EY Tax and Regulatory Alert

June 2020

Prepared for ACMA

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2.	Customs and Foreign Trade Policy	**Key Circulars and Notifications:** • Notification issued for amending notification relating to export policy of alcohol based hand sanitizers. • Public Notice issued in relation to increase in duration of validity of MEIS / SEIS and relaxation in last dates for filing applications under MEIS / SEIS. • Notification issued for amending the import policy for tyres. • Update on introduction of faceless assessment for goods covered under Chapter 84 /85 for Bangalore and Chennai Customs Station.

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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 June 2020

- **Notification No. 44/2020-Central Tax, dated 08.06.2020** has been issued to provide that the provisions of Rule 67A i.e. for furnishing a nil return in FORM GSTR-3B by SMS shall be effective from 08.06.2020.

- **Notification No. 46/2020 -Central Tax, dated 09.06.2020** has been issued to provide that, due to wide spread of COVID-19, in cases where a notice has been issued for rejection of refund claim and where the time limit for issuance of order in terms of the provisions of section 54(5) read with sub-section (7) of the Act falls during the period from the 20.03.2020 to the 29.06.2020, in such cases the time limit for issuance of the said order shall be extended to fifteen days after the receipt of reply to the notice from the registered person or the 30.06.2020, whichever is later. The same shall come into force with effect from 20.03.2020.

- **Notification No. 47/2020 -Central Tax, dated 09.06.2020** has been issued seeking to provide extension of validity period of e-way bills which have been generated on or before 24.03.2020 and their period of validity is expiring on or after 20.03.2020, till 30.06.2020. The same shall come into force with effect from 31.05.2020.

- **Notification No. 48/2020 -Central Tax, dated 19.06.2020** has been issued to provide that registered person are allowed to furnish details of outward supply under GSTR 1 for the period from 27.05.2020 to 30.09.2020 through electronic verification code (EVC). Also, registered persons are allowed to file GSTR 3B for period from 21.04.2020 to 30.09.2020 through electronic verification code (EVC).

- **Press release on 40th GST council meeting held on 12.06.2020** wherein following recommendations have made on Law and Procedure changes:

➢ **Late fee for delayed filing of GSTR 3B of past years (i.e. for the period July 2017 to January 2020):**

- For registered entities with NIL tax liability - No late fee will be levied
- For others - Reduced to a maximum of Rs 500 per return

➢ **Relief for small taxpayers having turnover upto 5 Cr:**

- Rate of Interest for late furnishing of returns for February, March and April 2020 is reduced from 18% to 9%, provided the same are filed by September 2020
- The deadline for filing GSTR 3B for May, June and July 2020 has been extended till September 2020, without any interest or late fee

➢ **Extension in period for seeking revocation of cancellation of registration:**

- Filing of the application for revocation of cancellation has been extended upto 30.09.2020, in case where registrations have been cancelled till 12.06.2020.

The aforementioned changes shall be made effective through relevant Circulars/ Notifications.

- **Circular No. 140/10/2020, dated 10.06.2020** clarifying the position with respect to leviability of

GST under reverse charge mechanism on the remuneration payable to a director of a company has been summarised in following paragraphs:

- **Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company** – It has been clarified that remuneration paid to all such independent directors or other directors, who are not employees of the company, is taxable in the hands of the recipient company under reverse charge mechanism.

- **Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company** – Referring to the treatment of director remuneration under Income Tax Act, 1961, the Circular clarifies that the part of Director's remuneration which are declared as 'Salaries' in the books of the company and subjected to TDS under Section 192 of the Income Tax Act, are not taxable under GST being consideration for services by an employee to the employer in the course or in relation to the employment under Schedule III of the CGST Act, 2017. Any other amount which is subjected to TDS under Section 194J is liable to GST being outside the scope of Schedule III of the CGST Act.

  In essence, the onus has now been shifted to the treatment / position being adopted by companies while deducting TDS under the Income Tax Act, 1961. Hence, companies are advised to be careful while deducting TDS in respect of such payments. Prior to the issuance of this Circular, treatment under Income Tax Act was viewed only as an indicative ground rather than being the determining factor.

- **Circular No. 139/09/2020, dated 10.06.2020** issued has clarified that the treatment of refund of ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of the Circular No.135/05/2020. Hence, refund in this regard shall be availed on basis of self-declaration by uploading the self-invoice or BOE, as the case may be. Circular No 135/05/2020, dated 31.03.2020, restricts the refund of the accumulated ITC to the ITC as per the invoices, the details of which are uploaded by the supplier in GSTR-1 and are reflected in Form GSTR-2A of the applicant.

- **GSTN update** - Goods & Services Tax Network ("GSTN") has enabled filing of GST Form ITC-02A, wherein a registered person gives a declaration of unutilized ITC transferred for obtaining a separate registration within the same state or union territory. Rule 41A of the CGST Rules, 2017 deals with Transfer of credit on obtaining separate registration for multiple places of business within a state or UT-

  "A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of Rule 11 and who intends to transfer, either wholly or partly, the unutilized input tax credit lying in his electronic credit ledger to any or all of the newly registered places of business, shall furnish within 30 days from obtaining such separate registration, the details in Form GST ITC-02A electronically on the common portal either directly or through facilitation center, notified on this behalf by the commissioner.
  Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration."

- **Circular No. 1071/4/2019-CX.8, dated 29.05.2020,** has been amended by CBIC to provide that the last date of payment of dues by taxpayers/applicants determined under Sabka Vishwas (Legacy Dispute Resolution) Scheme,

2019, (SVLDRS) has been pushed to 30.06.2020.

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of June 2020

- **Notification No. 08/2015-2020, dated 01.06.2020**, issued by DGFT amending the Notification Number 04/2015-2020 dated 6 May 2020 related to the export policy of alcohol based hand sanitizers. In this regard, the restriction imposed on export of alcohol based hand sanitizers has been amended to prohibit the export of Alcohol based Hand Sanitizers in containers with dispenser pumps falling under the ITC HS codes ex3004, ex3401, ex3402, 380894 any other ITC HS Code. Further, it also provides that the alcohol based hand sanitizers exported in any other form / packaging are free for export.

- **Public Notice No. 08/2015-2020, dated 01.06.2020**, issued by Ministry of Commerce has issued the same in relation to increase in duration of validity of MEIS / SEIS and relaxation in last dates for filing applications under MEIS / SEIS. Key aspects has been summarised as followed:

  - Duty credit scrips issued between 01.032018 and 30.06.2018 shall be valid till 30.09.2020.

  - MEIS applications which attracted a late cut as on 01.03.2020, the period between 01.03.2020 and 30.06.2020 shall not be counted and the last date of submission of various categories of applications attracting that late cut and the applicable cuts will be accordingly re-determined.

  - SEIS application for the services rendered in FY 2016-17, the last date of application with 10% late cut would be 30.06.2020. After that the application would become time barred.

  - SEIS application for the services rendered in FY 2017-18, where 5% late cut was applicable as on 31.03.2020 shall continue to be applicable till 30.06.2020 and thereafter, 10% late cut would be applicable for applications submitted till 31.03.2021.

- **Notification No. 08/2015-2020, dated 01.06.2020**, issued by Ministry of Commerce and Industry amending the import policy for tyres. In this regard, the import of new pneumatic tyres covered under the ITC HS 40111010, 40111090, 40112010, 40112090, 40114010, 40114020, 40114090, 40115010 and 40115090 is amended from 'Free' to 'Restricted'.

- **Government had introduced the process of faceless assessment for goods covered under Chapter 84/85 for Bangalore and Chennai Customs Station**.

  Following are the key aspects of the same:

  - Main objectives of Faceless Assessment is speedy and uniform assessment practices.

  - National Assessment Commissionerates (NACs) has been established to examine the assessment practices of imported articles across Customs stations and suggest measures to bring about uniformity and enhanced quality of assessments.

  - The first pilot programme of Faceless Assessment was started for articles primarily falling under Chapter 84 of the

Customs Tariff Act, 1975 in Chennai on 14.08.2019.

- Similar pilot programmes were subsequently introduced in Customs formations at Delhi, Bengaluru, Gujarat and Visakhapatnam for articles primarily falling under chapters such as 85, 86 to 92, 39, 50 to 71 and 72 to 83 of the Customs Tariff Act, 1975.

- First phase would begin from 8.06.2020 at Bengaluru and Chennai for items of imports primarily covered by Chapters 84 and 85 of the Customs Tariff Act, 1975.

- The phased rollout plan envisages that Faceless Assessment shall be the norm pan India by 31st December 2020.

- Notification No.50/2020-Customs (N.T.) dated 05.06.2020 implements Faceless Assessment across different Principal Chief Commissioner/Chief Commissioner Zones. This notification enables an assessing officer (proper officer under Sections 17 and 18 of the Customs Act, 1962), who is physically located in a particular jurisdiction to assess a Bill of Entry pertaining to imports made at a different Customs station, whenever such a Bill of Entry has been assigned to him in the Customs Automated system

- In the first phase of the roll-out, this notification will be applied only for inter-linking of Bengaluru and Chennai Customs zones for the purpose of Faceless Assessment

- W.E.F. 08.062020 for the goods imported at any Customs station falling under the jurisdiction of Bengaluru or Chennai Customs Zone, the Bills of Entry pertaining primarily to the said two chapters will be marked by the Customs Automated System to the nominated Faceless Assessment group for assessment.

- Notification No 51/2020-Customs (N.T.) dated 05.06.2020 is issued for the purpose of empowering the jurisdictional Commissioners of Customs (Appeals) at Bengaluru and Chennai to take up appeals filed in respect of Faceless Assessments pertaining to imports made in their jurisdictions even though the assessing officer may be located at the other Customs station

- Turant Suvidha Kendra is created to facilitate the trade in completing various formalities relating to the Customs assessment locally at the port of import, as is presently done, even though the actually assessment may be done remotely or virtually by the proper officer physically located in another Customs station

- Turant Suvidha Kendra would be a dedicated cell in every Customs port of import and will be manned by Custom officers to cater to functions and roles such as :

    - Accept Bond or Bank Guarantee;

    - Carry out any other verifications that may be referred by Faceless Assessment Groups;

    - Defacing of documents/ permits licenses, wherever required;

    - Debit of documents/ permits/ licenses, wherever required; and

    - Other functions determined by Commissioner to facilitate trade

- Detailed process and procedure on the clearance of the document has been provided vide Instruction No. 09/2020-Customs dated 05.06.2020.

- **Circular No. 30/2020-Customs, dated 22.06.2020**, issued by Ministry of Finance promoting 'Faceless, Contactless, Paperless Customs' practice under customs. The Board directs that w.e.f. 22.06.2020, only the digital copy of the shipping bill bearing the final LEO (let export order) would be electronically transmitted to the exporter. And there would be no requirement of printing copies of the said document for the exporters and also for maintaining a docket in the customs house. The salient features of the secure electronic communication of the Final LEO copy of the Shipping Bill and the Gatepass copy of Shipping Bill are as follows:

  - Final Let Export Order (LEO) Copy of Shipping Bill: Taking printouts of shipping bills and Export promotion copy are no more required now. Instead a new functionality of communicating by email, the PDF version of the Final LEO copy of the Shipping Bill to the registered Customs Broker and exporter has been enabled. This Final LEO copy of the Shipping Bill will have the following features:

  - The PDF version will bear a digitally signed and encrypted QR code which can be scanned to verify the authenticity of the document using Mobile App ICETRAK. The QR code is tamper proof, which is digitally signed by CBIC to ensure the authenticity. Key details like SB No., SB Date, FOB value, Package Details are available in the secured QR Code.

  - A version number is also embedded in the QR code which can be used to ascertain whether the document is indeed the latest version (in case of cancellation of LEO etc.). The same would be verifiable at ICEGATE Enquiry.

  - Let Export Order (LEO) message shall also be sent to custodians who are integrated with ICEGATE. Also, it may be noted that the SB LEO message is not being received electronically by those custodians who are NOT connected via MFTP.

  - eGatepass Copy of Shipping Bill: The Directorate General of Systems would communicate through email, the eGatepass PDF copy of the Shipping Bill to the Customs Broker and the Exporter, if registered. Following are the features of eGatepass copy of the Shipping Bill :

    - The electronic document provides key summary details like Container/Packages related to logistics movement and facilitates authentic, easy and quick verification by the Custodian, at the point of Entry/Exit.

    - There will be two types of QR codes (i) for entire eGatepass document, and (ii) for each container/package covered under the eGatepass. This will ensure that only those containers/package move out which are covered under the Gatepass document.

    - In case of packaged and other bulk cargos, the eGatepass copy of the Shipping Bill will be generated during LEO.

- In case of containerized cargo, the eGatepass copy of the Shipping Bill will be generated after the receipt of the container stuffing information for the SB.

- It is re-iterated that for the purposes of exports, all the supporting documents should mandatorily be uploaded in eSanchit and collection of physical dockets shall be dispensed with.

Direct Tax

Part-A Key Direct Tax updates

CBDT issues revised Form 26AS to include additional information relating to specified financial transactions, demands and refunds, completed and pending assessments etc

- Income-tax laws ('ITL') require withholding or collecting of taxes in case of certain specified transactions. The taxes withheld or collected by a payer are required to be deposited with the Government of India within a specified time. Thereafter, the payee shall be eligible to claim credit of such taxes withheld or collected during the tax year.

- Prior to the amendment by Finance Act 2020 (FA 2020), w.e.f. 1 June 2020, the ITL mandated the Tax Authority to prepare and deliver a statement of taxes deducted or collected to every taxpayer in the prescribed form (Form 26AS), specifying the amount of tax deducted or collected and such other particulars as may be prescribed on or before 31 July of the following tax year.

- Presently, the information provided in Form 26AS is restricted to details in relation to taxes deducted or collected or payment of taxes made during the tax year. In practice, the Tax Authority also captures additional information in Form 26AS, like details of high value transactions in respect of shares or mutual funds etc

- For accurate computation of tax liability of a taxpayer, information like sale/purchase of immovable property, share transactions etc., is collected by the Tax Department from the annual information statements filed by various intermediaries like banks, registrar of immovable property, companies issuing shares etc shall also be included in the Form 26AS w.e.f. 1 June 2020. In view thereof, FA 2020 has omitted the erstwhile provision (S. 203AA of the ITA) which restricted preparation of statement of taxes withheld or collected and has introduced a new provision (s. 285BB of the ITA) with effect from 1 June 2020 for preparation of detailed statements (Annual Information Statement – Revised Form 26AS), which will capture additional details such as details of specified financial transactions etc., as compared to the existing Form 26AS, thereby widening the scope of information which can be disclosed to the taxpayer in Form 26AS.

- Pursuant to above, the CBDT has issued the Notification introducing a new Rule 114-I in the Rules and expanding the scope of Form 26AS.

- The Notification provides for omission of the existing Rule 31AB of the Rules and insertion of new Rule 114-I in the Rules, with effect from 1 June 2020. All the provisions of Rule 31AB, such as information relating to taxes deducted, collected or paid are incorporated in new Rule 114-I of the Rules.

- The current form 26AS provides information such as name, Permanent Account Number (PAN), Aadhaar number, address, tax year, assessment year, details of tax deducted at source, details of tax collected at source and details of taxes paid during the tax year. In addition to this, the revised form 26AS shall also provide date of birth/incorporation, mobile number, email address, details relating to demands and refunds, specified financial transactions, pending proceedings, completed proceedings and details of information received from foreign jurisdictions under EOI agreements.

- The new Rule 114-I of the Rules authorizes the Tax Authority to provide any other information received from any officer, authority or body performing any function under any law or from any other person to the extent as it may deem fit in the interest of the Tax Department.

- The Tax Authority is required to specify the procedures, formats and standards for the purposes of uploading the revised Form 26AS. The revised Form 26AS is required to be

uploaded in the registered e-filing account of the taxpayer within three months from the end of the month in which information is received by the Tax Authority.

CBDT notifies tax return forms for tax year 2019-20

- The CBDT, vide the Notification No. 31/2020 dated 29 May 2020 (Notification), has amended Rule 12 of the Income Tax Rules 1962 (Rule 12), has also notified the Income Tax Return (ITR) forms, for all categories of taxpayers for tax year 2019-20 (Assessment Year 2020-21). However, the instructions for filing the ITR forms are awaited.

Changes in Rule 12- Widening of applicability of simplified ITRs

- Rule 12 provides for specified taxpayers (e.g. small taxpayers and taxpayers offering income under presumptive taxation) to file their returns under the simplified ITRs (ITR-1 Sahaj and ITR-4 Sugam) containing only few disclosure requirements.

- The CBDT vide Notification No. 1/2020 dated 3 January 2020 (January Notification2) had already notified two ITR Forms, being ITR-1 Sahaj and ITR-4 Sugam for tax year 2019-20. Along with the same, the CBDT had also amended Rule 12 to narrow down the eligibility of the taxpayers who were entitled to file ITR-1 and ITR-4 in following two cases:

    - Taxpayer who jointly owns a house property with two or more persons shall not be eligible to file ITR-1 Sahaj or ITR-4 Sugam;

      and

    - Taxpayer who is required to furnish tax return only due to operation of seventh proviso to Section (s.) 139 of the Indian Tax Law (ITL) (Deposit/Expenditure criteria) shall not be eligible to file ITR-1 Sahaj. Such a taxpayer is:

        - A taxpayer who had deposited an aggregate amount exceeding INR 10 million in one or more current bank accounts; or

        - A taxpayer who had incurred foreign travel expenditure of an aggregate amount exceeding INR 0.2 million for himself/herself or any other person; or

        - A taxpayer who had incurred electricity expenditure of an aggregate exceeding INR 0.1 million.

- CBDT in its Press release dated 9 January 2020, clarified that the taxpayers who hold single house property in joint ownership shall also be allowed to furnish their tax returns in simplified ITR forms if they are otherwise eligible to file the same. Also, the taxpayers satisfying the Deposit/Expenditure criteria shall be allowed to file their tax returns in ITR-1 Sahaj.

- The legislative amendment is made in Rule 12 to give effect to the clarification issued vide the Press Release.

Key Changes in ITR Forms

1. **Common Amendments in different ITR forms**

- **Amendment relating to Deposit / Expenditure Criteria (ITR 1, 2, 3):** The taxpayer is required to disclose the criteria fulfilled and the aggregate amount of bank deposit or expenditure incurred on foreign travel or electricity depending on such condition, as the case may be

- **Disclosure of type of company for taxpayers being director in a company or taxpayers holding unlisted equity shares:** If the taxpayer individual was director in a company during the tax year, he/she was required to furnish certain information, like name of the company, whether shares are listed, PAN and Director Identification Number. An additional disclosure requirement has been inserted, being “Type of company”, wherein a

dropdown list shall be provided to identify types of company (ITR 2 and ITR 3).

Similarly, taxpayer is also to disclose “type of company” as an additional requirement while reporting the disclosure of unlisted equity shares of any company held by the taxpayer during the year (ITR 2, 3, 5 and 7)

- **Separate Schedule (Schedule 112A) for computation of capital gains arising on from sale of equity share in a company or unit of equity oriented fund or unit of a business trust on which Securities Transaction Tax (STT) is paid (ITR 2, 3, 5 and 6):** The new ITR form requires asset-wise detailed disclosure requirement i.e. it will include ISIN code of security; name, number and sale price of share/unit. Also, details such as full value of consideration, cost of acquisition, fair market value of the asset, expenditure wholly and exclusively incurred in connect with transfer, etc. are now also to be reported asset-wise.

  A separate schedule if introduced for taxpayers being no resident earning the said income for reporting the aforesaid details.

- **Disclosure of Document Identification Number (DIN) (ITR 1 to 7):** Pursuant to CBDT Circular No. 19 of 2019 dated 14 August 2019 which provides that no communication shall be issued by Tax Department relating to assessment, appeals, orders, etc. on or after 1 October 2019, unless electronically generated DIN is allotted and duly quoted on such communication, ITR forms require disclosure of such DIN if tax return is furnished pursuant to any notice issued by the Tax Authority.

- **Disallowance of amount paid to a member (ITR 3 and 6):** Any payment of interest, salary, bonus, commission or remuneration, by any association of persons or body of individuals to a member of such association or body which is disallowed under provisions of ITL are required to be reported separately.

- **Computation of income from life insurance business (ITR 5 and 6):** Details of net profit/loss from life insurance business and other additions/ deductions made to be included. Separate disclosure of losses to be carried forward from life insurance business is provided under Schedule CFL.

- **Expansion of depreciation schedule (ITR 3, 5 and 6):** Depreciation schedule is enlarged to include separate block of assets which is eligible for claiming deprecation at the rate of 45%.

- **Separate reporting of income from units of a mutual fund purchased in foreign currency by Offshore fund (ITR 5 and 6):** The ITR Forms require a separate reporting of income from units of mutual fund purchased in foreign currency by an offshore fund, which is taxable at special rate of 10%. in Schedule OS (Income from other sources).

2. Key changes which are consequential to amendments made in the provisions of ITL:

- **Amendment in conditions for carrying on tax audit (ITR 3,5 and 6) -** Erstwhile provisions governing requirement to carry out tax audit provided that if the total sales/turnover/gross receipts exceeded INR 10 million in a tax year for a person carrying on business, then such person is required to undertake tax audit. This, threshold was enhanced to INR 50 million if following two conditions are met:

  (i) Aggregate of all amounts received, including from sales/turnover/gross receipts or on capital account such as capital contribution, loans, etc., in cash, does not exceed 5% of the said amount; and

  (ii) Aggregate of all payments made, including amount incurred for expenditure or on capital account such as asset acquisition, repayment of loans, etc., in cash, does not exceed 5% of said amount.

- In consequence of the above amendment, ITR form provides for three new disclosure requirements, being:

(i). Whether total sales/turnover/gross receipts of business exceeds INR 10 million but does not exceed INR 50 million; and

(ii). Whether aggregate of all amounts received, including from sales/turnover/gross receipts or on capital account such as capital contribution, loans, etc., in cash, does not exceed 5% of the said amount; and

(iii). Whether aggregate of all payments made, including amount incurred for expenditure or on capital account such as asset acquisition, repayment of loans, etc., in cash, does not exceed 5% of said amount.

- **Payment based deduction (ITR 3,5 ad 6):** Additional disclosure requirement of interest payable to a deposit taking Non-banking financial company (NBFC) or systematically important non deposit taking NBFC

- **Reporting requirement in relation to secondary adjustment (IT 3,5 and 6):** As per provisions of ITL, where a primary adjustment is carried out with respect to an international transaction with an Associated Enterprise (AE), a secondary adjustment is also required to be carried out in the books of the taxpayer. Further, if the adjusted amount is not received from the respective AE in stipulated time, it is deemed to be treated as advance provided by the taxpayer to AE and interest is charged thereof. However, an option is provided to taxpayer in such cases to pay an additional income tax on the adjusted amount and prevent the adjusted amount from being treated as an advance. ITR form provides that if the taxpayer is availing such option, then requisite details in Schedule TPSA which includes amount of primary adjustment, computation of tax including surcharge and cess and details of payment of such taxes are required to be reported.

- **Change in taxation in the hands of unit holder (ITR 2,3,5.6 and 7):**

- Erstwhile provisions of the ITL provided that where the net computation of income of an investment fund was a loss, such loss have to captured at the level of the investment fund only and the same cannot be passed on to the unitholders of the investment fund. However, such treatment has undergone a change vide Finance Act 2020 as under:

(i) For losses accumulated with the investment fund as on 31 March 2019, with respect to income other than income from business and profession shall be considered as loss of the unitholders and shall be allowed to be carried forward by such unitholders;

(ii) For losses arising from tax year 2019-20, with respect to losses other than arising under the head of income from business and profession, such losses shall be passed on to the unitholders meeting stipulated conditions.

The changes made in the ITR form are:

- Reference to pass through of "losses" alongside pass through of income have been added;

- Schedule PTI which provides for details of pass through income from business trust/investment fund will require furnishing of additional disclosures, being current year income, share of current year loss distributed by investment fund, etc.

- Schedule CFL which provides for details of losses to be carried forward to future years, will now require a separate bifurcation with respect to house property loss, short term capital loss and long term capital loss, into normal losses and losses made available due to pass through from investment fund.

Also, with respect to long term capital gains earned by taxpayers by virtue of pass through taxation, bifurcation is required to be provided between the gains taxable under s. 112A @

10%, other than s. 112A @ 10% and taxable @ 20% for other cases. (ITR 2, 3, 5 and 6)

- **Option to disclose Aadhaar number in lieu of PAN (ITR 1 to 7):** ITR Forms are amended to provide option to taxpayer to furnish Aadhaar number wherever there is requirement to quote PAN if such Aadhaar number is linked with PAN following the prescribed procedure.

- **Option of "self-occupied" property introduced (ITR 5 and 6):** In case a property consists of building/ land appurtenant is held as stock in trade and the property/part of the property is not let out during the whole or any part of the previous year, the annual value of such property, for period up to two years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be NIL, thus now the ITR forms allow claim annual value as NIL.

3. Key changes in ITR 6- Applicable to corporate taxpayers

- The Taxation Laws (Amendment) Act 2019 provided for concessional tax regimes for various specified domestic companies, wherein the corporate tax rate stood reduced to 22%/15% for companies which met stipulated conditions and also agreed to give away certain allowances. These provisions are introduced as optional provisions, wherein the company can decide to whether opt-in for it or not. In lines with the same, the ITR Form in Part-A of General Schedule, requires the company to choose whether it is opting for any of the concessional tax regimes.

- In case of companies covered by presumptive taxation regime and do not maintain books of account, have to report certain specified items of assets and liabilities as also gross receipts and expenses in lieu of reporting of detailed items of balance sheet and profits and loss account. Such reporting was applicable to companies following Indian Accounting Standards (Ind AS). Considering that Ind AS companies are generally required to maintain books of account, requirement of reporting only specified items of balance sheet and profit and loss account under Schedule Part A-BS–Ind AS and Schedule Part A-P&L Ind-AS stand deleted.

- As part of disclosure of income chargeable to tax at special rates i.e. Schedule OS (Income from other sources) and Schedule SI (special rates), a new line item added, being tax on dividend received by an Indian company from specified foreign company i.e. a company in which the Indian company holds 26% or more of equity, chargeable to tax @ 15% plus surcharge and cess as applicable.

- Any capital gain or loss arising from the sale of land or building or both is required to be reported by taxpayer in Schedule CG of ITR form. In the new ITR-6, a company is now required to report its share in land or building in case of co-ownership

- As per the First Schedule of the Finance Act, a foreign company is liable to pay tax at the rate of 50% in respect of the following incomes:

  - Royalties received from Government of India (GoI) or an Indian concern in pursuance of an agreement made by it with the GoI or the Indian concern after the 31 March 1961 but before the 1 April 1976; or

  - Fees for rendering technical services received from GoI or an Indian concern in pursuance of an agreement made by it with the GoI or the Indian concern after the 29 February 1964 but before 1 April 1976, and where such agreement has, in either case, been approved by the Central Government.

In notified ITR-6, if a foreign company has earned such incomes, then it has to separately report them in the Schedule OS (Income from other sources). Consequential change has also been made to Schedule SI (Special Income) which provides taxation at special rate. It may be noted that such provisions

already formed part of the ITL, however a separate disclosure is now required in the ITR Form for the sake of clarity.

- Previously, the return of a company could be signed and verified by its Managing Director (MD) or in his/her absence, by any other director of the company. However, Finance Act 2020 amended the relevant provision to enable "any other person, as may be prescribed by the Board", to verify the return of income of a company. In pursuance to such amendment, ITR-6 requires details of the eligible authorised signatories verifying the return in schedule of 'Key Persons' such as name, designation, address, PAN/ Aadhaar no and director identification no, if he/she is the director of the company.

4. **Key changes in ITR- 1 Sahaj- applicable to specified small taxpayers and ITR-4 Sugam- applicable to taxpayers offering income on presumptive basis:**

- Following Additional Disclosure requirements which were notified in the Form ITR-1 Sahaj and ITR -4 Sugam through the January Notification now stand omitted by the present Notification:

  - A taxpayer owning a single house property was required to provide complete address of such house property. Also, if the said property was let out at any time during the tax year, details such as Name and PAN/Aadhaar number of the tenant (if available) was to be provided.

  - Under the house property schedule, the taxpayer was required to separately disclose the amount of unrealized rent along with amount of gross rent, though, unrealized rent is subsequently excluded from gross rent in the computation of taxable rent income.

  - Salaried taxpayer was required to provide various details of employer such as name, address and Tax Deduction and Collection Account Number (TAN) of the employer.

  - Requirement to furnish details of Indian passport

5. **Key changes in ITR-4 Sugam- Applicable to taxpayers offering income on presumptive basis**

- The following additional disclosure requirements which were notified in the Form ITR - 4 by the January Notification, now stand omitted by the current Notification:

  - A taxpayer, being a partner in a partnership firm was required to disclose the name and PAN of such partnership firms.

  - Taxpayer, being a partnership firm, was required to provide details of all the partners which include name, address, PAN and Aadhaar number (if eligible for Aadhaar) of the partner, percentage of share in the partnership firm, rate of interest on partner's capital and remuneration paid or payable.

  - Taxpayer was required to provide the movement of all transactions undertaken through bank channel (aggregate of all bank accounts) viz. details of opening balance, receipts during the tax year, payments/ withdrawals during the tax year and closing balance. Similar summary was also to be provided for all transactions undertaken in cash during the tax year.

    In lieu thereof, the earlier disclosure requirement to provide exhaustive details of financial information such as details of capital balances, secured and unsecured loans, creditors, fixed assets, inventories, cash and bank balance, etc. stand restored as per present Notification.

6. **Key changes in ITR-7- Applicable to specified taxpayers such as charitable trust, political parties, etc**

- While providing details of registration, the taxpayer is required to specify whether application for registration is made as per new provisions, provision under which registration

is applied, date on which the application for registration as per new provisions is made and specific provision of exemption opted for under the new provisions.

COVID 19 Impact – Government provides further extension to various timelines under the direct tax laws in India

Background

- In view of the challenges faced by taxpayers in meeting the statutory and regulatory compliance requirements across sectors due to the outbreak of COVID-19 pandemic, the Government of India (GoI) is proactively taking various steps to provide relaxations under taxation laws in India. In the past few months, the GoI has undertaken the following measures in this behalf:

    - Introduction of Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance 2020 (Ordinance) on 31 March 2020 to extend timelines for various compliances, reduce rate of interest and waive penalties and prosecution during COVID-19 disruption period.

    - Under "Self-Reliant India Movement" the GoI announced various direct tax relief measures like reduction in existing rate of withholding by 25% for specified non-salary payments made to residents, expeditious grant of tax refunds, extension of period of limitation for completion of assessment, extension for furnishing tax returns and tax audit reports for FY 2019-2020.

    - The CBDT also issued orders for interim reliefs in respect of lower withholding certificate application, disposal of pending applications over e-mail and furnishing nil withholding declarations.

    - Relaxation in residency rules for individuals who had come on a visit to India before 22 March 2020, but due to the declaration of lockdown and suspension of international flights are required to prolong their stay in India.

    - Deferment of applicability of revamped registration procedure for existing and new charitable/research institutions which are registered under the provisions of the ITA.

- In furtherance to the above measures, vide CBDT Notification dated 24 June 2020, the GoI has further extended various compliance timelines and requirements, as previously covered by the Ordinance. The CBDT has also released a Press Release along with the Notification explaining the key relaxations.

The Notification

General relaxation

- The Ordinance provided for the extension of time limits of certain compliances and actions by Tax Authority and taxpayers falling due between 20 March 2020 and 29 June 2020 (specified period) under certain specified laws. The compliances falling due within the specified period qualified for extension of time limit and other relaxations till 30 June 2020. However, the Ordinance authorized the GoI to further extend these dates by issuing a notification. Furthermore, the Ordinance authorized the GoI to notify different dates for different compliances.

- The GoI has issued the Notification in exercise of power granted by the Ordinance. The Notification extends the specified period from 29 June 2020 till 31 December 2020 i.e. it covers the compliances falling due between 20 March 2020 till 31 December 2020. Further, the Notification also extends the end date for making compliance during the specified period from 30 June 2020 to 31 March 2021. While this is a general relaxation, the Notification provides shorter extension for specific compliances by taxpayers under the ITA.

- The nature of compliances falling due within extended specified period which may qualify for general extended time limit may be categorized as under:

- **Tax Authority-centric:** Completion of any proceedings or passing of any order or issuance of any notice/ intimation/ notification/ sanction/ approval or such other action by any authority or commission or tribunal under the specified law. Thus, any such compliance which falls due between 20 March 2020 till 31 December 2020 can be made by the Tax Authority till 31 March 2021.

- **Taxpayer-centric:** Filing of any appeal, reply or application or furnishing of any report /document/return/statement or such other record under the specified law which falls due between 20 March 2020 till 31 December 2020 can be made till 31 March 2021. Importantly, this includes taxpayer's compliance of linking Aadhar with PAN which may be done till 31 March 2021.

Specific relaxations

- The above general relaxation will not apply to the following specific compliances by the taxpayers under the ITA, for which shorter extended timeline/dates are specifically provided in the Notification:

S.No.	Particulars	Extended time limit provided under the Ordinance	Further extended time limit provided through the Notification `
1.	Filing of belated and revised return for FY 2018-19	30 June 2020	31 July 2020
2.	Filing of Return of Income for FY 2019-20	No extension (Due dates being 31 July/31 October/30 November 2020)	30 November 2020
3.	Date of furnishing Tax Audit report for FY 2019-20	No extension (Due dates being 30 September/31 October 2020)	31 October 2020
4.	Deductions specified amounts under Chapter VIA of the ITA under the heading "B- Deductions in respect of certain payments" (like life insurance premium, contributions to New Pension Scheme, donations, etc) for FY 2019-20	30 June 2020	31 July 2020
5.	Investment u/s. 54 or 54GB for capital gains rollover benefit Note: The specified period is 20 March 2020 and 29 September 2020	30 June 2020	30 September 2020
6.	Beginning activity of manufacture or production of article or thing or providing of services by newly established units in SEZ to claim profit-linked tax holiday u/s 10AA, in case letter of approval from SEZ authorities has been issued on or before 31 March 2020.	30 June 2020	30 September 2020
7.	Furnishing of tax withholding and tax collection	30 June 2020	15 July 2020

	statements for the month of February or March 2020, or for the quarter ending on the 31 March 2020 by the government		
8.	Furnishing of tax withholding and tax collection statements for the month of February or March 2020, or for the quarter ending on 31 March 2020 by persons other than government	30 June 2020	31 July 2020
9.	Issuance of tax withholding certificate on salary in Form 16 for FY 2019-20	30 June 2020	15 Aug 2020

No relaxation for payment of tax

- The Ordinance did not extend the due date of tax payments under the specified laws. But it provided for reduced rate of interest of 9% per annum instead of the regular rate of 12%/18% per annum and waiver of penalty and prosecution for tax payments falling due between 20 March 2020 and 29 June 2020, if paid by 30 June 2020.

- The Notification does not extend the above relief beyond 30 June 2020. However, it provides a limited relief in respect of interest payable on self-assessment tax on belated filing of return. The Notification provides that if the self-assessment tax (i.e. after reducing tax deducted/collected at source, advance tax, etc.) does not exceed INR 0.01 million, then there shall be no interest if such tax is paid by extended due date of filing return of 30 November 2020. As per Press Release, this relief is intended for small and middle-class taxpayers but on a plain reading of the Notification, it can also be availed by large taxpayers if their self-assessment tax does not exceed INR 0.01 million.

- However, if the self-assessment tax exceeds INR 0.01 million, then it will carry interest at regular rate of 12% per annum if not paid within original due date as per the ITA (i.e. 31 July 2020 or 31 October 2020, as the case may be) even if paid by extended due date of 30 November 2020.

Extended date of compliance under the Vivad Se Vishwas Act, 2020 (VSVA)

- The Ordinance had extended last date for making payment without any additional amount of 10% for resolving past direct tax disputes under the VSVA from 31 March 2020 up to 30 June 2020. The Finance Minister on 13 May 2020 announced further extension from 30 June 2020 to 31 December 2020 as part of first tranche of COVID-19 stimulus measures. As per Press Release, this extension requires necessary legislative amendments, which shall be moved in due course.

- Separately, the Ordinance had extended the compliances falling due under VSVA between 20 March 2020 to 29 June 2020 till 30 June 2020. The Notification further extends this period to 31 December 2020. Thus, any compliances falling due between 20 March 2020 to 30 December 2020 can be made till 31 December 2020. For example, if a declaration is filed on 25 June 2020, designated authority is required to issue certificate by 10 July 2020 (i.e. within 15 days from the date of receipt of such declaration). As per extended time period under the Notification, such certificate can be issued till 31 December 2020.

- For the sake of clarification, it may be noted that the Notification does not specify the last date for availing benefit of VSVA which is yet to be notified by the GoI.

Deferring implementation of new procedures for approval/registration of charities/NGOs

- The Finance Act 2020 introduced a revamped registration procedure for all the existing registered charitable institutions and for taxpayers seeking new registration. This was also applicable to registered research institutions and funds and institution for continuing/grant of registration for receiving donations which qualify for deduction in the hands of donors. Under the revamped registration procedure, in order to enjoy the continuity of the tax exemption by the existing registered institutions, an intimation to the Tax Authority is necessary within a specified period. Similarly, for all fresh registration applications made on or after 1 June 2020, registrations are to be granted as per the revamped registration procedure.

- The date of implementation of revamped registration procedure for approval/ registration/notification of specified charitable and research institutions was deferred from 1 June 2020 to 1 October 2020. The Press Release clarifies that the old procedure i.e. pre-amended procedure shall continue to apply during the period from 1 June 2020 to 30 September 2020. Necessary legislative amendments in this regard shall be moved in due course of time.

Withholding relief

- The Press Release also clarifies that the relief announced by Finance Minister on 13 May 2020 by way of reduction in existing rate of withholding by 25% for specified non-salary payments made to residents will be implemented through necessary legislative amendments in due course.

Key Regulatory amendments

Reserve Bank of India ('RBI') amends Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019

The RBI has amended the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019. The key highlights of the amendment are as follows :

- In terms of the erstwhile regulations, balance in Special Non- Resident Rupee Account ('SNRR Account') of a Foreign Portfolio Investor ('FPI') maintained in accordance with Foreign Exchange Management (Deposit) Regulations, 2016 ('Deposit Regulations'), was not permitted for making investment in units of investment vehicles other than units of domestic mutual funds. Further, sale/maturity proceeds of only equity instruments and units of domestic mutual funds were permitted to be credited to SNRR/ foreign currency account of FPI.

- Pursuant to this amendment, balance in SNRR account of an FPI is permitted to be paid as amount of consideration for trading in units of Investment Vehicle listed or to be listed (primary issuance) on the stock exchanges in India. Further the sale/maturity proceeds of units of Investment Vehicle including Real estate investment trust (REITs) and Infrastructure Investment Trust (InvITs) are also permitted to be credited to the SNRR/ foreign currency account of FPI.

- In terms of the erstwhile regulations, balance in SNRR Account of a Foreign Venture Capital Investor ('FVCI') maintained in accordance with Foreign Exchange Management (Deposit) Regulations, 2016 ('Deposit Regulations'), was not permitted for making investment in units of investment vehicles. Pursuant to this amendment, balance in SNRR account of an FVCI is permitted to be paid as amount of consideration for trading in units of Investment Vehicle listed or to be listed (primary issuance) on the stock exchanges in India. Further the sale/maturity proceeds of units of Investment Vehicle is permitted to be credited to the SNRR account of FVCI.

- The said amendment shall come into effect from the date of publication in the official gazette.

Source : Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2020 dated 15 June 2020.

Part B – Case Laws

Goods and Services Tax

1. M/s Brand Equity Treaties Limited Vs The Union of India and Ors [TS-402-SC-2020-NT]

Subject Matter: Ruling where Supreme Court staying the Delhi High Court's order in relation to transitional credit under the Goods and Services Tax.

Background and Facts of the case

- A Writ petition was filed by four petitioners namely Brand Equity Treaties Ltd., Micromax Informatics Ltd., Developer Group India Pvt. Ltd. And Reliance Elektrik Works, wherein Brand Equity Treaties Ltd. was considered as lead petitioner.

- All four petitions was filed seeking identical relief, i.e. to permit the petitioners to avail input tax credit of the accumulated CENVAT credit as of 30.06.2017 by filing declaration Form TRAN-1 beyond the period provided under the Central Goods and Services Tax Rules, 2017.

- Additionally, petitioners also assail Rule 117 of the CGST Rules on the ground that it is arbitrary, unconstitutional and violative of Article 14 to the extent it imposes a time limit for carrying forward the CENVAT credit to the GST regime. However, all the petitioners have unanimously stated that if the Court were to give directions to the respondents to permit them to file the statutory Form TRAN-1 to avail the input tax credit, they would be satisfied and not press for the relief of challenging the vires of the provisions of the Act.

- One of the petitioner contended faces technical glitch, error on the screen while uploading refund application for CENVAT credit. Another contended that, on account of utter confusion and chaos uploading of Form GSTR TRAN-1 failed and it could not upload the claim on the common portal within time.

- The Appellant referred a case of A.B. Pal Electricals v Union of India (W.P.(C) 6537/ 2019 (decided on 17.12.2019) and several others, to canvass that the instant cases are squarely covered by the said decision.

- Also, it was contended that during a nascent "trial and error" phase, petitioners should not be made to suffer on account of inefficiency in the systems.

- It was argued that the CENVAT credit accumulated in the erstwhile regime represents the property of the petitioner which is a vested right in their favour. And such right cannot be taken away on account of failure to fulfil conditions which are merely procedural in nature.

- On the other hand, Mr. Amit Bansal, and other learned senior standing counsels for the Revenue, have strongly opposed the petitions. They have argued that the petitioners do not deserve any sympathy as the facts of each case exhibit a casual approach on their part. Petitioners' failure to file the declaration Form TRAN-1 within the due date is not attributable to any technical glitches while uploading the forms rather the delay is a result of their follies and do not warrant relief similar to what has been granted by this Court in several other cases.

- It is also pointed out that some of the petitioners attempted to file TRAN-1 for the first time after the expiry of the last date for filing TRAN-1, as

admitted in the pleadings. The petitioners were negligent, and do not deserve any leniency.

Discussion and findings of the case

- It was observed that, The period of 90 days provided in rule 117 of Central Goods and Services Tax Rules, 2017 for filing Form TRAN-1 has no rationale. Also, extensions granted by the government in certain cases from time to time indicates that the time limit is not sacrosanct.

- CENVAT credit which stood accrued and vested is the property of the taxpayer and is a right under Article 300A of the Constitution.

- In absence of any consequence provided under section 140 of Central Goods and Services Tax Act, 2017 w.r.t. delayed filing of Form TRAN-1, rule 117 has to be understood as directory and not mandatory.

- Hence, taxpayers cannot be robbed of their valuable rights on an unreasonable and unfounded basis of them not having filed Form TRAN-1 within 90 days, when civil rights can be enforced within a period of three years under the Limitation Act, 1963.

Ruling

- Accordingly, High Court permitted the petitioners to file TRAN-1 on or before 30.06.2020.

- Further, Revenue preferred Special Leave Petition (SLP) before the Supreme Court against the said High Court order.

- The Supreme Court has now stayed the operation of the order of the Delhi High Court and have issued notices in the matter.

2. Sterlite Technologies Limited [2020-VIL-150-AAR]

Background and Facts of the case

- The Applicant proposed to place an order on a foreign vendor for direct supply of goods to a foreign buyer. The goods would be directly dispatched from foreign vendor to foreign customer without bringing them in India.

Questions on which Advance ruling is sought

- Whether GST is payable on goods procured from vendor located outside India in a context where the goods so purchased are not brought into India?
- Whether GST is payable on goods sold to customer located outside India, where goods are shipped directly from the vendor's premises (located outside India) to the customer's premises?

Discussion and findings of the case

- AAR noted that Section 2(5) and Section 2(10) of the IGST Act, 2017 defines the term import and export of goods as :

    - Export of goods – Taking goods out of India to a place outside India.

    - Import of goods – Bringing goods into India from a place outside India.

- On reading of Section 12 of Customs Act, 1962 and amended Section 3 of Customs Tariff Act, 1975, it was observed that the integrated tax on goods imported into India shall be levied and collected at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 i.e.-on the date

determined as per provisions of Section 15 of the Customs Act, 1962.

- Further, reference was made to case of M/s Synthite Industries Ltd., Ernakulam, Kerala wherein it was held that "the goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India; The applicant is neither liable to GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in Netherlands, after being procured from China, to customers, in and around Netherlands as the goods are not imported into India at any point.''

- Circular No. 33/2017 Customs dated 01.08.2017, issued clarifying sub section (12) of section 3 of the Customs Tariff Act, 1975 specifies that all duties, taxes, cesses etc shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the custom clearance purposes, was also referred in context of "High sea sales". And found that Bill of Entry/import declarations are not being filed with respect to the goods so procured, GST would not be leviable.

- Further, Section 7 of CGST Act 2017 was observed in relation to the definition of term "Supply".

- It was noted that, goods under consideration are supplied to overseas buyers, accordingly the place of supply will be a place outside India. Further, the supplier is the applicant who has declared the principal place of business within India and issues the invoices for sale of such goods.

- In the instant case, the goods have not crossed the Indian customs frontier and as such it is clear that the goods are not physically available in the Indian territory. In such a case, the question of taking goods out of India does not arise. Thus, the transaction does not qualify as export of goods and hence liable to tax.

Ruling

- GST is not payable on goods procured from vendor located outside India, where the goods so purchased are not brought into India.

- Applicable GST is payable on goods sold to customer located outside India ,where goods are shipped directly from the vendor's premises (located outside India) to the customer's premises.

Part B – Case Laws

Customs, Foreign Trade Policy (FTP) and other laws

1. Principal Commissioner, Customs (Preventive) New Delhi Vs M/s Nijhawan Travel Services Pvt. Ltd.
[2020(6) TMI 424 – CESTAT, New Delhi]

Subject Matter: An appeal is filed against the order not allowing to import capital good "car" under EPCG license.

Background and Facts of the case

- M/s Nijhawan Travel Service Pvt. Ltd. (appellant No. II) had imported one Mercedes SL 500 car by claiming concessional rate of the customs duty of 5% under Notification No. 97/2004CUS dated 17 September 2004 on the basis of an EPCG licence issued to them.

- The appellant have availed EPCG licence from the Directorate General of Foreign Trade, New Delhi under the category of the export of service under "Tour and Travels services" as per prevailing the import– export policy.

- The department started investigations in the matter and suspected that the goods namely car imported under EPCG licence is not being put to its legitimate use for which it was allowed under the EPCG licence violating the following conditions :-
  - Imported car was to be installed at M/s NTSPL, F-53, Bhagat Singh Market, New Delhi and M/s NTSPL did not furnish installation certificate;
  - The said imported car was not used for earning freely convertible foreign currency from services rendered to the tourists;
  - The actual user condition was violated;
  - The car was found parked at the residence of the Director of M/s NTSPL;
  - The car was insured as personal vehicle;
  - The car was carrying private car registration number;
  - The statements of driver and various other persons indicated that the car was used by the Director for his personal and private purposes;

- A show cause notice dated 02.022009 was issued to the appellants wherein it was said that the matter imported and cleared by fraudulently availing duty exemption under Notification Nos. 55/2002-Cus. dated 19.04.2002 and 97/2004-Cus. dated 17.09.2004.

- Accordingly, an order was passed in line with the issued show cause notice, wherein it was held that appellant is not liable to import the matter under such EPCG license and would be liable to pay the duty accordingly. The imported Mercedes was confiscated with an option to redeem with fine of ₹ 10,00,000/- failing which the Bond/Bank Guarantee shall be enforced against them. Penalty under section 112(b) and 114A of the Customs Act 1962 was also imposed.

- The Appellant filed an appeal against the above order.

- It was contended that, it is wrong on the part of the department to allege that subject car was only put for personal and private use and not for fulfillment of the export obligation as envisage under the conditions of EPCG licence.

- It was further being submitted that the Managing Director Shri Sham Nijhawan was using the car for the purpose of receiving VIP clients at the Airport exclusively for business purposes.

- It was further being emphasized that the EPCG licence conditions does not have any mention that the imported car need to be registered as a taxi. And also contended, for the security reasons the car was being parked at the residence of the appellant.

- Reference was made to the case of Narang International Hotels Pvt. Ltd. versus Commissioner of Customs (Export), JNCH Nhava Sheva (supra) has held that it is not necessary to exclusively use the imported car for earning foreign exchange from the tourist.

- On the basis of above, it has been argued that once the licensing authority has found that the licensing conditions has been met and the export obligation has been fulfilled by the appellant, it is not open to the customs authorities to contest that the import of car under the EPCG scheme was contrary to any provisions of the Customs Act and to Import Export Policy and therefore the Adjudicating Authority has grossly erred in confiscating the subject car and making them liable for pay differential amount of customs duty.

Discussion and findings of the case

- It was observed that basic purpose of capital goods to have installed at the given address is to ensure that the capital goods which have been imported under EPCG licence on a concessional customs duty are not diverted from the place of manufacturing.

- It was found that there was no violation of the condition of the EPCG licence has been done on this count as the vehicle found in the possession of the importing firm and no evidence have been adduced by the Department to sustain their claim that it was not used for the purpose for which it has been allowed to be imported by the EPCG licence on concessional rate of customs duty.

- Also, at the time of seizure, the license was not expired. The exporter was still having a period of nearly 4 years for fulfilling their export obligation towards EPCG licence.

Ruling

- In accordance to the above, it was held that the imported goods namely car in this case under EPCG licence was imported validly and subsequently also there has been no violation of any of the conditions of EPCG/Customs Notification, we hold that the impugned order-in-original is devoid of any merits and therefore we set aside the same.

- The appeals were allowed accordingly.

Part B – Case Laws

Direct Tax

1. Tiger Global International II Holdings, Mauritius [116 taxmann.com 878 (AAR - New Delhi)]

Subject Matter : AAR rules that investment of a Mauritius company in a Singapore company deriving substantial value from assets in India is prima facie designed for avoidance of tax not eligible for treaty benefits and rejects the application filed by Mauritius company

Background

- The Income Tax Act (ITA) provides an option to eligible persons to seek an advance ruling from the Authority for Advanced Rulings (AAR) on tax implications in certain cases subject to certain conditions by making an application in the prescribed form and manner.
- The AAR is, however, authorized to allow or reject such application at its discretion. However, in the following circumstances the AAR may reject the application put forth before it:
  - The application is already pending adjudication before any Income Tax Authority or Tribunal
  - The application involves determination of fair market value (FMV) of any property
  - The application relates to a transaction or issue which is designed prima facie for the avoidance of income-tax

Facts

- The Taxpayers in this case were three Mauritian resident companies which were part of a US- headquartered private equity fund (PE Fund).
- The Taxpayers had invested in shares of a Singapore Company (i.e. SingCo) which had in turn invested in multiple Indian companies and derived substantial value from assets located in India.
- Such investment in shares of SingCo was subsequently transferred to a Luxembourg company (LuxCo), an unrelated entity. Such acquisition by Lux Co was as part of a broader transaction involving the majority acquisition of SingCo group.
- Prior to consummation of the transfer of shares of SingCo, the Taxpayers made an application to Indian Tax Authority to obtain a nil tax withholding certificate.
- In response thereto, the Indian Tax Authority held that the Taxpayers were not eligible to avail benefit under the India-Mauritius Tax Treaty as they were not independent in their decision making and the control over the decision making of the purchase and sale of the shares did not lie with them. Accordingly, the Tax Authority issued a certificate prescribing a tax withholding rate in the range of 6-9% of the consideration received.
- Subsequently, the Taxpayers approached the AAR to determine chargeability of the share transfer transaction to income tax in India.

Tax Authority's Contentions

Tax Authority contended that the application before the AAR is to be denied for the following reasons:

- Conclusion of proceedings pertaining to obtaining a nil tax withholding certificate was a reasonable ground for rejecting an AAR application. Reliance in this regard was placed on AAR Mumbai Bench ruling dated 22 January 2020 in the case of ArevaNP SAS, France
- Alternatively, the tax withholding certificate issued to the Taxpayers was valid for the financial year and it could have been modified

by the Tax Authority, thus there is a "pending proceeding" as on the date of the application.

- In any case it was possible that the return of income filed by the Taxpayers for the relevant tax year could be selected for scrutiny and the Tax Authority could have determined the taxability of such transaction independently.

- The capital gains computation involves a working of total sales consideration which in turn depended on the value assigned to each share of SingCo. In other words, determination of tax implications necessarily involves valuation of shares and since it involves FMV determination, the applications need to be rejected by the AAR.

- In any case, basis the following grounds it appears that the transaction was designed prima facie for avoidance of tax

  - **Ownership structure and control** - The Taxpayer companies were held by the PE Fund through a complex web of entities based out of low tax jurisdictions in Cayman Islands and Mauritius which indicated that the real control of the company did not lie in Mauritius. The Taxpayers were not acting independently but were merely acting as a conduit of the PE fund.

    Moreover, the Taxpayer companies were set up for making investments in India and the funds for making such investments were provided by the promoter.

  - **Decision making** - The minutes of the board meeting of the Taxpayer indicated that Mr. X, a US-resident and the General Counsel of the PE Fund attended all the board meetings of the Taxpayer companies in which crucial decisions of the Taxpayer companies were taken and the other directors were in effect mere spectators or took advice from Mr X.

  - **Financial control** – Mr. Y (founder and partner of the PE Fund) along with some of the senior management personnel of the PE fund based out of US, were appointed as the authorized signatory to the bank account of the Taxpayers. Although these personnel were not on board of the Taxpayer companies, any transaction above US$ 250,000 necessarily needed the approval of at least one such person. Further, Mr. Y was also authorized signatory for the parent companies of the Taxpayers. All these facts suggest that the control of the Taxpayers was outside Mauritius in the hands of personnel of the group based out of the US.

  - **Beneficial ownership** – A perusal of the documents submitted by one of the Taxpayers with Mauritius regulatory authorities itself revealed that the beneficial owner of the company was Mr. Y.

The above facts suggest that the Taxpayers decisions were not taken independently but by the senior management personnel of PE Fund based out of the US. Thus, the Taxpayer companies were "see through entities". Had the PE Fund directly held the shares in SingCo it would have been liable to pay tax on capital gains on sale of shares of SingCo as per the provision of India-US Tax Treaty. Therefore, the transaction was designed prima facie for the avoidance of tax by availing the benefit of India-Mauritius Tax Treaty.

<u>**Taxpayer's Arguments**</u>

i. On eligibility of the AAR application and absence of pending proceedings

- The Tax Authority itself conceded that there was no "proceeding pending" as on the date of filing of the AAR application by the Taxpayers.

- The consideration for transfer of shares was already credited/ paid prior to the filing of the application with the AAR and, accordingly, proceedings with respect to obtaining a nil tax withholding certificate stood concluded and there was no pending proceeding.

- In any case, the certificate of tax withholding does not decide the final tax liability and, hence, the Taxpayers were not precluded from making an application before the AAR.

- The application was filed only for the determination of taxability of transfer of shares in India and not for determination of the FMV.

ii. On the transaction being designed prima facie for avoidance of tax

The application cannot be rejected on the basis that the transaction is designed prima facie for avoidance of tax

- Transaction involved in the present application was a sale of shares simpliciter undertaken between two unrelated independent parties which cannot be considered as being designed for the avoidance of tax.

- As discussed in the case of Star Television Entertainment Ltd. (2010) 321 ITR 1 (AAR) a transaction cannot be said to be designed for the prima facie avoidance of tax if there is business rationale surrounding the transaction. In the instant case, the investment in Mauritius was made owing to a wide network of its treaties which would enable the Taxpayers to achieve a competitive after-tax return. In any case, availing a treaty benefit per se does not mean there is an avoidance of taxes.

- The Taxpayers were beneficial owners and controlled from Mauritius

  - The decision to invest into and ultimately sell the shares of SingCo was taken by the Taxpayers' Directors in Mauritius after proper discussions and deliberations. The Taxpayers had beneficially held shares of SingCo and were not accountable to any third party. The holding structure of the group does not determine the place of actual control.

  - The mere fact that a limited authorization was granted to certain persons to operate the Taxpayers' bank account does not ipso facto mean that the Taxpayers did not have control over its funds. Similarly, the mere fact that certain disclosures were made and maintained for Mauritius corporate law purposes does not ipso facto mean that the legal owner does not enjoy the benefits of the shares in its independent capacity.

  - No proof was submitted by the Tax Authority to prove that the sale proceeds in relation to the transfer were not beneficially controlled by the Taxpayers.

AAR Ruling

The AAR, after considering the Tax Authority's contentions and the Taxpayers' arguments, held as below:

a. Application made by the Taxpayers to obtain a nil tax withholding certificate is not a reason to reject AAR application

- The proceedings in relation to the Taxpayers' applications to obtain a nil withholding certificate were already concluded when the certificates were issued by the Tax Authority.

- Even if the tax withholding certificate was applicable for the entire financial year and could have been modified, it could not be given effect to after the transaction was closed and payment was made. Accordingly, proceedings with respect to obtaining a nil tax withholding certificate stood concluded and there was no pending proceeding on the date of making the AAR application.

- Further, the AAR ruling in the case of ArevaNP SAS (supra) is distinguishable on the grounds that in that case Taxpayer had indulged in forum shopping strategy by making concurrent application for tax withholding certificate as well as AAR application without making appropriate disclosure before the AAR.

- As held in various decisions an order passed in respect of Nil tax withholding certificate does not decide the final tax liability which is to be

determined by way of an assessment and hence it does not fetter the jurisdiction of the AAR to proceed with application. Further there are no specific provisions under ITA to prevent taxpayers from making an AAR application.

- Accordingly, in the absence of any pending proceedings and any other specific bar, the Taxpayers' applications cannot be rejected merely on this count.

b. *The application before the AAR is concerned only with chargeability to tax and the question of determination of FMV does not arise*

- The Taxpayers' applications are concerned only with determining the taxability of the transaction of shares transfer.
- The exercise of valuation of shares (if at all necessary) and the computation of capital gains has to be undertaken by the Tax Authority only once the transaction is found to be exigible to tax.
- Accordingly, in the absence of requirement to determine FMV, the Taxpayers' applications cannot be rejected merely on this count.

c. *The transaction is designed prima facie for avoidance of tax*

- In order to determine whether the application has to be allowed, it is necessary to only determine whether the transaction was prima facie designed to avoid income tax. The issue raised in the application is regarding chargeability of capital gains on sale of shares. For this purpose, not only the sale but the entire transaction including the purchase of shares as a whole, is relevant for determining if the transaction is undertaken with an intent to avoid taxes.
- While the holding-subsidiary structure is not a conclusive proof for tax avoidance, the purpose for which the Taxpayers were set up through a web of entities does indicate that the real intention behind the structure was to avail the benefits of India-Mauritius Tax Treaty. Participation by Mr. X, who was also the general counsel of the PE Fund, in the board meetings of the Taxpayer companies where crucial decisions were taken in the capacity of director of Taxpayer companies can lead to no adverse inference.
- Further merely because the investments in SingCo were made out of funds provided by the promoters of the Taxpayers cannot be looked at negatively in light of the Supreme Court decision in the case of Vodafone International Holding BV which held that there is nothing wrong if the funds for making foreign direct investment by Mauritius companies had not originated from Mauritius but had come from investors of third countries. What would be relevant is who has the control and management of the Taxpayers.
- It is undisputed that the authority to authorize transaction above US$ 250,000 was with Mr. Y. As the Taxpayer companies were located in Mauritius, it would be logical for them to appoint a Mauritius resident as authorized representative to operate bank account. However, no justification has been provided for the authorization of Mr. Y, who is a non-resident of Mauritius to operate the bank account and sign the cheques of the Taxpayer companies.
- While mere authorization to operate a bank account does not suggest that the person so authorized has control over the funds, however, in the present case, the authorization is given to Mr. Y, who is the beneficial owner of the parent of the Taxpayers, authorized signatory for the immediate parent companies of the Taxpayers and also the sole director of the ultimate holding companies. This indicates that the appointment of Mr. Y as authorized signatory is not a mere coincidence. Therefore, it is evident that the Taxpayers' funds were ultimately controlled by Mr. Y. Mr. Y controlled the decision of the Board of Directors of the Taxpayers through Mr. X who was accountable to him.
- Such holding structure coupled with the management and control of the Taxpayer companies would be relevant for determining if the arrangement has been designed with the objective of tax avoidance. The real

management and control of the Taxpayers is not with its Board of Directors, but with Mr. Y who is the beneficial owner of the entire group. The Taxpayer companies were only a "see through entity" set up to avail the benefits of India-Mauritius Tax Treaty.

- The SC in the case of Vodafone held that the treaty and furnishing of a tax residency certificate, as read with Circular 789 dated 13 April 2000, would not preclude Tax Authority from denying treaty benefits in suitable cases. In essence, the entire arrangement is that of investment in Singapore for which benefits of India-Mauritius Tax Treaty are sought to be availed. Thus, the arrangement has been designed to avail the benefits of India-Mauritius Tax Treaty.

- The Taxpayers made a selective reference to the observations of the SC in the case of Vodafone, wherein the SC prescribed a 'look at' approach to ascertain if the arrangement is a pre-ordained transaction created for tax avoidance or a transaction which evidenced investment participation in India by referring to factors such as the duration of investment, period of business operations, etc. In the instant case, in the absence of there being any direct investment in India or operations in India one can only conclude that the arrangement was a pre-ordained transaction which was created for tax avoidance purpose.

d. *Capital Gains tax provisions of the India-Mauritius Tax Treaty were not available to Taxpayer companies*

- In the facts of the case, the gains have been derived from transfer of SingCo shares and not Indian company shares. The protocol amending India-Mauritius Tax Treaty in 2016 as well as Circular No. 682 dated 30 March 1994 suggests that the intent of the treaty is only to protect transfer of Indian company shares and not the transfer of Singapore company shares which is the subject matter under this application.

- Even if the Singapore company derived its value substantially from assets located in India, the fact remains that what transferred was the shares of a Singapore company and not the transfer of Indian company shares and hence the exemption provided under the treaty in respect of indirect transfer is not available in the facts of the case.

2. Ventura Textiles Ltd. (Taxpayer) vs CIT [ITA No. 958 of 2017]

Subject Matter : Bombay High Court upheld validity of penalty notice despite defect in non-striking-off of inapplicable limb of charge of penalty

Background

- Under the Section 271 of the Income-tax laws, a taxpayer may be liable for penalty, if during the course of assessment proceeding, it is found that the taxpayer has (a) concealed any income; or (b) furnished inaccurate particulars of income. The quantum of penalty varies from 100% to 300% of tax sought to be evaded, as the case may be.

- The aforesaid penalty provision was applicable till tax year 2016-17. Thereafter, new penalty provision was introduced wherein penalty may be levied if taxpayer has under-reported the income. Under the new penalty provision, quantum of penalty is 50% of tax payable in case of under-reported income and 200% of tax payable in case where such under-reported income is in consequence of misreporting of income.

- While issuing show cause notice in printed form for levy of penalty under the erstwhile penalty provisions, it is a predominant judicial view that Tax Authority is required to specifically mention the limb of penalty provisions under which penalty is initiated and is required to strike off the inapplicable part in the said notice.

Facts

- For tax year 2002-03, Taxpayer had claimed amount paid towards compensation for the supply of inferior quality of goods as bad debt in the tax return.

- During the course of assessment proceedings, Tax Authority disallowed the claim on the ground that neither it represented bad debt5 nor it is an expense which is incurred wholly and exclusively for the purpose of business. The said disallowance was confirmed by the First Appellate Authority (FAA) as well.

- In the assessment order, Tax Authority directed initiation of penalty for furnishing inaccurate particulars of income.

- Tax Authority along with the assessment order, issued a show-cause notice for levying penalty. The show-cause notice was issued in printed form; it carried description of the limb of penalty provision under which penalty is proposed to be levied i.e. (a) concealment of income or (b) furnishing inaccurate particulars of income. Tax Authority was required to strike out the inapplicable limb which Tax Authority did not do, while issuing notice.

- While passing the penalty order, Tax Authority levied penalty on Taxpayer on charge of furnishing inaccurate particulars of income as also concealment of income.

- FAA upheld the order of Tax Authority levying penalty which was further affirmed by Second Appellate Authority (SAA).

- Being aggrieved, Taxpayer challenged the said order before HC on the merits of penalty sustained by lower authorities as also on technical ground that non striking of inapplicable limb in the printed notice invalidated the notice and consequent order passed based on invalid notice is also invalid.

Taxpayer's contentions before HC

- Taxpayer contended that impugned notice did not mention under which limb penalty was proposed to be initiated by striking out the inapplicable limb. This is a fundamental error which goes to the root of the matter and has vitiated the order of penalty.

- This argument was raised for the first time before HC. This, being a jurisdictional issue, can be raised before HC for the first time as well even though not raised before the lower appellate authorities.

- As held by Supreme Court (SC) in case of T. Ashok Pai vs CIT (292 ITR 11), both the limbs of penalty provisions have different connotations and, therefore, Tax Authority must indicate on what grounds penalty is initiated. In absence thereof, the notice should be considered invalid on the ground of non-application of mind.

- Even though the assessment order specified that penalty proceedings initiated separately are for furnishing inaccurate particulars of income, in absence of any such specific reference in the impugned notice, penalty proceedings are liable to be quashed.

- Additionally, on merits, Taxpayer argued that mere disallowance of a bonafide claim made would not amount to concealment of income or furnishing inaccurate particulars of income to warrant imposition of penalty. Amongst others, Taxpayer relied upon ratio of SC ruling in case of CIT vs Reliance Petroproducts Pvt. Ltd. (322 ITR 158) and various other HC rulings discussed below.

Tax Authority's Contentions before HC

- Tax Authority placed heavy reliance on the order of lower appellate authorities

HC's Ruling

- In the facts of the present case, HC has deleted penalty levied by Tax Authority and concluded as under:

  - **Whether jurisdictional issue can be raised before HC for the first time?**

    - HC held that ordinarily, appeal before it can only be in respect of issues which were raised before SAA and therefore any question of law not raised before SAA cannot be permitted to be raised before HC for the first time. However, having regard to SC ruling in case of

CIT vs Jhabua Power Ltd. (37 taxmann.com 162) and Bombay HC ruling in Ashish Estate Estates & Properties (P) Ltd. vs CIT (96 taxmann.com 305), HC can entertain an appeal on issue of jurisdiction even if the same was not raised before SAA.

- **Whether Tax Authority is required to clearly specify the limb in show-cause notice, basis which penalty is proposed to be levied?**

  - On principle, HC held that the notice should specifically specify the limb under which penalty is proposed to be initiated. Non scoring out of inapplicable limb from printed notice will make notice invalid for non-application of mind by Tax Authority.

  - Reliance is placed on decision of Karnataka HC in case of CIT v. Manjunath Cotton and Ginning Factory (359 ITR 565) wherein it was held that Tax Authority while issuing notice has to come to a conclusion as to whether it is a case of concealment of income or furnishing of inaccurate particulars. Levy of penalty has to be clear as to the limb for which it was levied, and absence thereof will lead to an inference as to non-application of mind. This decision was further followed by Karnataka HC in case of CIT v. SSA's Emerald Meadows (73 taxmann.com 241) and SLP against this order is dismissed by SC.

  - Further, Bombay HC in case of CIT v. Samson Pernchery (392 ITR 4) held that initiation of penalty for one limb of penalty provisions and levying penalty on another limb is invalid This is because taxpayer would respond only to the ground on which the notice was issued and, hence, penalty cannot be imposed on a ground of which taxpayer had no notice.

- **Whether, on the facts of the case, impugned notice was invalid:**

  - HC noted that Tax Authority did mention in the assessment order that penalty is initiated for furnishing inaccurate particulars of income. However, while issuing show cause notice of even date, Tax Authority did not strike out inapplicable limb in the printed form of notice.

  - HC evaluated meaning of the term "notice" which means that the fact of observing or paying attention to something; advance notification or warning; a displayed sheet or placard giving news or information. It means to become aware of. Notice, in its legal sense, may be defined as information concerning a fact communicated to a party by an authorized person or actually derived from a proper source. The term "notice", in its full legal sense, embraces a knowledge of circumstances that ought to induce suspicion or belief as well as direct information of that fact.

  - In the light of the above, and considering that the impugned notice and the assessment order are of even date, HC held that a view can reasonably be taken that notwithstanding the defective notice, Taxpayer was fully aware of the reason as to why Tax Authority sought to impose penalty i.e. furnishing inaccurate particulars of income.

  - The purpose of a notice is to make the notice aware of the ground of notice. HC held that it would be too technical and pedantic to take the view that because in the printed notice the inapplicable portion was not struck off, the order of penalty should be set aside even though in the assessment order it was clearly mentioned that penalty proceedings had been initiated separately for furnishing inaccurate particulars of income.

- Bombay HC ruling in case of PCIT v. Goa Coastal Resorts and Recreation (P.) Ltd. (113 taxmann.com 574) is distinguishable. In that case there was concurrent findings of lower authorities that Tax Authority did not record satisfaction as to whether initiation of penalty is for concealment of income or for furnishing inaccurate particulars of income. It was in this context that HC held that notice issued in the printed format without striking off inapplicable limb of charge was defective and invalid.

- In the light of the above facts, HC upheld the validity of notice

► **On merit, whether taxpayer has furnished inaccurate particulars of income in the present case:**

- HC held that on the facts of the case there was no furnishing of inaccurate particulars of the income and no penalty is therefore leviable. HC noted that taxpayer had declared the full facts before Tax Authority in the course of the assessment proceedings though the claim of Taxpayer based on such facts was found to be inadmissible by Tax Authority. Such a case does not qualify as furnishing inaccurate particulars of income.

- Reliance was placed on the decision of SC in case of CIT v. Reliance Petroproducts Pvt. Ltd. (322 ITR 158) wherein SC has examined the meaning of term “particulars” and “inaccurate”. SC has held that “inaccurate” and “particulars” should be read in conjunction which means that the details supplied in the tax return are not accurate, not exact or correct, not according to truth or are erroneous. SC held that mere making of a claim which is not sustainable in law by itself would not amount to furnishing inaccurate particulars.

► Similar view was adopted by Bombay HC in case of CIT v. Mansukh Dyein & Printing Mills (38 taxmann.com 242), Delhi HC in case of CIT v. DCM Ltd.(359 ITR 101), and Punjab and Haryana HC in case of CIT v. Shahabad Co-operative Sugar Mills Ltd. (322 ITR 73).

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