Board has instructed the jurisdictional officers to issue the SCNs well before the last date and take appropriate action to ensure timely completion of investigation(s).

- **Functionality introduced on GSTN for resumption of blocking of E-way Bill (EWB)** generation facility: The blocking of the E-way bill generation facility has now resumed on the EWB portal for all the taxpayers.

- Going forward, from the tax period August 2021 onwards, the System will periodically check the status of returns filed in Form GSTR-3B or the statements filed in Form GST CMP-08 as per the regular procedure followed before pandemic, and block the generation of EWBs as per rule. Hence, it is advisable to file the pending GSTR 3B returns/ CMP-08 Statement regularly.

Customs and Foreign Trade Policy (FTP)

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

- **Notification No 08/2021**- Central Tax (Rate) was issued by CBIC in order to charge GST on "Retro fitment kits for vehicles used by the disabled " at the rate of 5%. Certain other amendments in the rates were also introduced.

- **Circular No 23/2021- Customs dated 30.09.2021** was issued by CBIC subsequent to Notification No. 75/2021- Customs (NT) dated September 23, 2021 and Notification no 76/2021-Customs (NT) which explains various conditions and restrictions subject to which duty credit shall be used/transferred from Electronic Credit Ledger (ECL). Notification 75/2021- Customs (NT) specified the scheme guidelines and further specifies that scheme would take effect for exports from 01.01.2021.

- The circular clarifies that the scheme provides for remission amount in the form of transferable duty credit issued to a person and maintained in ECL in customs automated system in terms of Section 51B of the Customs Act inserted vide Finance Act,2020.

- The circular prescribes that for availing the scheme, an exporter is also required to make a declaration on the electronic shipping bill undertaking that it would abide by scheme provisions, not claim rebate/remission with respect to any duties/taxes/ levies already exempted for which remission is provided under any other scheme and it shall preserve documents for audit, etc.

- It is also provided that once Systems Directorate (SR) commences processing of RoDTEP, a scroll will be generated in the customs automated system which shall contain the necessary details of the export. The exporter shall have the option of combining the duty credits available in a scroll or a number of scrolls to generate e-scrips in the exporters electronic ledger.

- The exporter shall have an option to generate e-scrips within one year of generation of the scroll. If this option is not availed, by an exporter, the available duty credits in each scroll shall be combined Customs station-wise and sent by the Customs station to the electronic ledger of the said exporter as an e-scrip.

- It also mentions that e-scrip shall be freely transferable and shall be valid for a period of one year from the date of its generation, any duty credit in the e-scrip remaining unutilized at the end of this period shall lapse.

- The e-scrips shall be used for payment of duties of customs specified in the First Schedule to the Customs Tariff Act, 1975 i.e., the Basic Customs Duty only on imports made through customs automated system.

- The circular further emphasizes that the duty credit allowed under the scheme is subject to realization of sale proceeds within the period allowed by RBI.

- **Trade Notice No 19/2021-22 dated 01.10.2021** was issued by DGFT to extend date for manual/paper- based filing of Non-Preferential Certificate of Origin (CoO) to October 31, 2021.

- DGFT has required that all the agencies must ensure that the on-boarding exercise is completed latest by 31st October 2021 failing which the agencies may be de-notified from Appendix 2E.

- **Trade Notification No.28/2015-2020 dated 23.09.2021** was issued by DGFT to introduce an option to avail extension in Export Obligation for the advance authorizations, where the original or extended Export Obligations (EO) period is expiring between 01.08.2020 and 31.07.2021. The period is proposed to be extended till December 31, 2021 without any composition fees.

- However, this extension is subject to fulfilment of 5% additional export obligation in value terms (in free Foreign Exchange) on balance exports on the date of expiry of original/ extended export obligation period.

- In case where the Advance Authorization Holder has already obtained EO extension upon payment of composition fee, the refund of composition fee will not be permitted.

- **Notification29/2015-2020 dated 23.09.2021 -** Vide this notification, DGFT notifies list of services and respective rates under Service Exports from India Scheme (SEIS) claims on services rendered in FY 2019-20.

- It was also stated that for SEIS claim for FY 2019-20, the service providers of eligible services shall be entitled to Duty Credit Scrip at notified rates (as per Annexure 3X of the notification) on the net foreign exchange earned, with the total entitlement capped at INR 5 Crore per IEC for FY 2019-20.

- For SEIS claim for FY 2019-20, the deadline for filing the online application as per ANF 3B shall be 31.12.2021.

- **DGFT Notification No.33/2021 - Customs dated 28.09.2021 -** As per the notification, the Validity of Foreign Trade Policy 2015-2020 is extended up to 31st March. 2022.

- **Public Notice 25/2015-2020 dated 28.09.2021** was issued by DGFT was issued to extend the validity of the existing Handbook of Procedures, 2015-20 up to 31st March, 2022.

Direct Tax

Part-A Key Direct Tax updates

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

1. SC ends general extension in limitation period granted due to COVID-19 pandemic for various proceedings (including filing) before courts/tribunals in India (TS-901-SC-2021)

Background

- In wake of outbreak of COVID-19 pandemic, the SC had suo-moto taken cognizance of the situation and extended the period of limitation prescribed under general laws or special laws (Central or State law) for filing of petitions/applications/suits/appeals/all the proceedings in all courts/tribunals across India with effect from 15 March 2020 till further orders (March 2020 order).

- Since the situation appeared to be normalized, the SC vide its order dated 8 March 2021 (March 2021 order) had put an end to the general extension granted vide March 2020 order and revised its guidelines as under:

  - In computing the period of limitation for filing of any suit/appeal/application/other proceedings, the period from 15 March 2020 till 14 March 2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15 March 2020 if any, shall become available with effect from 15 March 2021.

  - For cases where limitation period is expired between 15 March 2020 to 14 March 2021, a general period of 90 days is to be granted. If balance period left is more than 90 days, then such higher period should be allowed.

  - However, due to sudden outburst of the second wave of COVID-19 pandemic, the SC, on account of representations made by various stakeholders, in April 2021, had recalled the March 2021 order and restored its March 2020 order and further extended the period of limitation indefinitely (April 2021 order).

  - Since the present situation in the country appears to be normal, the SC has ended general extensions vide order dated 23 September 2021 and provided certain guidelines as well.

SC ruling:

- In a hearing conducted through video conferencing wherein, Attorney General of India, representatives of Election Commission of India, The Supreme Court Advocates on Record Association and others participated, it was agreed that there was no requirement for continuance of March 2020 Order. Hence, general extension in the period of limitation need not be continued any further.

- SC, accordingly, amongst others, has issued the following directions:

  - The period from 15 March 2020 till 2 October 2021 shall be excluded while computing the period of limitation for any suit/appeal/application/other proceedings under any laws prescribing period of limitation for institution/termination of proceedings in all courts/tribunals all over India.

- In cases where limitation period would have expired between 15 March 2020 and 2 October 2021, an additional period of 90 days from 2 October 2021 shall be granted, regardless of the balance limitation period remaining as on 15 March 2020.
- However, where the actual balance of limitation period as on 15 March 2020 is greater than 90 days, such longer period shall apply.

2. OECD releases statement updating July conceptual agreement on BEPS 2.0 project

Background

- In March 2018, the OECD released the document Tax Challenges Arising from Digitalisation — Interim Report 2018 as a follow up to 2015 final report on Action 1 of the project on Base Erosion and Profit Shifting. However, the 2018 Interim Report does not include any specific recommendations.

- On 1 July 2021, the OECD released a "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy" (July Statement), reflecting the agreement of 130 of the member jurisdictions of the Inclusive Framework on some key parameters with respect to both pillars.

- On 8 October 2021, the OECD published a statement indicating that the Inclusive Framework has agreed on a two-pillar solution to address the tax challenges arising from the digitalization of the economy.

Important terms

Pillar One – This addresses the allocation of taxing rights between jurisdictions and considers various proposals for new profit allocation and nexus rules.

- The aim of Pillar One is to reach a global agreement on adapting the allocation of taxing rights on business profits in a way that expands the taxing rights of market jurisdictions. In order to achieve this, Pillar One contains three elements:

  - **Amount A**- New taxing rights for market jurisdictions over a share of deemed non-routine profits of a multinational enterprises group (MNE)

  - **Amount B** - A fixed return for certain baseline marketing and distribution activities taking place physically in a market jurisdiction

  - **Tax Certainty**- Dispute prevention and resolution mechanisms proposed for Amount A

- **Pillar Two** – It involves the development of a coordinated set of rules to address ongoing risks from structures that are viewed as allowing multinational enterprises to shift profit to jurisdictions where they are subject to no or very low taxation.

Key updates

<u>Pillar One</u>

- Pillar One will apply to multinational entities (MNEs) with global turnover above €20 billion and profitability above 10%. These thresholds will be calculated using an average mechanism (this mechanism has not been described in detail).

- For the MNEs covered above, 25% of "residual profits" (viz. profit in excess of 10% of revenue), would be allocated to market jurisdictions where there is nexus using revenue-based allocation key.

- In July statement it was agreed that a mandatory and binding dispute resolution mechanism will be available for all issues related to Amount A.

- Further it is provided that, for certain developing countries, an elective binding dispute resolution mechanism will be available.

- Multilateral Convention (MLC) will be developed to implement the amount A and it will be opened for signature in 2022, with Amount A coming into effect in 2023. This MLC shall introduce a multilateral framework for all jurisdictions that join the global consensus, regardless of whether a tax treaty currently exists between those jurisdictions.

  - Where a tax treaty exists between parties to the MLC, that tax treaty will remain in force and continue to govern cross-border taxation outside Amount A, but the MLC will address inconsistencies with existing tax treaties to the extent necessary to give effect to the solution with respect to Amount A

  - Where there is no tax treaty in force between parties, the MLC will create the relationship necessary to ensure the effective implementation of all aspects of Amount A.

- Further, the October statement acknowledges that countries may need to make changes to domestic law to implement the new taxing rights over Amount A. In this regard, model rules for domestic legislation shall be developed by early 2022

- The MLC will require all parties to remove all Digital Services Taxes (DST) and other relevant similar measures with respect to all companies, and to commit not to introduce such measures in the future.

- No new DST or other relevant similar measures will be imposed on any company from 8 October 2021 and until the earlier of 31 December 2023 or the coming into force of the MLC

- As per October guideline Amount B (i.e. fixed return for baseline marketing and distribution activities), final deliverables is targeted to be completed by end of 2022.

Target deadlines for Pillar One are as under:

- **Early 2022 –** Text of an MLC and Explanatory Statement to implement Amount A of Pillar One

- **Early 2022 –** Model rules for domestic legislation necessary for the implementation of Pillar One

- **Mid 2022 –** High-level signing ceremony for the MLC

- **End 2022 –** Finalization of work on Amount B for Pillar One Pillar Two

<u>Pillar Two</u>

- Minimum tax rate for purposes of the Global anti-Base Erosion Rules [i.e. Income Inclusion Rule (IIR) and Undertaxed Payments Rule (UTPR)] is fixed at the rate of 15%.

- The nominal tax rate used for the application of the Subject to Tax Rule (STTR), that allows jurisdictions to impose a withholding tax on certain related-party payments, are taxed at a low adjusted nominal rate will be 9%.

- Exclusion from the Undertaxed Payments Rule (UTPR) will be available for MNEs in the initial phase of their international activity (i.e., MNEs with a maximum of €50 million tangible assets abroad that operate in no more than five other jurisdictions during the first five years after the MNE comes into the scope of the GloBE rules).

- A de minimis exclusion is provided for those jurisdictions where the MNE has revenues of less than €10 million and profits of less than €1 million

- In respect of existing distribution tax systems, there will be no top-up tax liability if earnings are distributed within four years and taxed at or above the minimum level.

- Formulaic Substance-based Carve-Outs is set at 5% of the carrying value of payroll and tangible assets. During the transition period of 10 years, exclusion will be 8% of the carrying value of tangible assets and 10% of payroll, declining annually for the first five years by 0.2 percentage points, and for the last five years by 0.4 percentage points for tangible assets and by 0.8 percentage points for payroll.

- Pillar Two will be brought into law in 2022, will be effective in 2023. The entry into effect of the UTPR has been deferred to 2024.

The implementation plan, including target dates as below:

  - **November 2021** – Model rules to define scope and mechanics for the GloBE rules

  - **November 2021** – Model treaty provision to give effect to the subject to tax rule

  - **Mid 2022** – MLI for implementation of the STTR in relevant bilateral treaties

  - **End 2022** – Implementation framework to facilitate coordinated implementation of the GloBE rule

  - **2023** – Implementation of the Two-Pillar Solution

Key Regulatory amendments

This section summarizes the regulatory updates for the month of October 2021

1. **Department of Economic Affairs ('DEA'), Ministry of Finance ('MoF') amends Foreign Exchange Management (Non-debt Instruments) Rules, 2019**

- In terms of the extant regulations, foreign direct investment (FDI) upto 49% is permissible under the automatic route for "Petroleum refining by the Public Sector Undertakings (PSUs), without any disinvestment or dilution of domestic equity in the existing PSUs."

- As per the amendment, in case an 'in-principle' approval for strategic disinvestment of a PSU has been granted by the Government, FDI upto 100 % under the automatic route is permitted.

Source: Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2021 dated 05 October 2021

2. **DEA notifies increase in sectoral cap for FDI in telecom sector from 49% to 100% under automatic route**

- The DEA has amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 notifying the increase in sectoral cap for FDI in the telecom sector under the automatic route from 49% to 100%.

- As per the erstwhile regulations, FDI in the telecom sector was permitted upto 49% under the automatic route, and beyond 49% upto 100 % under government approval route.

- As per the amendment, sectoral cap of FDI in the telecom sector has been increased to 100% under the automatic route.

Source: Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2021 dated 12 October 2021

3. **Reserve Bank of India ('RBI), amends Foreign Exchange Management (Debt Instruments) Regulations, 2019**

- RBI has amended Schedule 1 of Foreign Exchange Management (Debt Instruments) Regulations, 2019.

- As per the amended regulations, foreign portfolio investors have been granted permission to purchase debt securities issued by Infrastructure Investment Trust and Real Estate Investment Trust.

Source: Foreign Exchange Management (Debt Instruments) (First Amendment) Regulations, 2021 dated 13 October 2021

Part B- Case Laws

Goods and Service Tax

1. **M/s Fine Electro Coating (Maharashtra AAR- GST ARA-81/2019-20/B-70)**

Subject Matter: Ruling wherein it was held that process carried for Cathodic Electro Deposition (CED) coating and powder coating auto parts, vehicle parts, machine parts, etc. shall be treated as service as per Schedule II and the same would also constitute as Job-work.

Background and Facts of the case

- The applicant is engaged in rendering premium CED coating and Powder Coating services. The firm also undertakes metal finishing coating services for various products and further offers: (a) CED Coating for metallic components & auto parts (b) Coating on General Industrial equipment etc.
- The firm receives products (e.g. Auto parts) from its customers through delivery challan and undertakes Phospheting treatment and then coating with the use of Powder gun machine.
- The applicant had contended that the said transaction would fall within the ambit of supply of job work services as per Section 2(68) of the CGST Act,2017 as no new product emerges after the processes are carried on the products and the basic characteristics are not lost.
- Owing to the provisions envisaged under Schedule II of the Act, the applicant had contended that the said supply should be treated as supply of services even if goods are used for providing such services.
- In respect of the above, the following question was placed before the AAR:
  - Whether the process followed will be treated as a Service as per Schedule II-Point 3 and the activity to be treated as Job Work?
  - Whether Notification No 20/2019 Central Tax (Rate) New Delhi, 30th September, 2019- where GST on Job work is reduced to 6% from 9% is applicable to the firm?

Discussions and findings of the case

- The Authority had referred to the definition of 'Job-Work' and 'manufacture' under the GST law and had observed that job work means any treatment or process undertaken by a person on goods belonging to another registered person whereas manufacture means processing of raw materials or inputs in any manner that results in emergence of a new product having a distinct name, character and use.
- Accordingly, the Authority had observed that the coating process only increases the life span of the said products and no new product emerges after the process.
- The applicant had also resisted that the condition under Section 143(1) (a) of the CGST Act, 2017 which states that the goods have to be returned within one year, was also satisfied by them.
- Correspondingly, the Authority observed that the applicant is only a job worker who carries out processes on the goods supplied by the principal.
- Further, the Authority had referred to the Notification No. 11/2017-Central Tax Rate dated 28.06.2017 amended by Notification No. 20/2019- Central Tax (Rate) dt. 30.09.2019 and held that the services provided by the applicant does not fall under (i), (ia), (ib), (ic) of the said notification. Hence, the subject supply of services will be

covered by the residuary entry at item (id) of the said notification, namely, Services by way of job work other than (i), (ia), (ib) and (ic)

- The Authority also drew reference to the judgement of Hon'ble Supreme court in the case of Maruti Suzuki Limited Vs. CCE, New Delhi, 2015 (318) F..LT 353 (S.C) wherein it was held that Electro Deposition (E'D) Coating of anti-rust treatment to increase shell life of various component is merely a processing activity and not a complete manufacturing activity.

Ruling

- In light of the above observations by the Authority, it was held that the processes followed by the Applicant will be treated as job work services by the virtue of Point 3 of Schedule II of the Act.

- Furthermore, the reduced rate of 6% as per Notification No. 20/2019- Central Tax (Rate) dt. 30.09.2019 would be applicable on such services.

2. Aludecor Lamination Private Limited (GST AAR Maharashtra- GST ARA- Application No 78 dated 12.12.2019)

Subject Matter: Ruling wherein it was held that Aluminium Composite Panel/Sheet (Sandwich Panel/ACP Sheet) manufactured by applicant is covered under HSN Code 7606 with applicable rate of tax being 18%.

Background and Facts of the case

- The applicant is engaged in manufacturing of Aluminium Composite Panel/ sheet, (herein after referred as "**ACP Sheets" or "Sandwich Panel").**

- The applicant had contended that the product is "**Plastic sheet laminated with Aluminium Foils".**

- The Aluminium composite panels are sandwiched type panel consisting of Nontoxic polythene core firmly laminated with thin Aluminium sheet on top and bottom (One Side affixed with adhesive polythene film for protection) and is being used as Industrial Product.

- Further, the Applicant had expounded the ACP Manufacturing Process wherein the plastic adhesive film is melted and helps Aluminium foils/coils to be laminated on the plastic sheet extruded.

- The Applicant had further stated that the finished goods are used in various industries including automobile Industries in manufacturing of passenger motor vehicles.

- It was stated by the Applicant that during the VAT period, the product was sold by him under Central Excise Tariff Heading(CETH) 3920. The Applicant had also asserted that once, the same article was imported by him from out of India and the documents related to import also stated that the product is covered under CETH 3920.

- CETH 3920 is for classification of Other plates, sheets, films, foil and strip of plastics, Non-cellular and not reinforced, laminated, supported or similarly combined with other material, whereas CETH 7606 is for classification of Aluminium plates, sheets and strip, of thickness exceeding 0.2 mm. Moreover, CETH 7610 is for classification of Aluminium structures (Excluding prefabricated building of heading 9406) and parts of structures (For example, bridges and bridge sections, towers, lattice masts, roofs, roofing, frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns) Aluminium plates, roads, profiles, tubes & the like, prepared for use in structure.

- The Jurisdictional officer had alleged that the said product would be classifiable under CETH 7606 as the same seems to be the most appropriate classification.

- In respect of the above, the following questions were placed before the AAR:

  - Whether the Aluminium Composite Panel/sheet is covered under: HSN Code 3920 or HSN Code 7606 or HSN Code 7610?

  - And what is the rate of tax on the same under CGST Act and SGST Act respectively?

Discussions and findings of the case

- The Authority referred to the description of articles classifiable under Chapter 39 which is for classification of plastic and articles thereof. The Authority further emphasized that the said products are plastic sheets laminated with aluminium sheets and held that in view of Tariff Heading 3920 it is clear that the impugned products are not covered under Tariff Heading 3920.

- The Authority further observed that the heading 7610 covers Aluminium structures and its parts and held that from the facts and submissions it is apparent that the subject product is not classifiable under CETH 7610.

- The Authority then further observed that CETH 7606 covers ALUMINIUM PLATES, SHEETS AND STRIP, OF A THICKNESS EXCEEDING 0.2 mm. Basis the various uses of the product, essential user characteristics are given by the aluminium lamination. Moreover, the Top and Bottom Aluminium Foil thickness in the subject products ranges upto 0.5 mm. Thus, the Authority discerned that the subject product would essentially exceed the thickness of 0.2 mm.

- The Authority also referred to the case of **R K Corporation V/s Government of Karnataka & Others (2009) 21 VST 386 (KAR).**Post this judgement, a clarification dated 02.02.2006 was issued by the Commissioner stating that the said product i.e. Aluminium Panel Sheets would fall under Central Excise tariff Code 7606.11.90 and not Heading 3920.

Ruling

- Basis the above observations, the AAR held that the the Aluminium Composite Panel/Sheet would be covered under HSN Code 7606.

- Further, the rate of tax on Aluminium Composite Panel/Sheet 18% (9% each under CGST and SGST).

3. M/S Rajasthan Prime Steel Processing Center Pvt. Ltd (EXCISE APPEAL NO. 50371 OF 2019)

Subject Matter: Ruling wherein the Hon'ble CESTAT had held that amount of compensation received by manufacturer of auto parts, for the loss on account of the cancellation of contract for supply of the auto parts, would be included in the transaction value on sale of the parts sold to other parties at a lesser value.

Background and Facts of the case

- The appellant is engaged in the manufacture of auto parts falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 19855. It had availed and utilized CENVAT credit on inputs, capital goods and input services for discharging its output duty liability.

- Such auto parts manufactured by the appellant were sold to several buyers spread throughout the country. One such buyer of the appellant was Honda India, with whom the appellant entered into a contract for supply of auto parts and other products used in the manufacture of motor vehicles.

- The appellant had further asserted that it imported raw material like Flat Rolled products in open vessels from various countries to save on transportation cost. However, in view of urgent requirement of Honda India,the appellant had airlifted the raw material in full container load for the manufacture of auto parts for Honda, Thailand.

- Out of the raw material air-lifted by the appellant, some quantity was also used for manufacture of parts for the 2CV model for Honda India but due to discontinuation of the said model in 2012, Honda India cancelled the order and did not take delivery of the parts.

- Accordingly, this resulted in accumulation of the finished goods to the appellant which were sold as scrap, resulting in loss to the appellant but part quantity of the unutilized raw material, which could not be used in manufacture of auto parts, was cleared at a lesser value to other buyers on reversal of credit.

- The appellant also raised two debit notes, on Honda India to cover the loss suffered by the appellant due to cancellation of the order.

- However, a show cause notice dated 29.03.2017, followed by a corrigendum dated 07.11.2017, was issued to the appellant proposing to demand central excise duty amounting to Rs. 60,75,728/-, alleging that the consideration received by the appellant from Honda India under the guise of compensation was liable to be included in the transaction value of goods.

- The appellant filed a reply to the show cause notice, pursuant to which the Additional Commissioner confirmed the demand with interest and also imposed equal penalty upon the appellant .

- This order was challenged by the appellant before the Commissioner (Appeals) who, partially allowed the appeal by confirming the proposed demand but extended the benefit of cum-duty price.

- Thereafter, an appeal had been filed before the CESTAT to assail the order passed by the Commissioner (Appeals) to the extent it has confirmed the demand.

Discussions and findings of the case

- The Appellant had contended that the amount received by the applicant from Honda to compensate for the loss was in the nature of liquidated damages and not in connection with sale of goods to independent buyers. Hence, this must not be included in the transaction value.

- The appellant further held that compensation received from Honda India cannot be included in the transaction value of the goods sold to independent buyers (other than Honda India).

- In opposition to the above, the revenue contended that the appellant had received an amount from Honda India in respect of the goods sold to a third party at a lesser value and such amount has been paid to compensate the loss occurred due to non-lifting of the said goods by Honda India.

- Thus, central excise duty was chargeable on this amount, in addition to the amount charged by the appellant for selling the goods, as the amount received is directly relatable to the goods sold at a lesser price and the amount received by the appellant is required to be considered to arrive at the price of the goods for the purpose of payment of excise duty.

- The Hon'ble Tribunal drew reference to Section 4(1) of the Excise Act which deals with valuation of excisable goods for purposes of charging of duty of excise. It provides that where the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall be, if the assessee and the buyer of goods are not related and the price is the sole consideration for the sale, be the transaction value.

- Accordingly, the Hon'ble CESTAT had observed the business arrangement between the appellant, Honda India and the buyers and noticed that the appellant received some amount from the buyers of scrap and some amount from Honda India for the value of the auto parts sold to them.

- It further stated that the contention of the appellant that the amount cannot be included in the transaction value since the consideration must flow only from the buyer to the seller of goods, in view of the business arrangement arrived at in the present case, cannot be accepted.

- The Hon'ble Tribunal further held that it is clear that the amount received by the appellant from Honda India has flown indirectly from the buyers.

Ruling

- In light of the above observations, the appellant held that there was no error in the order passed by the Commissioner (Appeals), hence, the compensation received from Honda would be added to the transaction value for the purpose of calculating the excise duty.

Part B – Case Laws

Direct Tax

1. Ashok Kumar Agarwal & Others v. Union of India (UOI) & others (Writ Tax No. 524 of 2021)

Subject matter: Allahabad HC quashes reassessment notices issued from April to June 2021 following provisions of old regime of reassessment.

Background

- Provisions for reassessment under Income Tax Law (ITL):

  - Prior to the amendment made vide Finance Act (FA) 2021 i.e. under the old regime of reassessment, tax authority could reopen the past assessments if there is reason to believe that income has escaped assessment.

  - Though there is no requirement in the statutes to supply reasons recorded to the taxpayer, the **Supreme Court (SC) in the case of GKN Driveshafts v. ITO** provided the guidelines (such as to supply reasons to taxpayer if asked, objections to be raised by taxpayer, if any, disposal of objections by speaking order, etc.) for conduct of reassessment proceedings under old regime of reassessment. Admittedly, these provisions were applicable till 31 March 2021.

  - FA 2021 has brought new provisions for conducting reassessment proceedings under the ITL (new regime of reassessment) by substituting the old regime. The new regime of reassessment is made effective from 1 April 2021.

  - Amongst other changes, the new regime of reassessment provides a separate mechanism to be followed by tax authority before issuing the notice for opening assessment and is materially different than the procedure laid down under old regime of reassessment till 31 March 2021.

  - Under the new regime of reassessment, tax authority is required to **(a)** conduct pre-notice inquiry on the basis of information in tax authority's possession which suggest that income has escaped assessment **(b)** provide an opportunity to taxpayer to support why reassessment should not be done and **(c)** pass an order if tax authority proceeds for issuing notice for reassessment. Additionally, there is obligation on tax authority to obtain approval from higher authorities at multiple stages under the new regime of reassessment.

Relaxation provided under the Act

- With a view to relieve the various compliance burden of the taxpayers, the Parliament had promulgated an Ordinance in March 2020 which was succeeded by Relaxation Act in September 2020 (w.e.f. March 2020) to relax various compliances under various laws including the ITL both for the taxpayers and tax authority.

- Relaxation Act provided for certain relaxation on the part of tax authority as well. From the ITL perspective, it provided that where time limit for completion of any proceedings, passing order, issuance of notice, intimation, notification, sanction, approval or by whatever name called which falls between 20 March 2020 to 31 December 2020 (Disruption Period), then compliance done in that regard on or before 31 March 2021 (Compliance Date) shall be considered as being complied within the due date.

- Relaxation Act has granted powers to Central Government (CG) for further extending the Disruption Period or Compliance Date, if required. Pursuant to these powers, CG has time to time provided following extensions "in relation to issuance of reassessment notice" vide various notifications as under: (Refer below)

S. No.	Notification No.	Relevant provisions of the notification in relation to reassessment of past TYs
1	Notification No. 93/2020 dated 31 December 2020	► Disruption Period was extended till 30 March 2021. In other words, the extended Disruption Period was 20 March 2020 to 30 March 2021 (both dates inclusive). ► Compliance Date was not extended and was kept as 31 March 2021 itself
2	Notification No. 20/2021 dated 31 March 2021 (March Notification)	► Disruption Period was further extended to include time-barring date being 31 March 2021. Therefore, the extended Disruption Period was from 20 March 2020 to 31 March 2021 (both dates inclusive). ► Consequently, Compliance Date was extended from 31 March 2021 to 30 April 2021 ► In the context of issuance of notice for reassessment within extended period, a specific Explanation was introduced to state that provisions for old regime will apply. This Explanation appears to suggest that while notice for reassessment can be issued within the extended time period (where new regime is applicable), but the old re-assessment procedure provisions shall apply. ► The validity and scope of this Explanation was a subject matter of dispute before Allahabad HC.
3	Notification No. 38/2021 dated 27 April 2021 (April Notification)	► No change in Disruption Period ► Compliance Date was extended from 30 April 2021 to 30 June 2021 ► The impugned Explanation introduced in March Notification was reproduced in this notification also.

Facts of the Case

- The HC was dealing with multiple writs where various taxpayers challenged the validity of reassessment notices issued after 31 March 2021 (i.e. between April to June 2021) following the procedure of old regime of reassessment for reopening different tax years ranging from tax year (TY) 2012-13 to 2016-17.

- Since the issue at hand was a purely a legal issue, the HC did not elucidate the facts of individual petition.

Issue

- The issue before the HC was the validity of the reassessment notices issued after 31 March 2021 (i.e. from April to June 2021) following the old regime of reassessment under the garb of impugned Explanation in March Notification and also in 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.

- A challenge was also raised with respect to the validity and scope of Explanation appended to March Notification and April Notification as being beyond the powers and authority provided under Relaxation Act.

Taxpayer's contentions

- Upon the enforcement of FA 2021, the old regime of reassessment stood repealed and replaced by the new regime of reassessment. The act of substitution obliterates the old provisions from the statutes and make them dead and unenforceable.

- Relaxation Act only sought to enlarge limitation with respect to the pre-existing provisions under ITL and it could not resurrect the old law that was already dead as on 1 April 2021. In other words, procedural amendments cannot recreate a non-existing substantive law which was substituted by FA 2021.

- Relaxation Act was enacted solely to extend the limitation under the pre-existing provisions, as they stood prior to the amendment made by FA 2021. There is no saving clause in the later act i.e. FA 2021 to extend the life of old law.

- Delegated legislation can be only for the purpose of enlarging limitation under a valid law and such delegation could not be exercised to resurrect the provision of law that stood omitted from the statutes by virtue of its substitution made by FA 2021 w.e.f. 1 April 2021. The validation of the April notification would be tantamount to resurrecting a dead law and is a clear case of legislative overreach by the delegate which is ultra vires the Constitution of India.

- Relaxation Act was enforced (in September 2020) much before the enforcement of FA 2021 (w.e.f. 1 April 2021). Therefore, Relaxation Act could not have visualized the impact of the provisions of FA 2021, if any. Therefore, the notifications issued under Relaxation Act cannot be read to remedy the situation arose upon the enforcement of FA 2021

- The procedure prescribed under new reassessment regime (effective from 1 April 2021) is mandatory without any exception. If Explanation in March Notification and April Notification is held to be valid after 1 April 2021, it would create a conflict of laws solely on account of that delegated legislation, the mandatory provision of the principal legislature (i.e. ITL as amended by FA 2021) would have been rendered ineffective or inoperative.

- March Notification and April Notification only provide for an extension of time, limited to the permissions contained in Relaxation Act.

- Since Relaxation Act itself does not seek to save the pre-existing provisions of the ITL, notwithstanding any change of legislation, such an intent cannot be created by those notifications.

- Both substantive and procedural provisions under ITL are dynamic since material amendments are made every year through enactment of the Finance Act. ITL suffers a process of continuous change and there is no inherent logic or principle embedded to save a pre-existing provision despite substitution of the provision in subsequent year in absence of any specific saving clause.

- Upon enforcement of FA 2021, the entire situation and dynamics of statutory law of reassessment underwent a change. While Relaxation Act did not undergo any statutory amendment or change upon enactment of FA 2021, the latter Act substituted the old regime of reassessment.

- Under Relaxation Act, different effective dates have been specified for different provisions. There was nothing in Relaxation Act (and could not have been) to put the provisions of FA 2021 in abeyance which were yet to be born.

- While enacting FA 2021, the Parliament was aware of the ground realities. The Parliament was also aware of the existing statutory laws both under the ITL as well as Relaxation Act. Still, it chose to enforce the new scheme for reassessment without any saving clause. Thereby it brought an end to the possibility of any fresh proceeding being initiated under the erstwhile reassessment provisions.

- Relaxation Act and FA 2021 do not conflict with each other. Therefore, there is no repugnancy between the two. While Relaxation Act takes care of the law as it pre- existed till 31 March 2021 i.e. before the enactment of FA 2021 and FA 2021 operates w.e.f. 1 April 2021.

- The repeal is inferred by necessary implication if the provisions of the later law are so repugnant to the provisions of the earlier law that the two cannot stand together. There appears to be no clear repugnancy as both laws (i.e. Relaxation Act and FA 2021) operate in different time spaces.

- Relaxation Act is limited to extend the time qua reassessment proceedings, validly initiated under the unamended ITL up to 31 March 2021. It neither creates any jurisdiction nor it confers the validity on any reassessment proceedings instituted under the unamended law, after the enforcement of FA 2021.

- A non-obstante clause is to be read in a manner as to allow for an overriding effect viz-a-viz other laws or such laws as may be specified in that non-obstante clause. A non-obstante clause cannot be interpreted to cause effect which was not contemplated. The non-obstante clause can only be applied to a proceeding that was already in existence when the said clause confronted the ITL as amended by FA 2021. However, no such proceedings were pending as 31 March 2021 and hence it can never be said that there were any proceedings of re-assessment pending on the date when the non-obstante clause may be applied.

- The recent Chhattisgarh HC decision in case of Palak Khatuja (supra) which upheld the validity of similar notices does not lay down law correctly and is contrary to settled legal propositions. The HC therein has over simplified impact of Relaxation Act and gone by practicality of life and completely ignored the impact of provisions of law.

- The HC construed impact of Explanation issued under delegated authority as having the effect of providing a saving clause for old regime and suspending operation of the new provision enacted under FA 2021 till 30 June 2021 which is clearly contrary to legal proposition that delegated authority cannot overreach principal provision of Act.

Tax authority's contentions

- The extension of limitation granted or, the strict rule of limitation relaxed by Relaxation Act was for the benefit of the taxpayers as also the statutory authorities. These extensions were granted by way of legislative acceptance of the hard realities obtaining from the spread of COVID-19, which largely disabled normal human activity and prevented statutory authorities from discharging their statutory obligations in accordance with law and obstructed and/or prevented the taxpayers from making compliances and pursing their rights.

- The constitutional validity of a law may be challenged on only two grounds – **(a)** there was legislative incompetence in enacting the law or **(b)** the law impinges on any of the fundamental rights enshrined in the Constitution of India. No such grounds are being raised in the present case. There always exists a presumption in favour of the constitutionality of the law and that no enacted law may be struck down on a simple reasoning of it being arbitrary or unreasonable.

- Strict application of the rule of limitation must be ensured while dealing with taxation legislation.

- Once limitation had been extended in favour of the taxpayer to submit replies and to make other compliances, correspondingly, extension of time was granted to tax authority to initiate, amongst others, reassessment proceedings, beyond the normal limitation of time. This is the real intention of Relaxation Act read with notifications.

- Relaxation Act contains a non-obstante clause which clearly overrides any period of limitation or any disability arising from such period of limitation as may have been prescribed under the ITL. Thus, a non-obstante clause has an overriding effect against all other provisions of general application, and it cannot be controlled or overridden, unless specifically permitted.

- If any ambiguity exists or is perceived on account of enforcement of FA 2021, it must be examined, and the law may be interpreted by applying mischief rule. The mischief being the unforeseen and difficult circumstances arising from spread of pandemic COVID-19, Relaxation Act only sought to remedy the same. Examined in that light, the extension of limitation to issue a reassessment notice under the TL, is incidental to the mischief addressed.

- Unless free play is given to the non-obstante clause of Relaxation Act read with the notifications issued thereunder, a wholly lop-sided situation would arise whereby the taxpayer would remain saved from adverse consequences despite non-compliance shown but the statutory authorities would be hand-tied and restrained from taking any corrective action, solely on account of force majeure.

- Explanations in the March Notification and April Notification are only clarificatory. Even if those Explanations were to be ignored, by virtue of the clear language of Relaxation Act, the time limits specified under the ITL (prior to its amendment by FA 2021), stood extended by the Parliament. It is only with respect to such extension that a power was delegated on the CG to grant further extension/s.

- Therefore, the Explanations do not create any new law and they do not, in any way, offend the existing law. Hence, the argument that the delegated power has been exercised in excess of the delegation made, is plainly erroneous and unfounded.

HC's order:

- The HC quashed the reassessment notices issued by tax authority from April to June 2021 following the procedure of old regime of reassessment in the wake of provisions of new regime enacted w.e.f. 1 April 2021 on following grounds:

    - By substituting the provisions of the ITL vide FA 2021 w.e.f. 1 April 2021, the old provisions were omitted from the statutes and replaced by fresh provisions. Substitution omits and thus obliterates the pre-existing provision and in absence of any saving clause shown to exist either under Relaxation Act or FA 2021, there exists no presumption in favour of the old provision continuing to operate for any purpose beyond 31 March 2021.

    - In Relaxation Act and FA 2021, there is absence of any express provision in itself or to delegate the function, to save the old reassessment procedure. Plainly, Relaxation Act is an enactment to extend timelines only. Consequently, it flows from the above that from 1 April 2021 onwards, all references to issuance of notice contained in Relaxation Act must be read as reference to the substituted provisions only. Equally, there is no difficulty in applying the pre-existing provisions to pending proceedings as on 31 March 2021. Hence, there is no disharmony in the two provisions.

    - Assumption of valid jurisdiction is pre-requisite for reassessment under the old regime and new regime of reassessment. As a fact, no jurisdiction had been assumed by tax authority against any of the petitioners, under the unamended law before 1 April 2021. Hence, no time extension could ever be made under Relaxation Act, read with the Notifications issued thereunder.

- The saving due to the non-obstante clause of Relaxation Act could arise only if jurisdiction had been validly assumed before 1 April 2021.

- Non-obstante clause in Relaxation Act does not speak of saving any provision of law. It only speaks of saving or protecting certain proceedings from being hit by the rule of limitation.

- Even otherwise the word 'notwithstanding' creating the non-obstante clause, does not govern the entire scope of Relaxation Act. It is confined to and may be employed only with reference to the second part of the said provision of Relaxation Act i.e. to protect proceedings already under way.

- In absence of any specific delegation, to allow the delegate of the Parliament to indefinitely extend limitation period, would be to allow the validity of an enacted law i.e. FA 2021 to be defeated by a purely colorable exercise of power, by the delegate of the Parliament.

- The provisions of Relaxation Act only provide a general relaxation of limitation granted on account of general hardship existing upon the spread of pandemic COVID -19 and does not specifically refer to reassessment provisions. Therefore, after enforcement of FA 2021, it applies to the substituted provisions and not the pre-existing reassessment provisions.

- Once the matter reached the Court, it is the legislation and its language, and the interpretation offered to that language, as may primarily be, the decisive factors to govern the outcome of the proceeding. To read practicality into enacted law is dangerous. Also, it would involve legislation by the Court which may be incorrect.

- Mischief Rule has limited applicability. It applies only in case of any doubt existing as to which of the two interpretations may apply or to clear a doubt as to the true interpretation of a provision. However, where plain legislative action exists, as in the present case (whereunder the Parliament has substituted the old reassessment provisions with new provisions from 1 April 2021), the mischief rule has no application.

- The HC did not agree with the decision of Chhattisgarh HC (supra). A delegated legislation could never overreach any Act of the principal legislature. Practicality of life de hors statutory provisions, may never be a good guiding principle to interpret any taxation law.

- The HC declared that Relaxation Act and FA 2021 (as enforced w.e.f. 1 April 2021) are not conflicting. The Explanation in March Notification and April Notification be read, as applicable to reassessment proceedings as may have been in existence as on 31 March 2021 (i.e. under old law). Consequently, the reassessment notices in all the writ petitions quashed. The HC left it open to the respective tax authority to initiate reassessment proceedings in accordance with the provisions of the ITL as FA 2021, after making all compliances, as required by law.

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