EY Tax and Regulatory Alert

January 2021

Prepared for ACMA

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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 January 2021

- **Notification No. 95/2020, dated 30.12.2020** issued by CBIC, to extend the time limit of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 till 28.02.2021.

- **Notification No. 01/2021, dated 01.01.2021** issued by CBIC, to seek to amend the CGST Rules, 2017 to CGST Amendment Rules, 2021: A new sub-rule 6 is added to rule 59 of the CGST Rules, 2017, restricting or blocking the filing of GSTR-1 as follows:

  - For monthly filing of GSTR-1, where GSTR-3B filing for the preceding two months is pending, then GSTR-1 for the current month is not allowed.

  - For quarterly filing of GSTR-1, where GSTR-3B filing for the preceding tax period is pending, then neither the Invoice furnishing facility (IFF) nor the GSTR-1 for the current quarter is allowed.

  - Where more than 99% of tax liability is discharged through electronic credit ledger under Rule 86B, then taxpayer cannot use the IFF or file GSTR-1 if the preceding tax period's GSTR-3B is not filed.

- **Punjab One Time Settlement Scheme for Recovery of Outstanding Dues-2021 (OTS)**

  The scheme has been introduced to benefit small and medium dealers/ traders to clear and settle their pending arrears amidst COVID-19.

  Key features of OTS are:

- The scheme would be implemented from 01 February 2021

- All dealers for whom assessments were framed up to 31 December 2020 can apply for the scheme

- The application under the scheme is to be filed on or before 30 April 2021

- The dealers are eligible submit additional statutory forms like C-forms which were not produced at the time of assessment

- The concerned Ward in-charge would issue an order of settlement which would not be reopened in any proceeding by way of review or revision.

- In respect of assessments pertaining to FY 2013-14, following additional benefits have been provided:

- Dealers with demand up to INR 1 lakh would get 90% relief in tax and 100% relief in interest and penalty

- Dealers with demand ranging from Rs.1-5 lakhs would get 100% relief in interest and penalty.

- In respect of arrears of demand pertaining to FYs 2005-06 to 2012-13, it is expected that at least 57% of cases would get relief from 90% of amount of tax and 100% of amount of interest and penalty.

Customs and Foreign Trade Policy (FTP)

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

Press Release dated 31st December 2020 on implementation of Remission of Duties and Taxes on Exported Products (RoDTEP) Scheme from 01.01.2021

- It has been decided to implement the Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP) to all export goods with effect from 01 January 2021
- RoDTEP Scheme aims to refund the embedded Central, State and local duties/taxes that were not previously rebated/refunded to the exporters
- Refunds under RoDTEP would be credited in an exporter's ledger account with Customs which can be utilised against payment of BCD on imported goods or it can also be transferred to other importers
- An exporter desirous of availing benefit of RoDTEP scheme shall be required to declare his intention for each export item in the shipping bill or bill of export
- Rates under the RoDTEP scheme shall be notified shortly by Ministry of Commerce; Rates under the Scheme shall apply with effect from 01st January 2021 irrespective of date of Notification
- Scheme of RoDTEP shall be allowed by Ministry, subject to specified conditions and exclusions.

Additionally, the Ministry has also released an **advisory note dated 01 January 2021** with detailed procedure for claiming benefits under RoDTEP Scheme. We have summarised the procedure as provided by the said advisory note hereunder:

- Avail the scheme, exporter shall make a claim for RoDTEP in the shipping bill by making a declaration
- Once EGM is filed, claim will be processed by Customs
- Once processed a scroll with all individuals shipping bills for admissible amount would be generated and made available in the users account at ICEGATE
- Users can create RoDTEP credit ledger account under Credit Ledger tab. This can be
- done by IESs who have registered on ICEGATE with a DSC
- Exporter can log in into his account and generate scrip after selecting the relevant shipping bills

While the Government is yet to come up with finer details on the Scheme eligibility and conditions, the Government vide the said advisory note has made it mandatory for the exporters to **declare their Intent "to claim benefits under RoDTEP Scheme" for all items in the shipping bills starting 01 January 2021,** in the manner as prescribed by the said note. Unless the declaration is specifically made in the shipping bill, no benefit will accrue to the exporter.

Notification No. 01/2021 – Customs (NT), dated 04.01.2021 issued by CBIC with regards to Customs Authority for Advance Rulings Regulations, 2021. Key points are as follows:

- CBIC notifies Customs Authority for Advance Rulings Regulations, 2021 in supersession of the Authority for Advance Rulings (Central Excise, Customs and Service Tax)] Procedure Regulations, 2005;

- ‘Specifies that Customs Authority for Advance Rulings, Delhi & Mumbai shall have the power to hear and determine all applications and petitions;

- Prescribes that application for obtaining advance ruling shall be made in Form CAAR-1 [earlier Form - AAR (CUS)] to jurisdictional Authority at Delhi & Mumbai;

- Prescribes Form CAAR-2 for filing appeal against advance ruling by the applicants accompanied with a fee of Rs 15,000 and Form CAAR-3 with no fee for filing appeal by the Principal Commissioner or Commissioner;

- Prescribes that applicant may withdraw his application within two weeks from the date of the application and thereafter only with the leave of the Authority;

- Enumerates the powers of authority, powers and function of the Secretary and other general procedures;

- Rescinds the Customs (Advance Rulings) Rules, 2002, made vide notification no. 55/2002 - Customs (NT), dated August 23, 2002.

▶ **Trade Notice 37/2020-21, dated 11.01.2021** in relation to UK Generalised Scheme of Preferences (GSP) per which UK has been added as a country of Export on the Electronic Certificate of Origin (e-CoO) platform under Generalised Scheme of Preferences.

- The details provided by UK on GSP can be accessed at URL- https://www.gov.uk/government/publications/trading-with-developing-nations wherein it is prescribed that trade preferences reduce or remove rates of duty (tariffs) on imports from eligible developing countries into the UK and hence, eligible developing countries can get trade preferences through the UK Generalised Scheme of Preferences. It further mentions that UK GSP has 3 frameworks:

  - **Least Developed Countries Framework** - This framework is for countries that the UN classifies as Least Developed Countries. Imports from these countries have quota-free access and nil rates of import duty on all goods other than arms and ammunition

  - **General Framework** - This framework is for countries that the World Bank classifies as low-income and lower-middle income countries. Imports from these countries have reduced rates of import duty on certain goods outlined in the UK GSP tariff rates. India is covered under the said category.

  - **Enhanced Framework** - This framework is for countries that are classified by the World Bank as low-income and lower-middle income countries and economically vulnerable due to a lack of export diversification and a low level of integration with the international trading system.

- The trade notice further prescribes that the goods that meet the UK GSP rules of origin requirements are eligible to claim a GSP rate of import duty on the basis of a valid proof of origin, which must be either GSP Form A or an Origin declaration.

▶ **Press Release dated 7th January 2021 on Liberalised AEO Package under Customs for MSMEs**

Vide the said press release, CBIC introduces flagship Liberalized Authorized Economic Operator Package for MSMEs. The procedural modifications and relaxations for Authorized Economic Operator (AEO) accreditation of MSMEs under customs, having a valid certificate from their line Ministry, are as under:

- The requirement of handling minimum 25 customs clearance documents during the immediately preceding financial year has been relaxed to 10 documents (subject to handling at least five documents in each half year period of the preceding financial year)

- The requirement to have business activities for at least three financial years preceding the date of application has been relaxed to two financial years.

- The qualifying period for legal and financial compliance has been reduced to two financial years.

- The time limit for processing of AEO T1 and AEO T2 application has been reduced to 15 working days and three months respectively, after electronic submission of complete documents

- The additional benefits, like further reduction in bank guarantee requirements, have also been granted and will be expanded subsequently.

Direct Tax

Part-A Key Direct Tax updates

1. CBDT grants further extension of due date for filing tax returns and audit reports for tax year 2019-20 and for filing declaration under VSV Act, 2020

Background

In response to various representations being made to the CBDT requesting for further extension, the CBDT, vide the Press Release, has provided further extension for various compliances under the ITL and VSV.

Press Release

Relaxations under the ITL:

Particulars	Original due date as per ITL	Extended due date as per June and July Notifications	Revised due date as per October notification	Press Release
Extension of due date for furnishing tax returns:				
Taxpayer who is required to submit transfer pricing report	30 November 2020	No extension	31 January 2021	15 February 2021
Taxpayer being (a) Corporate taxpayer (including foreign companies); or (b) which is required to get its accounts audited under the ITL or any other law (and its partners, if any) (Not covered above)	31 October 2020	30 November 2020	31 January 2021	15 February 2021
Other taxpayers not covered above (e.g. individual, partnership firm having no tax audit obligations etc.)	31 July 2020	30 November 2020	31 December 2020	10 January 2021
Extension for furnishing tax audit report, other audit reports and transfer pricing report:				
Due date for furnishing tax audit report	31 September 2020	31 October 2020	31 December 2020	15 January 2021
Other audit reports required to be filed under various provisions of the ITL (e.g., for book profit computation for corporate taxpayers, audit report for claiming incentive deductions, audit report for charitable trust)	Different due dates as specified under the ITL	31 October 2020	31 December 2020	15 January 2021
Due date for furnishing transfer pricing report	31 October 2020	No extension	31 December 2020	15 January 2021

- Similar to relief granted earlier, the Press Release extends relief in respect of interest payable on self- assessment tax on belated filing of tax return. The Press Release provides that if the self-assessment tax (i.e., after reducing tax deducted/collected at source, advance tax etc.) does not exceed INR0.1m, then there shall be no interest if such tax is paid by the extended due date of filing tax return i.e., 10 January 2021 or 15 February 2021, as the case may be. As per the Press Release, this relief is intended for small and middle-class taxpayers but, on a plain reading of the Press Release, it can also be availed of by large taxpayers if their self-assessment tax does not exceed INR0.1m.

- Relaxations under VSV:
  - Sunset date of filing declaration under VSV is extended from 31 December 2020 to 31 January 2021.
  - Earlier, the CBDT issued Notification No. 35/2020 dated 24 June 202013 to extend the due date for any compliances by the tax authority falling due under VSV between 20 March 2020 and 30 December 2020, till 31 December 2020. The Press Release now extends the due date for any compliances falling due under VSV between 20 March 2020 and 30 January 2021, till 31 January 2021. For instance, if a declaration was filed on 5 January 2021 by the taxpayer, the Designated Authority is required to issue the certificate by 20 January 2021 as per VSV (i.e., within 15 days from the date of receipt of such declaration). As per the present extension, such certificate can be issued till 31 January 2021.
- Relaxation for passing orders or issuance of notice under the direct taxes or benami acts:
  - The Relaxation Act granted general extension to all compliances due on the part of the tax authority by whatever name called (such as passing of order, issuance of notice/intimation/approval etc.) which are falling due between 20 March 2020 and 31 December 2020, to 31 March 2021.
  - The CBDT, vide the Press Release, provides extension to tax authorities in relation to any compliance pertaining to "passing of orders or issuance of notice" which is due by 30 March 2021, to 31 March 2021. For instance, in a case where application for obtaining charity registration is made in August 2020, the tax authority is required to pass an order for accepting or rejecting such application within a period of six months from the end of the month in which the application was made as per the ITL i.e., on or before 28 February 2021 in the present case. As per the Press Release, the tax authority can now pass such order on or before 31 March 2021.

2. Central Government announces Faceless Penalty Scheme, 2021 for conducting penalty proceedings in faceless mode under the Income Tax Laws

Background

- The Finance Act, 2020 introduced a new provision in the ITL to enable the CG to frame a scheme for conducting penalty proceedings so as to impart greater efficiency, transparency and accountability by:
  - Eliminating the interface between the tax authority and taxpayers during penalty proceedings to the extent it was technologically feasible.
  - Optimizing utilization of resources through economies of scale and functional specialization.
  - Introducing a system for conducting penalty proceedings with dynamic jurisdiction in a team-based manner.
- Taking one more step forward in this direction and pursuant to the powers granted under the ITL, the CG has now notified FPS, effective from 12 January 2021, by publishing the following notifications dated 12 January 2021 in the official gazette:
- **Notification No. 2/2021 dated 12 January 2021**: Introduction of FPS, infrastructure of FPS, mode of communication, process of conducting penalty proceedings, authentication and delivery of electronic record, option for personal hearing etc.

- **Notification No. 3/2021 dated 12 January 2021:** Directions from the CG to the effect that any provision of the ITL shall not apply/or shall apply with exception, modification and adaptions for giving effect to FPS.

Scope of CG notifications

- The notification that introduces FPS shall apply to disposal of penalty proceedings under the ITL in respect of such territorial area, or persons or class of persons, or income or class of income or cases or class of cases, or penalties or class of penalties as may be specified by the Central Board of Direct Taxes (CBDT).

- FPS comes into effect from the date of its publication in the official gazette i.e., 12 January 2021.

Infrastructure of FPS

- FPS empowers the CBDT to set up the following units to collectively carry out penalty proceedings and to specify their respective jurisdictions:

- **National Faceless Penalty Centre (NFPC):** To facilitate the conduct of penalty proceedings in a centralized manner and to have jurisdiction to dispose of penalty in accordance with FPS.

- **Regional Faceless Penalty Centres (RFPC):** To facilitate conduct of penalty proceedings and to have jurisdiction to dispose of penalty in accordance with FPS.

- **Penalty Units (PU):** The functions of PUs are: (a.) To facilitate the conduct of faceless penalty proceedings. (b.) To draft penalty orders, including identification of points or issues for imposition of penalty under the ITL. (c.) To seek any information or clarification on points or issues so identified. (d.) To provide the taxpayer an opportunity of being heard. (e.) To analyze the material furnished by the taxpayer. (g.) Such other functions as may be required for the purposes of imposing penalty.

- **Penalty Review Units (PRU):** The functions of PRUs are: (a.) To facilitate the conduct of faceless penalty proceedings. (b.) To review draft penalty order, including checking whether the relevant material evidence has been brought on record, whether the relevant points of fact and law have been duly incorporated in draft penalty order, whether the issues on which penalty is to be imposed have been discussed in the draft penalty order, whether the applicable judicial decisions have been considered and dealt with in the draft penalty order, checking arithmetical correctness of computation of penalty. (c.) Such other functions as may be required for the purposes of review.

- The notifications state that until specific units are set up under FPS, the CBDT may direct certain units of Faceless Assessment Scheme, 2019 to perform the functions of various units under FPS. For instance, National Faceless Assessment Centre (NFAC) will act as NFPC, Regional Faceless Assessment Centre will act as RFPC, Assessment Unit will act as PU and Review Unit will act as PRU.

Mode of communication under FPS

- All communication between PU and PRU or with the taxpayer/any other person/NFAC/Jurisdictional Tax Authority (JTA), as the case may be, shall be exclusively through NFPC.

- Such communication shall be exclusively by electronic mode.

Procedures for conducting penal proceedings in faceless manner as laid down in FPS

- JTA/NFAC shall refer cases to NFPC in the prescribed form where: (a) Penalty proceedings are initiated and show-cause notice is issued by JTA/NFAC; or (b) Penalty proceedings are recommended by JTA/NFAC

- NFPC shall assign such case to any PU in any RFPC in randomized manner.

Stage 1: Preparation of draft penalty order

- **Cases where initiation of penalty proceedings is recommended by JTA/NFAC:**

  - PU is required to draft and provide a show cause notice to be served on the taxpayer

- **PU, if so required, may take the following action:**

  - To NFPC if it agrees with the recommendations for levy of penalty. If it disagrees with such recommendation, then it would be required to provide reasons for the same in writing to NFPC.

  - On receipt of such show cause notice or reasons, NFPC, in cases where penalty is recommended to be initiated by PU, shall serve the show cause notice to the taxpayer, specifying the date and time for filing a response. In other cases, no penalty should be initiated by NFPC.

- **Cases where penalty proceedings are already initiated by JTA/NFAC:**

  - PU shall draft and provide a show cause notice as to why penalty should not be levied on the taxpayer to NFPC and NFPC shall serve the said show cause notice to the taxpayer, specifying the date and time for filing a response.

- The taxpayer shall file a response to the show cause notice to NFPC within the specified time or the extended time so granted on application by the taxpayer. If the response is filed by the taxpayer, NFPC shall send such response to the concerned PU and if no response is filed by the taxpayer, NFPC shall inform the same to PU.

S no	Action by PU	Addressed to	Notice to be issued by	Response submitted to NFPC
1	Obtain further information/ document/ evidence	JTA or NFAC	Request NFPC to issue notice/ requisition	JTA or NFAC shall submit the information within specified time or extended time so granted
2	Obtain further information/ document/ evidence	Taxpayer or any other person	Request NFPC to issue notice/requisition	Taxpayer or any other person shall submit details within specified time or extended time so granted
3	Seek certain enquiry or verification or seeking technical assistance	NFAC	Request NFPC to issue notice/requisition	NFAC shall submit report within specified time or extended time so granted
NFPC shall forward aforesaid response/report to PU or shall inform PU if no such response/report is received				

- **Preparation of draft penalty order**

  - PU shall prepare a draft penalty order in writing after considering all relevant evidences/documents available on record, including any response filed by the taxpayer/any other person, any report furnished by JTA/NFAC for imposition or non-imposition of penalty.

  - PU shall forward the draft penalty order to NFPC.

Stage 2: Processing of draft penalty order into final penalty order

- NFPC shall examine the draft penalty order in accordance with risk management strategy specified by the CBDT and decide:
  - In a case where imposition of penalty has been proposed, to pass the penalty order as per draft order and served thereon to the taxpayer.
  - In a case where non-imposition of penalty has been proposed, not to impose penalty and, accordingly, intimate the taxpayer.
  - Assign the draft penalty order to PRU in randomized manner for its review.
- **Review of draft penalty order –** PRU may review the draft penalty order and decide to:
  - Concur with the draft penalty order and intimate NFPC about such concurrence
    - In such a case, NFPC shall finalize the penalty order in case of imposition of penalty and served thereon to the taxpayer or intimate the taxpayer if no penalty is imposed.
  - Suggest necessary modification to the draft penalty order and send such suggestions to NFPC.
    - In such a case, NFPC shall forward the suggestion to another PU (other than original PU) in a randomized manner. In such a case, the new PU may:
      - If modifications are prejudicial to the interest of the taxpayer, follow the entire procedure as noted above and then pass revised draft order for imposition of penalty.
      - If modifications are not prejudicial to the interest of the taxpayer, shall pass the revised draft order for imposition of penalty.
      - Propose non-imposition of penalty with reasons in writing.
  - On receipt of draft order from PU (after review as the case may be), NFPC shall pass the final penalty order as per such draft and serve thereon to the taxpayer for imposition of penalty and send intimation to the taxpayer if no penalty is imposed.
- Communicate such penalty order to JTA/NFAC, as the case may be, as required under the ITL.

Premature exit of penal proceedings from FPS

- Without prejudice to FPS, NFPC may transfer the proceedings to JTA/NFAC having jurisdiction over the taxpayer with prior approval of the CBDT at any stage of the penalty proceedings, if considered necessary.

Procedure for conducting rectification proceedings for an order passed under FPS

- NFPC may amend any order passed under FPS for rectification of any mistake apparent from record upon application. Such rectification application can be filed by (a) taxpayer (b) PU (c) PRU (d) JTA/NFAC, as the case may be.
- NFPC shall assign rectification application to any PU in a randomized manner. Such PU shall examine the rectification application and send a notice to the applicant through NFPC for granting an opportunity to show cause as to why rectification of mistake should not be carried out under the ITL.

- On receipt of such notice, the applicant shall furnish its response to NFPC within the specified time or extended time so granted. NFPC shall forward the said response to PU or inform PU if no response is received.

- PU shall, after taking into consideration such application and response, prepare a draft order for:

  - Rectification of mistake; or

  - Rejection of the application citing reasons thereof.

- Upon receipt of draft order, NFPC shall finalize the order and communicate the same to:

  - Taxpayer/any other person; and

  - JTA/NFAC to take further actions under the ITL.

Appellate proceedings against order passed by NFPC

- An appeal against the penalty order passed by NFPC shall lie before the Commissioner of Income-tax (Appeals) having jurisdiction over JTA or National Faceless Appeal Centre, as the case may be.

Authentication and delivery of electronic record

- An electronic record shall be authenticated by the originator, being NFPC, by affixing its digital signature or being the taxpayer or any other person, by affixing his/her digital signature or through electronic verification code.

- Every notice or order or any other electronic communication under FPS shall be delivered to the taxpayer, by way of:

  - Placing an authenticated copy thereof in the taxpayer's registered account on designated portal;

  - Sending an authenticated copy thereof to the registered email address of the taxpayer or his/her authorized representative;

  - Uploading an authenticated copy on the taxpayer's mobile app and followed by a real time alert.

- A notice or order or any other electronic communication can be delivered to any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert.

- The taxpayer shall file its responses to any notice or order or any other electronic communication under FPS through its registered account and the response shall be deemed to be authenticated once an acknowledgement is sent by NFPC.

- Time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of Information Technology Act, 2000.

No personal appearance before any unit under FPS

- The taxpayer or its authorized representative or any other person is not required to appear personally for proceedings before any unit under FPS, though it can request for personal hearing so as to make oral submissions or present their case before the PU.

- On receipt of request for personal hearing, Chief Commissioner of Income-tax or Director General of Income-tax (in-charge of RFPC) may approve the request for personal

hearing if it falls under specified circumstances. Such personal hearing shall be conducted exclusively through video conferencing and in accordance with the procedure to be laid down by the CBDT.

3. CBDT directs transfer of ongoing penalty proceedings to Faceless Penalty Scheme, 2021

CBDT Orders

- The CBDT has directed units established under Faceless Assessment Scheme, 2019 to perform the functions of various units under FPS till separate National Faceless Penalty Centres (NFPC), Regional Faceless Penalty Centres (RFPC), Penalty Units (PU) and Penalty Review Units (PRU) are set up. In view thereof, National Faceless Assessment Centre will act as NFPC, Regional Faceless Assessment Centre will act as RFPC, Assessment Unit will act as PU and Review Unit will act as PRU. Consequently, the units established under Faceless Assessment Scheme, 2019 are required to also perform their functions for penalty matters and act accordingly.

- Furthermore, the CBDT has directed that all ongoing, as also future, penalty proceeding under the ITL shall be conducted under FPS, except cases where:
  - Penalty proceedings are assigned to central charges.
  - Penalty proceedings are assigned to international tax charges.
  - Penalty proceedings arising in withholding cases

- The above directions are effective from immediate effect i.e., 20 January 2021.

Key Regulatory amendments

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

Reserve Bank of India ("RBI") amends Foreign Exchange Management (Export of Goods and Services) Regulations, 2015. ("FEMA 23R")

The RBI has amended FEMA 23R to further liberalize the exemption from furnishing export declaration in cases of re-export of leased aircraft/ helicopter and/or engines/auxiliary power units (APUs). The key features of the amendment are as follows:

- It has been clarified that exemption is applicable to re-export of leased aircraft/ helicopter and/or engines/APUs which are either completely or in partially knocked down condition

- Further, the erstwhile provision only covered re-export of those units which were de-registered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorization (IDERA) holder under 'Cape Town Convention' subject to permission by DGCA/Ministry of Civil Aviation for such export(s)

- As per the amended provision, the exemption also extends to re-export of the units that have been de-registered by way of any other termination or cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export(s)

Source: Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021 dated 8 January 2021

Part B – Case Laws

Goods and Services Tax

1. M/s. Musashi Auto Parts Private Limited

Subject Matter: Ruling whether ITC on canteen services and recoveries from employees and business promotional activities are allowed or not

Background and Facts of the case

- The Applicant is a company engaged in the business of manufacturing and supply of auto parts
- As per Section 46 of the Factories Act, 1948, it is mandatory for every employer to provide canteen/food facilities for employees, if the number of employees are more than 250 and consequently, the Applicant is under mandate by law to provide such canteen/food facilities to employees working therein
- In this regard, the Applicant recovers a nominal amount from the employees as a reimbursement of expenses by way of coupon sale or by way of cardpunch per meal
- The Applicant is also availing the ITC pertaining to supplies received from canteen service provider and discharging GST liability on the amount recovered from employees as reimbursements
- Further ,the Applicant also purchases edible items like sweets, dry fruits etc; and gifts like electronics, gold & silver coins/articles for the purpose of business promotion

Questions on which advance ruling is sought

- Whether the Applicant is eligible to avail ITC on GST charged by vendor for Canteen Service
- Whether distribution of coupons among employees attracts GST liability
- Is it correct to determine the fair market value of coupons based on the rate charged to employees
- Whether the Applicant is eligible to avail ITC on procurements made for the purpose of business promotions

Discussions and findings of the case

- It was observed that, the instant case, the Applicant is engaged in the business of manufacturing of automobiles and not in the business of provision of food or catering. The mandate of the Factories Act to provide meals to the employees does not mean that such provision is in the course of furtherance of business. Even if the provision of food and catering had been in the course of furtherance of business, the applicant would not have been entitled to avail ITC in light of the express bar provided under Section 17(5)(b)(i) of the CGST Act, 2017.
- The in the light of provisions of Section 15(2)(b) and 15(2) (e) of CGST Act, values of coupon is part of value of services provided by caterer and as such, coupon value is taxable.
- In regard to procurements made for the purpose of business promotion, the applicant is not eligible for ITC as per section 17(5) which provides that ITC shall not be available in respect of the goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

Ruling

- Basis the above discussion, Applicant is not eligible to take ITC on GST charged by vendor for canteen services availed by it for its employees.

- The distribution of coupons among employees will attract GST liability and the coupon value shall form part of the total taxable value for the caterer i.e. service provider.

- The Applicant is not eligible to avail ITC on business promotion expenses.

2. M/s Thirumalai Chemicals Limited

Subject Matter: Valuation of stock transfer of finished products to units (depots) located in other states

Background and Facts of the case

- The is primarily engaged in the business of manufacture and trading of Chemicals; and undertakes stock transfer of their finished products to their units (depots) located in other States

- The present the valuation adopted for stock transfer to their distinct entities in other States are made in accordance with the provisions of the CGST rules i.e. at open market value

- The distinct entities have excess accumulated credits owing to various reasons and therefore, they propose to change their valuation method

- Applicant intends to value supplies as per the second proviso to Rule 28 of the CGST Rules 2017 which provides that any value declared in the invoice shall be deemed as open market value if the recipient is eligible for full input tax credit

Question on which advance ruling is sought

- Whether the value of such supplies can be determined in terms of the second proviso to Rule 28

Ruling

- It the case at hand, the applicant supplies to their distinct persons who are eligible for full Input Tax Credit, for which presently they adopt the approximate sale value of the distinct person.

- Therefore, following the judicial discipline, AAR holds that the value to be adopted by the applicant can be arrived by following the methodology of either of the three methods:

  - Open Market Value as is presently being adopted by them;

  - In case the supplies made by the Applicant are further supplied as such by the distinct person to an unrelated customer, value would be 90% of the ultimate sale value of such further supplies made by the distinct persons in line with first proviso to Rule 28 of the CGST Rules 2017;

  - In case the distinct persons is eligible for full Input Tax credit, the 'Invoice value' would be deemed as 'Open Market Value'.

Part B – Case Laws

Direct Tax

1. Dr. Ranjan Pai (Taxpayer)- Karnataka HC [TS-692-HC-2020 (KAR)]

Subject matter: Karnataka HC holds that receipt of bonus shares is not subject to gift taxation under the Income Tax Act,1961

Relevant provisions of the ITL (Income Tas laws)

Up to tax year 2016-17, where a taxpayer, being individual or Hindu Undivided Family (HUF):

- Received any sum of money without consideration, which was in excess of INR 0.05m, the whole of such sum received was considered as income of the taxpayer.
- Received any specified property without consideration or for an inadequate consideration in excess of INR 0.05m, the difference between the FMV and the consideration discharged was considered as income of the taxpayer (gift tax provisions).

Facts

- The Taxpayer was an individual and was engaged in the medical profession.
- During the course of assessment proceedings for tax year 2010-11, the tax authorities noted that the Taxpayer had received 10m bonus shares issued by the Company.
- The tax authorities held that the bonus shares were received from the Company without consideration and the FMV of such bonus shares was the Taxpayer's income under the gift tax provisions.
- Aggrieved by the tax authorities' order, the Taxpayer filed an appeal before the first appellate authority (FAA) and the FAA held in the Taxpayer's favour on the ground that on issuance of bonus shares, there is mere conversion of reserve into capital and, therefore, the gift tax provisions are not applicable.
- Aggrieved by the FAA's order, the tax authorities filed an appeal before the Bangalore Income Tax Appellate Tribunal (Tribunal) which held in favour of the Taxpayer.
- Aggrieved by the Tribunal's order, the tax authorities filed an appeal before the HC.

Taxpayer's arguments before the HC

- There is a difference between creation of shares and transfer thereof. On allotment of shares, there is no transfer and in the absence of transfer of shares, there cannot be receipt of shares to trigger the gift tax provisions.
- When the bonus shares are allotted, shares are created in the hands of shareholders. Shares do not exist until they are allotted.
- The Company cannot be regarded as holding its own shares. When the shares are issued for the first time, the Company cannot be said to be in possession of the shares and transferring the same to the allottees.
- On subscription of shares, there cannot be receipt of shares by a shareholder in the absence of transfer from the Company.
- To support the above contentions, reliance was placed on various judicial precedents.
- The gift tax provisions are anti-abuse provisions and while interpreting the provisions, the object of the provisions is to be kept in mind.

- The intent of the gift tax provisions was to tax the benefit received by a taxpayer. On allotment of shares, no benefit accrues to the shareholder and, hence, the same cannot be taxed.

HC's ruling

- The HC rejected the appeal filed by the tax authorities on the following grounds and held that on issuance of bonus shares, the gift tax provisions are not attracted:

- Issuance of bonus shares involves capitalization of reserve which is merely reallocation of the funds of the Company. There is no inflow of fresh funds or increase in capital employed in the Company. The total funds available with the Company remain the same. Furthermore, issue of bonus shares does not involve any change in the capital structure of the Company.

- When a shareholder gets a bonus share, the value of the original share goes down. Post issue of bonus shares, the market value, as well as the intrinsic value of the original shares and bonus shares put together, is the same or nearly the same as that of the original shares.

- Any profit derived by the Taxpayer on receipt of the bonus shares is adjusted by reduction in the value of the original equity shares.

- On issuance of bonus shares, the money remains with the Company and nothing is received by the shareholder. In the absence of transfer of property, gift tax provisions are not applicable.

- The HC also observed that the bonus shares were not issued in order to evade any tax, which is the object of the provisions.

2. Deep Industries Ltd (Taxpayer)- Ahmedabad Tribunal (TS-21-ITAT-2021(Ahmd))

Subject matter: Ahmedabad Tribunal allows revenue deduction for premium paid on forward contract entered for hedging forex loan for capital asset

Background

- Section 37(1) of Income-tax Act, 1961 (ITA) provides deduction for expenses (other than capital and personal) which are incurred wholly and exclusively for the purpose of business or profession while computing income under the head Profits and Gains from Business or Profession.

- Section 43A of ITA, which is a non-obstante provision, provides for the treatment of exchange fluctuation loss or gain arising on restatement of liability relating to the cost of a capital asset acquired from outside India for the purposes of business or profession or to the foreign currency borrowing made specifically for the purpose of acquisition of such asset. In such cases, the cost of the asset is increased or reduced by the amount of exchange fluctuation loss or gain and the depreciation and other capital allowances are allowed on the adjusted cost of the asset. Explanation 3 to section 43A provides that where taxpayer has entered into forward contract with an authorized dealer to cover his liability in foreign exchange, the gain or loss to be adjusted to capital asset should be computed with reference to forward rate specified in forward exchange contract.

- Post tax year 2016-17 onwards, Section 43AA inserted by Finance Act 2018 and Income Computation Disclosure Standards (ICDS) VI dealing with treatment of exchange fluctuation requires recognition of premium or discount arising on foreign exchange forward contract as income or expense over the period of the forward contract.

Facts

- The Taxpayer, engaged in the business of gas and air compression activities, had borrowed a foreign currency loan to acquire equipment for the purpose of business. In order to hedge foreign exchange fluctuation on such loan, the Taxpayer entered into a forward contract with bank and paid premium thereon. The Taxpayer claimed the premium as revenue deduction under section 37(1) of ITA.

- The Tax Authority disallowed the claim on the ground that premium on forward contract does not represent a foreign exchange fluctuation loss but it is in the nature of the premium paid to secure the foreign currency loss which may arise at the time of repayment of instalment of such loan The expenditure is capital in nature since it is incurred towards principal amount of loan and underlying loan is used to meet capital expense. The accounting treatment of such premium as revenue expense as per Institute of Chartered Accountants of India (ICAI) Accounting Standard-11 is not relevant for tax purposes.

- The first appellate authority upheld the decision of Tax Authority. The first appellate authority also relied on the Bangalore Tribunal decision in the case of Archidply Industries vs. DCIT (ITA No.1079(B)/2011). In that case the premium on forward contracts was treated as a sunk cost and was neither allowed to be capitalised as per Section 43A nor was it allowed as a revenue expenditure under Section 37(1).

- The Bangalore Tribunal did not permit capitalisation under section 43A as the capital asset in that case was not an imported asset. It also held that since the purpose of loan was acquisition of capital asset, the premium paid to protect against foreign exchange fluctuation thereon was also on capital account in terms of ratio of Supreme Court (SC) ruling in CIT vs. Woodward Governor (2010) (312 ITR 254).

- Being aggrieved, the Taxpayer filed further appeal before the Ahmedabad Tribunal.

Issue before Tribunal

Whether premium paid on forward contract for securing protection against foreign exchange fluctuation on foreign currency loan is covered under section 43A of ITA or whether it is deductible under section 37(1)?

Tribunal Ruling

- Section 43A does not deal with premium paid on forward contract which is entered for hedging loss arising on repayment of foreign currency loan. It deals with only loss/gain on repayment of liability in foreign currency for the assets acquired from a country outside India. Hence, Section 43A is not applicable in said case and premium paid cannot be disallowed.

- The premium on forward contracts can be equated to any other insurance policy obtained to safeguard from any unforeseen loss in normal course of business which does not give rise to capital expense. In present case, the premium paid is to protect against exchange fluctuation. Hence, it is akin to insurance policy premium and allowable under section 37(1).

- Also, since the premium was allowed as revenue deduction in past years, applying principles of consistency, it is allowable as deduction in current year as well.

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