EY Tax and Regulatory Alert

June 2019

Prepared for ACMA

Contents

Building a better working world

Indirect Tax

This Section of Tax alert summarizes the Indirect tax updates for the month of June 2019

Judicial Precedents

1. M/s. Volkswagen India Private Limited
v/s
Commissioner of Central Excise

[2019-VIL-318-CESTAT-MUM-CE]

Backgrounds and Facts of the case

- Briefly stated the facts of the case that the Respondents, M/s Volkswagen are, inter alia, engaged in the manufacture of motor vehicles falling under CHS 8704 under the Central Excise Tariff Act, 1985. The Respondents were issued a Show Cause Notice demanding reversal of CENVAT credit of Rs. 96,75,223, under Rule 3 (5B) of the CCR, for the period 01.04.2008 to 31.12.2008, because inputs on which such credit was claimed were charged to "Launch expense ledger account" and hence to be considered as written off

- Learned Commissioner dropped the demand holding, based on records before him, that he was satisfied that the inputs were received and used in the production of preserved cars cleared on payment of excise duty and were accounted so in the ER-1 returns; that there was neither allegation nor any evidence that the assessee cleared the inputs clandestinely; mere charging expenses to Launch expense account does not entitle the department to invoke Rule 3(5B) of the CCR. The Revenue preferred an Appeal before the CESTAT, Mumbai

- Learned Authorized Representative, for the Revenue submits a written brief and argues that Shri Kaushik Base-AGM (Finance & Accounts) in the statement dated 6/8/2009, stated that all inputs purchased up to 31/12/2008 were debited to "launch material Account" which was included under the head "Launch expenses" and submitted a statement giving details of launch material of R. 5,55,38,521/- and details of CENVAT credit taken amounting to Rs. 93,73,210; Rs. 6.35 Cr disclosed in Schedule 4 of the balance sheet pertained to imported material components not received in the factory except the commercial invoices (and no credit was taken); on being asked to explain the non-disclosure of stock in the balance sheet as on 31/12/2008, which was purchased and on which credit of Rs. 93,73,210/- was taken.

- Shri Bhaskar, GM (Fin), in the statement dated 18/01/2010, stated that the inventory of raw material, the value of which was not reflected in the balance sheet was used in 2008, and in the subsequent year; Since, the production processes was in its initial stages, these were classified as launch expenses as per their group accounting practice and not as raw material; as per India accounting standards, inventory can be shown in the balance sheet of some value only if the realization value was higher than inventory value and that during the initial stages of production it was not clear whether the said inventories would result in positive realization.

- In such a scenario, they assumed realizable value as zero and therefore the inventory value becomes zero even though these pass through the different stages of production and result in saleable cars. In the statement dated 29/4/2010 of Shri Bhaskar he stated that they had not maintained stock register/ record in respect of inputs procured by them and lying

on 31/12/2008, and thus he was not able to submit stock register.

Discussions and Findings of the case

- When three major inputs were verified - engines, radiators and tires submitted by Shri Bhaskar on 10/5/2010, it was observed that prior to 31/12/2008 there was import of only three engines and two radiators and that was no procurement of tires. The observation is supported by the fact of procurement and use (issue) of the said three inputs as is evident from the copies of stores ledger extracts for the period 1/02/2009 to 30/06/2009 submitted by Respondents under their letter dated 20/05/2010. The respondents suppressed the above facts within intent to evade payment of duty equivalent to Rs. 96,75,223/-

- The definition of 'net realizable value" as per AS-2 Principles, emphasizes on the situations in which the cost of inventories may not be recoverable. Such situations are: a) If those inventories are damaged b) If they have become wholly or partially obsolete c) Or if their selling prices have declined.

- The Commissioner failed to appreciate the fact that in the instant case the inventories did not fall in any of the aforesaid categories, to qualify to a situation in which the VILGST Passion to Deliver cost of the inventories could not be recoverable as it was the initial period of production. The Commissioner failed to appreciate the fact that the definition of "Net realizable value" as per AS-2 Principles, did not speak of "Zero" realizable value. The assessed has adopted the concept of "ZERO" realizable value, which appears to be absurd and not in consonance with the AS-2 Principles. This is supported by the fact that the assessed themselves have admitted, that "there would be no sale proceeds for the try out/pre-series cars, the value of inventory when valued at the lower of cost and Net realizable value would be zero".

- As per provisions of Rule 9(5) the assessed was bound/ required to maintain proper records for receipt, disposal, consumption and inventory of the inputs on which they avail Cen vat Credit. Shri Bhaskar, GM (Finance) in his statement dated 29/4/2010 has admitted the fact that "they had not maintained stock register/ record in respect of the inputs procured by them and lying in stock as on 31/12/2008", and therefore he was not able to submit the stock register and submitted a list of pre-series cars manufactured by them during the period from 30/1/2009 to 15/6/2009, and a list showing the details of clearances of some of the said pre-series cars.

- Heard both sides and perused the records of the case. Revenue's contention in the impugned show-because notice is that the respondents have availed credit on input used in the manufacture of pre-launch series of cars. The cost of the inputs was debited to 'launch expense ledger account' and that they have not maintained proper account of the inputs.

- We find that Learned Commissioner had dropped the proceedings because debiting the costs to the expense ledger account does not mean writing off. The Learned Commissioner has also found that the appellants have maintained records of the receipt and usage of the inputs used in the manufacture of such pre-launch series of cars. We find that Shri Bhaskar Swaminathan, GM Finance & Account of the appellants in his statement dated 18/01/2010 & 29/04/2010 submitted the details of pre-

series cars manufacture and cleared. We also find that vide letter date 10/05/2010, Shri Bhaskar has submitted invoice/ bill of entry wise details of inputs and the credit availed by them on the same. Therefore, we find that the allegation of non-maintenance of record is not proved.

Ruling

- Therefore, we find that the provisions of Rule 3(5B) of CENVAT Credit Rules, 2004 are not attracted. The necessary condition for availing credit is receipt of inputs under the cover of invoice, payment of duty of the same and utilization of the inputs in the manufacture. None of these events have been challenged in the show cause notice. It is not the case of Revenue that the said inputs have not been received in the factory or not utilized in the manufacture or removed as such from the factory without payment of duty

- Under the above given circumstances, it was held that the Respondents have correctly availed that credit and as rightly held by the Learned Commissioner, the Respondents need not reverse and credit in his regard.

2. M/s MRF Ltd
v/s
State of Kerala

[MISC. APPLICATION No. 388 OF 2019 IN CIVIL APPEAL No. 3758 OF 2011]

Backgrounds and Facts of the case

- The petitioner, M/s MRF Ltd. ('the Assessee') filed an application for issuing appropriate directions about the amount deposited by the applicant in terms of order dated 27.01.2009 about adjustment of deposit with GST liability

- While finally disposing of the appeal, the Court reiterated the position that the amount deposited by the applicant shall remain with the Department as deposit till the matter is finally decided by the High Court and liberty was granted to the parties to apply to this Court for appropriate orders, if there be any occasion for the same

- It held that the amount of Rs. 13,19,11,404/- (Rupees thirteen crores nineteen lakhs eleven thousand four hundred and four only), which was deposited by MRF in terms of order of this Court dated 27.1.2009 in SLP (C) No. 909 of 2009 was concerned, the said amount shall continue to remain with the Department as deposit till the matter is finally decided by the High Court

- After the proceedings attained finality, the case was decided in favour of the applicant. Because of which, the amount deposited by the applicant was required to be returned to the applicant. The Department had provided refund of the principal amount alongwith interest from 10.08.2017 @ 10% in terms of Section 44 (4) of the Kerala General Sales Tax Act, 1963 (for short KGSTA)

- It was further claimed by the applicant, that the applicant ought to be paid interest @ 9% from the date of deposit of the amount until the same was refunded by the Department

Discussions and Findings of the case

- On bare reading of the order dated 27.01.2009, the applicant was directed to pay the amount equivalent to tax payable but that was to be treated as "deposit" with the Department and not payment (of tax dues) The expression used 'will be treated as deposit not payment'; is quite significant. That

position is restated in the final order passed by the Court on 28.04.2011

- The stand of the Department that the refund process ought to be governed by the provisions of the KGSTA, is inapposite. The amount deposited by the applicant was not towards tax dues as such, but to be treated as “deposit” in terms of order of the Court. That deposit would continue to remain with the Department until the final decision of the Hon’ble Kerela High Court and to abide by such orders as may be passed by this Court regarding its refund alongwith interest or otherwise, in terms of the final judgment of this Court dated 28.04.2011

Ruling

- The applicant was directed to pay the amount equivalent to tax payable, that was to be treated as “deposit" with the Department and not payment of tax dues. The expression used ‘will be treated as deposit not payment’; is quite significant - The amount deposited by the applicant was not towards tax dues as such, but to be treated as “deposit” in terms of order of the Court - The necessary adjustments by way of credit of Rupees Nine Crore Ninety-Six Lakh Thirty-Eight Thousand Sixteen only, being the net interest remaining due and payable, be given under the Kerala State Goods and Services Tax Act, 2017 against future liabilities

3. M/s BMW India Private Limited
v/s

THE COMMISSIONER OF CUSTOMS, CHENNAI

[2019-VIL-248-MAD-CU]

Backgrounds and Facts of the case

- The petitioner, M/s BMW INDIA PRIVATE LTD was issued notice by the Revenue under Section 130 of the Customs Act, 1962 (for short, the Act) is directed against the order dated 17.9.2018 in Final Order No.42430 of 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (for brevity, the Tribunal)

- Whether the Tribunal was correct in ignoring the law that the events and causes to invoke the extended period of limitation enumerated under Clauses (a), (b) and (c) of Section 28(4) of the Customs Act, 1962 are distinct, different and separate for recovery of duty short levied or short paid?

- Whether the Tribunal was justified in rejecting the invocation of extended period of limitation, when the respondent was undisputedly not entitled for the concessional rate of duty on import since 01.3.2011?

- The respondent – assessee availed the customs duty benefit under Sub-Clause (1)(a) to S.No.437 of Notification No.12/2012-Cus dated 17.3.2012 for import of their consignments of motor cars in completely knocked down (CKD) condition. The Officers of the Special Intelligence and Investigation Branch (SIIB) of the Customs House, Chennai took up for verification the import of consignments covered under a few of the Bills of Entry, to be precise, 20 Bills of Entry as against 712 Bills of Entry from 2012 onwards

- It is stated that on verification, it was found that the relevant details and description of individual part/sub-assemblies, which were imported, were not furnished among other things. Therefore, the Revenue, after noticing that the importer did not have complete details/description/of imported goods, called for a detailed container-wise packing list from the Customs House Agent (CHA)

- It appears that the CHA submitted unsigned copies of the details sought for. The consignments were examined by the Officers on 08.3.2013 in the presence of the representative of the importer/assessee and it was found that the goods, which are imported, were single independent complete preassembled engines and pre-assembled gear boxes with unique identification numbers engraved on each

Discussions and Findings of the case

- Therefore, the Revenue took a stand that the assessee was not eligible to avail the concessional rate of duty prescribed under Notification No.12/2012 dated 17.3.2012 and on the reasonable belief that the consignment was liable to confiscation under Section 111(o) of the Act, the respective Bills of Entry were seized under Section 110 of the Act. Subsequently, the other Bills of Entry were also subjected to such examination and the matter was investigated further. A statement was recorded under Section 108 of the Act. The result of the investigation culminated in a show because notice dated 26.8.2013.

- The Commissioner of Customs, by Order-in-Original dated 13.2.2015, held that the motor cars declared as “BMW cars in CKD....” in different Bills of Entry imported during the period from 01.3.2011 to 11.4.2013 by M/s. BMW India Private Limited, Chennai for manufacturing various models of BMW motor cars at their Chennai Plant as imports of 'motor car in CKD kit with engine and gearbox in pre-assembled condition’.

- Further, the assessee was denied the benefit of Notification No.21/2002-Cus dated 01.3.2002 as amended. The Adjudicating Authority confirmed the demand of differential customs duty of Rs.6,96,44,66,115/- in respect of 706 Bills of Entry from 01.3.2011 to 11.4.2013 (excluding six seized consignments) filed with the Customs, Chennai under Section 28(8) of the Act along with applicable interest under Section 28AA of the Act and ordered confiscation of the goods imported under the subject 706 Bills of Entry and cleared through Chennai Customs totally valued at Rs.24,99,31,14,405/- under Section 111(m) and (o) of the Act.

- Since the goods were physically not available, the Commissioner refrained from levying redemption fine against the said goods under Section 125(1) of the Act. A penalty of Rs.6,96,44,66,115/- was imposed along with applicable interest under Section 114A of the Act. There was an order of finalisation of provisional assessment in respect of six Bills of Entry under Section 18(2) of the Act.

- There was an order for enforcement of bank guarantee of Rs.8,19,04,067/- furnished by the respondent herein – assessee and confiscation of the goods imported under provisionally assessed Bills of Entry valued at Rs.29,42,38,781/- under Section 111(m) and (o) of the Act with an option to the respondent herein - assessee to redeem the same on payment of fine of Rs.3 Crores under Section 125(1) of the Act. There was also imposition of penalty of Rs.3 Crores on the respondent herein – assessee under Section 112(a) of the Act.

Ruling

- The confiscation of the goods under Section 111(m) and (o) of the Act was upheld. The redemption fine, which was imposed, was upheld. However, the redemption fine was reduced to Rs.1 Crore. The imposition of penalty under Section 112(a) of the Act was

upheld. However, the penalty was reduced to Rs.1 Crore.

4. M/s Mahindra & Mahindra Limited
v/s
Commissioner of Customs, Chennai

[2019-VIL-306-CESTAT-HYD-CU]

Backgrounds and Facts of the case

- The applicant is a company engaged in manufacture and marketing of motor vehicles, having its factories at Kandivali and Nasik. In addition, they also took over another company originally set up by Allwyn Nissan Ltd at Zahirabad.

- The case of the assessee is that whether a concessional rate of customs duty available for Original Equipment (OE) parts vide Notification No. 222/87-Cus dated 01.03.1987, 146/92-Cus dated 26.03.1992 and 72/93 dated 28.02.1993 can also be availed in respect of those parts which the applicant, after import, diverted to their spare parts division

- There was a separate notification in terms of 74/85-Cus dated 17.03.1985. For parts of automobiles which were imported during the relevant period there was a tariff rate, a lower level of exemption for such parts are to be imported for sale as spare parts and a much higher level of exemption if the parts are imported as Original Equipment for manufacture of the vehicles

- The Applicant imported some goods as meant for spare parts division applying appropriate rate of customs duty. They also imported parts as OE on which they claimed a much higher level of exemption

Findings of the case

- After investigation it was found that during the period 23.05.1990 to 31.12.1994, the applicant had diverted the goods which were imported as OE parts to their spare parts division under transfer note called Spare Parts Transfer Note (SPTN)

- This was done in some cases only which, according to the learned counsel for the applicant, was about 1% or less

- In some cases, goods were taken on loan basis from manufacturing division by the spare parts division and returned in the form of another spare part of the same type

- In this case, eligibility of exemption notification was not in doubt at the time of import. The exemption was available for a specific end-use. Having imported the parts for the specified end-use, assessee has, thereafter, diverted them for some other use

- As far as the exemption notification is concerned, they are not entitled to the benefit of exemption notification on such quantity of the goods as were diverted from OE to their spare parts division. The appellant's contention that they were not the manufacturers during the relevant period who had imported the goods but had taken over the firm subsequently also does not carry their case any further. Once they have taken over the unit from the previous owners, they necessarily take on all the assets and liabilities including contingent liabilities of the unit. Therefore, they are fully liable to pay differential duty

- Another argument put forth by the learned counsel is that they have only diverted less than 1% of the goods. This also does not

reduce their liability. Since they have diverted a small proportion, the duty is also demanded on such small proportion and penalty has also been proposed proportionately. As far as the demand of Rs.18,66,114.81/- made under Sec.28B is concerned, after hearing both sides, we find that the demand is based on the presumption that the appellant has collected some amount as representing customs duty by incorporating such amount in their cost calculations

- Clearly, there is no evidence that the customer was charged some amount as representing customs duty. Section 28B does not provide for recovery of any amount included in the cost calculation as element of Customs Duty. Therefore, the demand on this count is not sustainable and needs to be set aside and we do so

- A small quantity of the goods valued at Rs.2,10,000/- were confiscated by the impugned order under Sec.111(o) of the Customs Act for violation of the conditions of the customs notification. An option to redeem the same has been given under Sec.125 by paying redemption fine of Rs.25,000/- only. We find no reason to interfere with either confiscation or the reasonable amount of fine imposed for redemption of the goods on this count

- In the impugned order a penalty of Rs.40 lakhs has been imposed under Sec.112 (a) & (b) of the Customs Act upon the appellant for non-compliance of the conditions of the customs notification and clandestine clearance of OE parts to their spare parts division as discussed above. A penalty of Rs. 75,000/- was also imposed on the following individuals who worked with the appellant Shri V. Vaidyanathan – Rs. 75,000/-, Shri C.S. Ramakrishnan – Rs. 75,000/- and Shri S. Upadhya – Rs. 75,000/-.

Ruling

- The appeal is partly allowed by modifying the impugned order by setting aside the demand of Rs.18,66,114.81/- under Sec.28B, setting aside personal penalty under Sec.112(a) on Shri V. Vaidya Nathan, Shri C.S. Ramakrishnan and Shri S. Upadhyay and reducing the penalty on the appellant under Sec.112 (a) & (b) to Rs.10,00,000/-

5. M/s HP Transmissions Limited and M/s Tata Motors Limited
v/s
The Commissioner OF Central Excise, Jamshedpur

[2019-VIL-324-CESTAT-KOL-CE]

Backgrounds and Facts of the case

- The present appeals have been filed by M/s. H.V. Transmission Ltd., as well as M/s. Tata Motors Ltd. M/s. Tata Motors Limited ('TML'), Jamshedpur are engaged in the manufacture of Motor Vehicles

- The Division of TML, Jamshedpur manufacturing transmission gears was converted into a subsidiary of TML with the name of H.V. Transmission Ltd. ('HVTL') with effect from 31.03.2000

- HVTL continued to manufacture transmission gears and supply its entire manufacture to TML. Part of the goods supplied were consumed by TML in the manufacture of motor vehicles. The rest of the supply was made to the spare parts division of TML

- After formation of HVTL, the clearance of goods to TML was made on payment of duty.

The value was adopted on the basis of purchase order price placed by TML to HVTL

- Since HVTL became a subsidiary of TML, the former undertook an exercise of correctly re-determining the assessable value to be adopted for payment of duty for clearances made during the period 31.03.2000 to 30.06.2000 and paid a total differential duty of Rs. 57,93,544/- (which included Rs. 13,34,387/- for dispatch of gear boxes between April to June 2000) and also an amount of Rs. 41,84,306/-

- When the departmental officers investigated this matter, Show Cause Notice dated 13.10.2004 was issued proposing the demand of central excise duty totally amounting to Rs. 90,84,536/- during the period from 31. 03. 2000 to 30.06.2000.

- The differential duty demand was raised mainly on the following two grounds:

- The valuation of goods cleared by HVTL to TML for captive consumption in the manufacture of motor vehicles was required to be done by addition of notional profit of 15% over and above the value adopted by HVTL

- The trade discount ranging from 5% to 14% granted by TML, at the time of sales of these spare parts and claimed by HVTL, was disallowed

Discussions and Findings of the case

- The Ld. Advocate prayed for setting aside the impugned order and his main arguments are summarised below: -

- The Ld. Advocate submitted that the dispute from 31.03.2000 to 30.06.2000 pertains to the period prior to amendment of Section 4 of the Central Excise Act, 1944 as well as the issue of Central Excise Valuation Rules, 2000. He submitted that un-amended provisions of Section 4 read with the Central Excise Valuation Rules, 1975 will be applicable for this period

- The relevant valuation rules for valuation of goods cleared to TML will be Rule 6(b)(ii). The above rule provides for inclusion of “profits, if any”. In this connection he submitted that HVTL during the relevant period was incurring loss and as such the Department is not justified in addition of notional profit @15%

- With reference to the clearance of goods to the spare parts division of TML, he submitted that the said discount is an allowable deduction in terms of Section 4 before 1.07.2000

- With reference to the denial of Cenvat credit to TML, he submits that the Cenvat credit cannot be denied as any differential duty paid and the supplementary invoice issued prior to 29.08.2000 would also be entitled

- He also forcefully submitted that the department was not justified at all in issuing the SCN and that the fact of clearances of goods from HVTL to TML was very much within the knowledge of the department. Prior to the change of status of HVTL on 31.3.2000; the same goods were manufactured in the transmission gear division of TML. He emphasized the fact that differential duty amounting to Rs. 55 lakhs was paid suo moto by HVTL and until the intimation of payment of this differential duty, the department did not undertake any investigation. The SCN also did not outline any specific reason for suppression and hence he submits that the entire demand is hit by timebar

- The Ld. D.R. on the other hand justified the order passed by the Lower Authority. His arguments are summarised below: -

- He referred to the provision of Rule 6(b)(ii) of the Central Excise Valuation Rules 1975 which was applicable during the relevant disputed period. He emphasized the fact that this sub rule provided for addition of profit, if any, which the assessee would have normally earned on the sale of such goods. He submits that the actual profit of HVTL is not relevant but the rule provides for addition of the profit normally earned on the sale of such goods. He accordingly justifies the addition of notional profit of 15%

- It was also observed that HVTL has failed to submit any documentary evidence about the grant of discount and the fact that such discounts were given to the buyers.

- He has held that the supplementary invoices were issued on 29.12.2000 and 31.10.2001 and during such time the Central Excise Rules did not provide for credit to be taken on the basis of the supplementary invoices.

- The dispute has arisen with reference to the valuation of goods to be adopted for supply by HVTL to TML. During the period of dispute, HVTL became the subsidiary of TML and as such the valuation of goods will need to be done in terms of the provision of Section 4 of the Act read with the Central Excise Valuation Rules, 1975. (amended w.e.f. 1.07.2000).

- HVTL On its own re-determined the value of goods cleared during the period and quantified and paid differential duty amount to Rs. 55 lakhs. The department, after investigation, disputed such quantification and worked out the demand of Excise duty amounting to Rs. 90.84 lakhs as follows:

Sl. No.	**Particulars**	**Amount(Rs. In Lakhs)**
1	Duty demanded u/s 11A – proviso Invoked	90.84
2	Amount paid before issue of Show Cause Notice	55.18
3=1-2	Difference	35.66
4	Amount representing 15% notional Profit	16.13
5=3-4	Amounting representing discount	19.53

Ruling

- The dispute may be decided by consideration of the argument of time bar advanced on behalf of the appellants. The SCN dated 13.10.2004 proposed demand of differential duty for the period 31.03.2000 to 30.06.2000. The SCN has invoked the extended period of limitation under Section 11A

- It is seen that the department has made a bland allegation that the assessee has resorted to short payment of duty with intent to evade payment of duty. Nowhere the SCN records any specific act on the part of HVTL for such allegation. In fact, perusal of the SCN reveals that the investigation was started by the department only after receipt of intimation by HVTL regarding the payment of differential duty amounting to Rs. 55 lakhs as per their own computation the normal period of limitation, the entire differential duty demand raised is liable to be set aside, and we do so.

- It is also not in dispute that prior to formation of HVTL, the transmission gear manufacturing facility was a Division of TML and the relevant pricelists were being filed from time to time by TML before the jurisdictional authorities. As such we find no justification for issue of SCN by alleging suppression on the part of HVTL. Since no demand for differential duty survives within the normal period of limitation, the entire differential duty demand raised is liable to be set aside, and we do so.

- Next we consider the issue of availment of Cenvat Credit by TML on the basis of supplementary invoices issued by HVTL at the time of payment of differential duty. In this regard, there is no dispute that the differential duty has been paid by HVTL and the supplementary invoices issued.

- It was also observed that there is no justification for invoking extended period of limitation under Section 11A since there is nothing on record to allege suppression of facts. The Tribunal has also been consistently taking the view that credit is permissible on the basis of supplementary invoice even prior to 29.08.2000 when notification No. 51/2000

  was issued. In view of the above discussion, we find no infirmity in the availment of Cenvat credit by TML on the basis supplementary invoice issued by HVTL.

- In the result the impugned order is set aside and both appeals are allowed.

Key Indirect Tax updates

This section summarizes the regulatory updates for the month of June 2019

1) 35th GST Council Meeting held on 21 June 2019

- The due date of filing GSTR-9, GSTR-9C and GSTR-9A for the period 2017-18 has been extended till 31st August 2019

- Due date for filing GST ITC-04 (in relation to Job Work) for the period July 2017 to June 2019 has been extended till 31st August 2019

- Rule 138E of the CGST rules, pertaining to blocking of e-way bills on non-filing of returns for two consecutive tax periods, to be brought into effect from 21.08.2019, instead of the earlier notified date of 21.06.2019

- The new return system has been decided to be implemented under GST in a phased manner as follows:

July 2019 to September 2019

- The new return system (FORM GST ANX- 1 and FORM GST ANX-2 only) to be available for trial for taxpayers.

- Taxpayers to continue to file FORM GSTR-1&FORM GSTR-3B as at present

October 2019 onward

- FORM GST ANX-1 to be made compulsory.

- Large taxpayers (having aggregate turnover of more than Rs. 5 crores in previous year) to file FORM GST ANX-1 on monthly basis

- Small taxpayers to file first FORM GST ANX-1 for the quarter October 2019 to December 2019 in January 2020

October 2019 and November 2019

- Large taxpayers to continue to file FORM GSTR-3B on monthly basis and will file first

FORM GST RET-01 for December, 2019 in January, 2020.

- Invoices can be uploaded in FORM GST ANX-1 on a continuous basis both by large and small taxpayers from October, 2019 onwards.

- FORM GST ANX-2 may be viewed simultaneously during this period but no action shall be allowed on such FORM GST ANX-2

From October 2019

- Small taxpayers to stop filing FORM GSTR-3B and to start filing FORM GST PMT-08.

- They will file their first FORM GST-RET-01 for the quarter October, 2019 to December, 2019 in January, 2020.

From January 2020 onwards

- FORM GSTR-3B to be completely phased out

2) GST Portal Updates

Form GSTR-9, Annual Return for 2017-18

- Facility to file Annual Return by normal taxpayers in Form GSTR9, for Financial Year 2017-18, is now available at GST Portal.

- The FAQs and Manual for Form GSTR-9 is available on the GST Portal.

- APIs for Form GSTR 9 has been released for CBIC/Model I States for back office integration.

- Facility to file Annual Return by composition taxpayers in Form GSTR9A, for Financial Year 2017-18, is now available at GST Portal.

- APIs for Form GSTR 9A has been released for CBIC/Model I States for back office integration.

Revocation of cancellation of Registration

- Facility for applying for revocation of suo moto cancellation of registration for the persons registered as OIDAR/TDS/TCS/NRTP category has been enabled on GST Portal.

- Viewing & Downloading of month-wise Comparative Table on Liability Declared and Credit Claimed

- Normal taxpayers can view and download a report on tax liability as declared in their Form GSTR-1 and as declared & paid in their return filed in Form GSTR 3B. The new facility enables the taxpayers to view these two liabilities in one table for each return period at one place, which can be compared. This will enable taxpayers to make good of any differences between the two Forms filed by the common GST Portal.

- The tax payers have also been provided information regarding data of Input tax credit (ITC) as claimed in their Form GSTR3B and as accrued in Form GSTR 2A. Now taxpayers can see both these data sets and compare the input tax credit availed by them.

Defects fixed for Taxpayer

<u>Refunds</u>

- Refund amount entered, while filing refund application for excess payment of tax, will get rounded off now.

- Correct financial period will now be displayed in ARN receipt & Track ARN Status of Refund.

- Refund filed by UN user, downloaded in PDF format, will now show period as quarterly (July-Sept/Oct-Dec instead of 13,14,15) and NA will not appear for refund filed for the period July-September 2017-18.

<u>Registration–TDS</u>

- TDS Registrants whose constitution of business is “Authority or board or Any other body notified by Central/State Government or statutory body/government agencies" can now download their registration certificate

- Registration–GSTP: GSTP will now get an intimation about disengagement of their services as and when done by a taxpayer.

Search Taxpayer facility on GST Portal: Search Taxpayer facility on GST Portal will now show return filing details of a taxpayer only when there levant button (provided for showing its details) is clicked. (This is done to take care of performance issues on the portal during peak return filing period.)

Direct Tax

This section of tax alert summarizes the Direct tax updates for the month of June 2019

Key Direct Tax Developments

1. CBDT releases revised guidelines on compounding of offences relating to Income Tax matters

Background

- Chapter XXII of the ITL contains provisions relating to prosecution for offences. Provisions enlist various categories of offences, which are punishable with imprisonment and fine. Imprisonment can extend from three months to seven years depending upon the gravity of offence and the quantum of sum involved.

- Section (S.) 279(2) of the ITL empowers Principal Chief Commissioner of Income Tax (Pr. CCIT)/CCIT/ Principal Director General of Income Tax (DGIT)/DGIT to compound the offences under the ITL.

- Compounding of an offence in the context of tax law means an amicable settlement of an amount which is paid up to avert prosecution for an offence. In case of compounding, the matter is resolved between Tax authorities and account holders, without any intervention by courts.

- The CBDT, with a view to provide uniform policy for compounding issues guidelines from time to time and updates the same by issuing revised guidelines.

- In deference to references, the CBDT has, issued revised guidelines dated 14 June 2019 (Revised Guidelines) to announce reviewed norms for compounding of offences under the ITL. The Revised Guidelines supersede earlier guidelines including the guidelines issued vide F.No.285/35/2013 IT(Inv.V) dated 23 December 2014 (erstwhile guidelines).

Revised guidelines

Effective date:

- The revised guidelines come into effect from 17 June 2019 and shall apply to all applications received on or after 17 June 2019. Applications received prior to 17 June 2019 will continue to be dealt in accordance with the erstwhile guidelines dated 23 December 2014.

Compounding is not matter of right:

- Competent Authority may compound an offence:
  - If upon satisfaction by taxpayer of the eligibility criteria provided in Revised Guidelines; and
  - After consideration by Competent Authority of the factors such as conduct of the person, the nature and magnitude of offence and other facts and circumstances of the case.
- The power to be exercised by Competent Authority is discretionary and hence a taxpayer cannot seek compounding as a matter of right

Application of Revised Guidelines to offences under Indian Penal Code (IPC):

- Offences under IPC cannot be compounded, hence, the Revised Guidelines do not apply to IPC. However, in a case where the prosecution complaint has been filed under the provisions of both the ITL and the IPC are based on the same facts and the complaint under the ITL is compounded, then the Competent Authority can initiate the process of withdrawal of prosecution under IPC in terms of Criminal Procedure Code, 1973.

Classification of offences:

- Revised Guidelines have categorized offences into two categories viz. Category “A” (technical offences) [8] and Category “B” (non- technical offences) [9]. Based on the category of offence, certain restrictions for compounding may vary.

Eligibility conditions and other procedural aspects for compounding an offence as per Revised Guidelines

General:

- The offence should be of a compoundable category. Offences falling under Category "A" and Category "B" are normally compoundable, subject to certain restrictions.

- Taxpayer should make an application to Competent Authority for compounding the offence/s in the format of an affidavit on a stamp paper of INR 100 as prescribed in Revised Guidelines.

- Before application for compounding is made, the Taxpayer should ensure that it has paid outstanding tax, interest, penalty and any other sum relating to the offence which is proposed to be compounded. Further, taxpayers should undertake to withdraw any appeal in case the same relates to or has bearing on the offence sought to be compounded.

- Revised Guidelines provide recommendary time limit to pass the compounding order within one month from the end of the month of payment of compounding charges as against 30 days from date of payment of compounding charges provided in the erstwhile guidelines.

- Revised Guidelines provide that where penalty proceedings which have bearing on offences sought to be compounded are pending at the time of filing compounding application, such penalty proceedings should be concluded expeditiously. This is a new feature in Revised Guidelines.

- Revised Guidelines continue to empower Ministry of Finance to relax restrictions on disqualifications in deserving cases on consideration of a report from the CBDT on the petition of an applicant and reduction in compounding charges in exceptional cases of genuine financial hardship of an applicant.

Other key aspects of Revised Guidelines on compounding

By and large, Revised Guidelines are largely along the lines of erstwhile guidelines except for certain changes/revisions.

While Revised Guidelines provide certain relaxation for taxpayers opting for compounding, certain other rules are made stringent in cases of grave nature of offence.

Key aspects of Revised Guidelines which provide liberal approach as compared to erstwhile guidelines:

- While there was no prohibition for voluntary filing of compounding application by taxpayers in erstwhile guidelines, the Revised Guidelines specifically provide an opportunity for voluntary filing of compounding application even before offence comes to the notice of the tax authority.

- As a measure of incentive, in a case of compounding of offence of delayed deposits of taxes withheld, if the errant taxpayer, suo motu, applies for compounding before such offence is brought to his/her knowledge by tax authority, there is a relaxation in compounding fees, which stand reduced to 2% a month (from 3%) of amount of TDS in default.

- Taxpayers are allowed to make a single application for all offences under a particular Tax Deduction and Collection Account Number (TAN) during any period, in relation to default in withholding/ collection of taxes at source. This feature was not present in the erstwhile guidelines.

- In case where prosecution complaint is filed in court, application for compounding is to be filed before the end of 12 months from the end of the month in which prosecution complaint has been filed in the court of law. This time limit can be relaxed by another 12 months by a prescribed committee in deserving cases where taxpayer has reasonable cause beyond applicant's control. However, any such relaxation in period will be subject to payment of enhanced compounding charges at 1.25 times of the normal compounding charges.

- As a relaxation, in Revised taxpayer can compound Category

- "A" offences in his/her lifetime upto three times/occasions as against two occasions in the erstwhile guidelines. Further, in exceptional circumstances the compounding application in more than three occasions can be considered on the approval of the committee. However, there is no change in compounding of offence under Category "B" which continues to be once in life time of taxpayers.

- Revised Guidelines further clarify that multiple applications for one or more tax years in one instance will be considered as one "occasion".

- Offences for failure to furnish return of income, which were considered to be Category "B" offences in erstwhile guidelines, have now been recharacterized to Category "A" offences and thereby, it is covered by liberal norms of compounding.

- While there was no specific prohibition on rectification of compounding order in the erstwhile guidelines, Revised guidelines specifically provide for rectification of compounding order at the written request of taxpayer applicant, in case the compounding application has been rejected solely on account of late payment of compounding charges or for shortfall in payment of compounding charges where such shortfall is for some bonafide mistakes or on some other technical grounds. The rectification is permitted provided the payment of compounding charges was made before rejection of application or before time allowed by Competent Authority whichever is applicable.

Key aspects of Revised Guidelines which provide stringent provisions/ rules:

- Offences under S. 275A/ 275B/ 276 which were considered to be Category "B" in erstwhile guidelines are no more compoundable.

- Another erstwhile CBDT guidelines permitted compounding of certain offences relating to undisclosed foreign bank account/assets. However, under the Revised Guidelines any offence which has bearing on such offences in any manner is not permitted to be compounded.

- Additionally, any offence which has bearing on offences under Black Money Act and/or under Benami Transaction Act cannot be compounded under Revised Guidelines.

- Compounding shall not be available where it is proved that a taxpayer enabled others to evade tax such as through entities used to launder money or generate bogus invoices of sale/purchase without actual business or providing accommodation entries in any manner.

- Revised Guidelines also provide for incremental additional compounding charges on deposit of compounding charges beyond specified period and increased rate of compounding charges for offences under specific sections. Illustratively,

    - Revised Guidelines reduce the normal time period for payment of compounding charges to one month from the end of the month of receipt of intimation by Competent Authority against 60 days from the day of receipt of intimation in erstwhile guidelines.

    - Like in case of erstwhile guidelines, Revised Guidelines also permit payment beyond specified time, but, with an additional cost. In case of payment beyond one month and upto three months, the additional compounding charges remains 2% p. m or part of the month on the unpaid amount of compounding charges. However, the rate is increased to 3% (as against 2% in the erstwhile guidelines) p. m or part of the month in case the taxpayer paid the compounding charges beyond three months from the end of the month of receipt of intimation.

    - Basis of computing compounding charges for offence in filing tax return has been changed. The erstwhile guidelines provided for a compounding fees of 2% p.m. on the amount of default in payment of tax for number of months of default. As against that Revised Guidelines provide

for charges basis per day default in filing tax return.

For instance, in relation to wilful failure to furnish return of income on or before due date, compounding fees charged is INR4000 per day where taxes sought to be evaded (after giving deduction of taxes withheld and advance tax) exceed INR2.5million and is INR2000 per day in other cases.

Further, in case of compounding of offence of filing tax return on or before due date, compounding fee payable is restricted to difference in aggregate of taxes payable on returned income and aggregate of all taxes paid under ITL, subject to a minimum of INR10,000. This relaxation applies to cases where difference in taxes payment as aforesaid is less than INR1,00.000. In other words, in cases where whole of tax payable on returned income is covered by TDS and if such person defaults in filing tax return under normal provision of ITL, such case can be compounded with compounding fees of INR10,000.

- For offences in relation to false statement in verification or delivery of false account and abetment of false return, account, statement or declaration relating to any income, a minimum compounding fees of INR100,000 is prescribed, which may be increased based on the assessment of loss caused to the revenue directly or indirectly for each of such offence on completion of assessment/reassessment. This is a new feature.

- For wilful attempt to evade tax, penalty or interest etc., scale of compounding fees has been increased from 100% of tax sought to be evaded to (a) 150% of the tax sought to be evaded (including consequential interest and penalty) where tax sought to be evaded exceeds INR2.5million and (b) 125% of tax sought to be evaded in other cases. Where attempt is made to evade only penalty (which is not directly related to tax evasion), a compounding fee of 100% of the tax sought to be evaded is prescribed.

- Where no compounding fee is prescribed, Competent Authority will determine the compounding fee having regard to nature and magnitude of offence, loss of revenue directly or indirectly attributable to such offence, subject to minimum compounding fee which is increased from INR25,000 in the erstwhile guidelines to INR1,00,000 under the Revised guidelines.

Source: F No. 285/08/2014-IT(Inv.V)/147 dated 14 June 2019

2. Karnataka HC upholds prosecution proceedings for default in remitting taxes withheld

Background and facts

Relevant provisions under the ITL

- Section 200 of the ITL provides that if any sum is withheld under the ITL, such taxes withheld shall be deposited with the GoI within the time specified. Rule 30 of the Income Tax Rules provides that, except for taxes withheld in the month of March, the taxes shall be deposited to the credit of the GoI within seven days from the end of the month in which the deduction is made.

- Default in payment of taxes withheld deems the defaulter as assessee-in-default (AID) who, as per Section 201(1), invites interest under Section 201(1A) and penal consequences under Sections 221 and 271C of the ITL.

- The ITL further provides for prosecution under Section 276B if the taxpayer, inter alia, fails to deposit the taxes withheld to the credit of the GoI. In case the offence is committed by a company, by virtue of Section 278B of the ITL, every person who was in charge of and responsible for the conduct of the business of the company, may also be liable to be prosecuted.

- Section 278AA of the ITL provides that prosecution proceedings shall not apply if the taxpayer proves that there was reasonable cause for failure to deposit taxes withheld.

Facts:

- The Taxpayer is engaged in the business of real estate and property development.
- A survey proceeding was conducted by the Tax Authority on the premises of the Taxpayer. During the survey proceedings, the Tax Authority detected that the Taxpayer had failed to remit to the credit of the GoI, the taxes withheld for tax years 2010-11 and 2011-12.
- The Tax Authority issued a notice to the Taxpayer, asking for reasons as to why prosecution should not be initiated for failure to deposit withheld taxes.
- In its reply to the aforesaid notice, the Taxpayer admitted the default and sought time to remit the taxes withheld and remitted the amount withheld partially to the credit of the GoI. The Tax Authority again issued a letter directing the Taxpayer to remit the outstanding amount.
- Subsequently, the Taxpayer filed the online quarterly statement for taxes withheld and it was found that the Taxpayer had remitted the taxes withheld after a delay of more than one year, without payment of interest, which is mandatory under Section 201(1A) of the ITL.
- Noticing that the Taxpayer had committed similar default even for tax year 2009-10, the Tax Authority passed an order under Section 201 quantifying the interest to be paid by the Taxpayer for delayed remittance of the amount withheld for financial years 2009-10 and 2010-11.
- The Tax Authority was not satisfied with the reasons furnished by the Taxpayer for delay in remittance of the taxes withheld and, hence, initiated prosecution proceedings against the Taxpayer and its directors who were responsible for the conduct of the business of the company.
- Aggrieved, the Taxpayer and its directors approached the HC for quashing of the prosecution proceedings pending before the Bangalore Trial Court.

Taxpayer's contentions for defending prosecution proceedings before the HC

- The Tax Authority, without quantifying the liability under Section 201 and without quantifying the penalty, should not have resorted to prosecution proceedings. In this regard, reliance was placed on the Delhi HC rulings in the cases of Sequoia Construction Co. and Indo Arya Central Transport Limited .
- The taxes withheld were deposited with interest to the credit of the GoI within 12 months from the respective date of deductions. Such deposit was made in accordance with the Central Board of Direct taxes (CBDT) Instruction/Circular dated 24 April 2008, which permitted to deposit taxes withheld within 12 months from the date of deduction, to obviate any penal consequences. Reliance was placed on the Supreme Court (SC) decision in the case of Kurian Abraham (P) Ltd. & another, wherein the SC had held that the above Instruction/Circular has a binding effect.
- The subsequent Circular dated 7 February 2013, by which the guidelines for initiating of prosecution was amended and the time limit of 12 months to deposit the taxes withheld was reduced to 60 days from the date on which were withheld, cannot have retrospective impact in relation to violations committed for the tax years 2010-11 to 2013-14. The Circular cannot be made applicable to the Taxpayer retrospectively.

Tax Authority's contentions for initiating prosecution proceedings before the HC

- Section 200 of the ITL, read with Rule 30, contemplates deposit of taxes withheld within the prescribed time limit and failure to deposit taxes would entail prosecution proceedings as per Section 276B. Reliance was placed on the SC decision in case of Madhumilan Syntex Ltd.
- As per Section 278AA, the onus of explaining reasonable cause is on the Taxpayer and, hence, the proceedings should not be quashed.
- Prosecution under Section 276B is not controlled by Section 201 and if a person, without reasonable cause, fails to pay taxes withheld, such person shall be punishable with prosecution, along with fine. Reliance was placed on the Madras HC ruling in the case of Rayala Corporation (P) Ltd.

- The Circular/Instruction referred by the Taxpayer deals with only the Standard Operating Procedure for initiating prosecution and neither does it extend the time limit for depositing taxes withheld, nor does it absolve the accused from criminal proceedings.

HC's Ruling

Based on a perusal of the facts, the HC upheld the prosecution proceedings against the Taxpayer and its directors.

The HC made the following observations while arriving at the conclusion:

- Section 201 provides that failure to pay the taxes withheld may lead to prosecution of the defaulter "without prejudice to any other consequences". This view is supported by the SC ruling in the case of Madhumilan Syntex (supra), wherein the SC rejected the taxpayer's contention that, once taxes are paid up, there can merely be levy of penalty, and not prosecution. Furthermore, the SC held that when taxes withheld are not deposited within the specified time limit, appropriate action can be taken under the ITL.

- A similar proposition had been laid down in the Rayala Corporation case (supra), wherein the Madras HC had held that prosecution under Section 276B is not controlled by Sections 201 and S.276B.

- The contention that prosecution proceedings cannot be initiated without determining the penalty, cannot be accepted, since the imposition of penalty would arise only in case of dispute with regard to liability to remit the withheld tax. However, in the present case, Taxpayer had clearly defaulted in the payment of taxes withheld.

- Section 278AA provides that the penal consequences can be negated if the accused shows reasonable cause. The material placed on record discloses that the Taxpayer and its directors had withheld the taxes, but had failed to deposit it to the credit of the GoI within the prescribed time. The Taxpayer had not placed the Instruction/Circular before the HC and there was no evidence to show that the taxes had been deposited within the extended time provided by the Instruction/Circular. Furthermore, since the taxes withheld were deposited post the survey proceedings, it cannot be said that the delay in depositing the taxes was based on the Instruction/ Circular.

Source: [TS-321-HC-2019(KAR)]

3. Bombay High Court allows interest on refund when delay not attributable to Assessee

Background

Section 244A of the ITL provides that the Assessee shall be entitled to receive interest at the rate of one-half percent for specified period on the amount of refund that become due to the Assessee. However, the section provides that no interest shall be payable in case the refund cannot be paid due to reason attributable to the Assessee.

Fact

The assessee has not claimed certain expenditure before the Assessing Officer but eventually raised such claim before the tribunal. The tribunal remanded back the matter to the CIT(A) in which CIT(A) has granted the additional claim which resulted in refund.

Tax Authority's Contention

The Revenue contended that since the delay in the proceedings was due to reasons attributable to the Assessee, it would not be entitled to such interest.

HC's Ruling

The court has observed that the revenue does not dispute the Assessee's claim of refund. The court has relied upon the case of Ajanta Manufacturing Ltd. v. Deputy CIT [2017] 391 ITR 33 (Guj.) to held that merely a belated claim of the Assessee during the course of assessment proceedings which result in granting of delay in issuance of refund will not disentitle the Assessee from interest u/s 244A as belated

claim is not it couldn't be said that refund have been delayed for the reasons attributable to the assessee.

Source: [2019] 106 taxmann.com 142 (Bombay)

4. India ratifies Multilateral Instrument

Background

The MLI has been signed by 88 countries out of which 25 countries have already submitted the ratified copy of MLI with OECD. India signed the MLI on 7 June 2017 and at the time of signature, India submitted its provisional list of tax treaties and provisional positions on various Articles of the MLI.

Pursuant to above, the Indian Cabinet, chaired by Prime Minister Shri Narendra Modi, has ratified the MLI on 27 May 2019 vide press release dated 12 June 2019.

Impact of ratification

After ratification of MLI, India will need to submit the ratified copy of the MLI with the OECD Depositary i.e. the Secretary-General of the OECD. Along with such ratified copy, India will also need to submit:

a) Final list of tax treaties that India wishes to be modified by MLI; and

b) India's final positions on MLI Articles

Entry into force and entry into effect of the MLI for India:

The MLI shall enter into force for India on the first day of the month after the expiry of three months from the date of deposit of ratified copy of the MLI with OECD.

As an ordinary rule, once MLI has come into force for both the treaty countries, the latter date of coming into force is relevant for determining the date of entry into effect of the MLI.

However, India has opted for an optional provision under the MLI, pursuant to which, date of entry into effect for India's CTAs shall be determined from "30 days from latter of the dates on which OECD receives notification from India and its treaty partner about completion of its respective internal procedures" (optional relevant date).

Following such "optional relevant rate", the date of entry into effect for India's CTAs will be as under:

Particulars	Date of entry into effect of Indian CTAs
For withholding taxes	1st day of next taxable period/ calendar year that begins on or after the "optional relevant date"
For other taxes	Taxable period that begins on or after expiry of six calendar months from the "optional relevant date"

Accordingly, if India and its CTA partners notify about completion of their respective internal procedures by 31 August 2019, the MLI may be effective for India's such CTAs from 1 April 2020 with respect to withholding taxes as well as other taxes.

Final MLI positions

India, at the time of signing the MLI, had submitted its provisional positions on various Articles of the MLI. The press release states that India has finalized its positions on MLI, however, details thereof are not yet made public.

Source:http://pib.nic.in/newsite/PrintRelease.aspx?relid=190417

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