EY Tax and Regulatory Alert

June 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 June 2021

- **Notification No 16/2021 dated 01.06.2021** issued by CBIC states that the provisions of Section 112 of the Finance Act, 2021 shall come into force from 1st June 2021. Section 112 of the Finance Act, 2021 is for substituting proviso in subsection (1) of Section 50 of CGST Act, 2017 which is for interest on tax payable for late filing of return under section 39 and which shall be payable on that portion of tax that is paid by debiting the electronic cash ledger.

- **Notification 17/2021 dated 01.06.2021 was issued extending the due date for GSTR-1 for the tax period May 2021 to 26.06.2021.**

- **Notification 18/2021- Central Tax dated 01.06.2021 is issued by CBIC for lowering the rate of interest on the basis of the turnover for the months of March'21, April'21 and May'21. A corresponding Notification was issued under IGST vide** Notification No 02/2021- Integrated Tax dated 01-06-2021

  - For the taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year, the interest rate is 9 per cent for the first 15 days from the due date and 18 per cent thereafter

  - For the taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) or under proviso to sub-section (1) of section 39, the interest rate is Nil for the first 15 days from the due date, 9 per cent for the next 45 days, and 18 per cent thereafter for the month of March 2021.

  - For the taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) or under proviso to sub-section (1) of section 39, the interest rate is Nil for the first 15 days from the due date, 9 per cent for the next 30 days, and 18 per cent thereafter for the month of April 2021.

  - For the taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) or under proviso to sub-section (1) of section 39, the interest rate is Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter for the month of May 2021.

  - For the Taxpayers who are liable to furnish the return as specified under sub-section (2) of section 39, the interest rate is Nil for the first 15 days from the due date, 9 per cent for the next 45 days, and 18 per cent thereafter for the Quarter ending March'21.

- **Notification 19/2021 dated 01.06.2021 issued by CBIC is for waiver of the penalty on late filing of GSTR 3B.**

  - For the taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year, the penalty would be waived for 15 days from the due date of furnishing of the return for the months of March'21, April'21 & May'21

- For the taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39, the penalty for March'21 shall be waived for 60 days from the due date of furnishing the return, the penalty for April'21 shall be waived for 45 days from the due date of furnishing the return, the penalty for May'21 shall be waived for 30 days from the due date of furnishing the return.

- For the Taxpayers who have an aggregate turnover up to INR 5 crores and who are liable to furnish the return as specified under sub-section (1) of section 39, the penalty for the quarter January- March 2021 shall be waived for 60 days from the due date of furnishing of the return.

- For the Taxpayers who failed to furnish the return in GSTR 3B for the months July 2017 to April 2017 & have furnished the same between the period from 1st June 2021 to 31st August 2021, the total amount of late fee in excess of INR 500 shall be waived. In case, the central tax payable under GSTR 3B for the said period is Nil, the late fees in excess of INR 250 shall be waived if the return is filed between 1st June'21 to 31st August 21.

- **Notification 20/2021 dated 01.06.2021** issued by CBIC is for capping of the late fee for delayed filing of GSTR 1 based on the turnover for the tax period June'21 onwards.

  - The late fees for the registered persons who have Nil outward supplies is capped to INR 250.

  - The late fees for the registered persons who have the aggregate turnover up to INR 1.5 crores in the preceding year, other than above, is capped to INR 1000

  - The late fees for the registered persons who have the aggregate turnover more than INR 1.5 crores and up to INR 5 Crores in the preceding year, other than above, is capped to INR 2500.

- **Notification 24/2021 dated 01.06.2021** issued by CBIC is for extension of time limit for compliance or completion of any action by any authority or person specified in, or prescribed or notified under the CGST Act or IGST Act(i.e. completion of any proceeding, passing of any order, appeal etc), which falls during the period 15th April 2021 to 29th June 2021, till 30th June, 2021.

- **Notification 26/2021 dated 01.06.2021** issued by CBIC is for extension of the due date for furnishing Form ITC-04 for the period January-March 2021, till 30th June,2021.

- **Notification 27/2021 dated 01.06.2021** issued by CBIC is to provide the facility of filing GSTR 3B and GSTR 1/IFF by the companies by using EVC instead of DSC for the period up to 31st August 2021. Further, the condition under Rule 36(4) shall apply cumulatively for April, May & June 2021 in Form GSTR 3B for June 2021.

- **Circular No 156/12/2021 -GST CBEC-20/16/38/2020-GST dated 21st June 2021** was issued by CBIC in order to clarify the various issues on the applicability of Dynamic QR Code on B2C invoices. Below are the highlights of the same:

  - Any person, who has obtained a Unique Identity Number (UIN) as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017, is not a "registered person" as per the definition of registered person provided in section 2(94) of the CGST Act 2017. Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.

  - Where the UPI ID is linked to a specific bank account of the payee/ person collecting money, separate details of bank account and IFSC may not be provided in the Dynamic QR Code

  - In such cases where the payment is collected by some person, authorized by the supplier on his/ her behalf, the UPI ID of such person may be provided in the Dynamic QR Code, instead of UPI ID of the supplier.

- Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

- In such cases, where the invoice number is not available at the time of digital display of dynamic QR code in case of over the counter sales and the invoice number and invoices are generated after receipt of payment, the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice.

- The purpose of dynamic QR Code is to enable the recipient/ customer to scan and pay the amount to be paid to the merchant/supplier in respect of the said supply. When the part-payment for any supply has already been received from the customer/ recipient, in form of either advance or adjustment through voucher/ discount coupon etc., then the dynamic QR code may provide only the remaining amount payable by the customer/ recipient against "invoice value". The details of total invoice value, along with details/ cross reference of the part payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.

Customs and Foreign Trade Policy (FTP)

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

- **Circular No 11/2021- Customs dated May 24th, 2021** issued by CBIC is a corrigendum to circular no 10/2021-Customs dated 24.05.2021. CBIC has taking cognizance of the difficulties faced by the AEO entities due to various lockdowns and has extended the validity of all the AEO certificates expiring between 01.04.2021 to 31.05.2021 to 30.06.2021 except for the cases where the entity has been found ineligible for continuation under the AEO Programme.

- **Trade Notice No 06/2020-21 dated 25th May,2021** states that a facility has been created on the DGFT website to record the information about the transfer of the Duty-Free Import Authorization (DFIA) Scrips. The given transfer of DFIA scrips shall be recorded on a relevant module on the DGFT website (https://dgft.gov.in) -- > Services -- > AA/DFIA. Issuance of the paper copies of DFIA scrips shall be discontinued with effect from 07.06.2021.

- For the cases where DFIA scrip was issued prior to 07.06.2021 and an ARO/ Invalidation is to be requested against the DFIA Scrip, the details of transfer of the said scrip (if any) would also be required to be recorded in the DGFT online system. m. For cases, where the ARO/invalidation is being requested by the original scrip owner no such record of transfer would be required. For cases where scrips were issued prior to 07.06.2021 and no request for ARO/Invalidation is to be made as on this date or after, the recording of any transfer of the given scrip shall not be mandatory

- The notice also mentioned that the DFIA scrip owner shall 'transfer' the scrip to another IEC in the same manner as was being done by them earlier i.e. as per the independently negotiated terms & conditions between the buyer and the seller. However, the information about the new owner (transferee) has to be recorded on the DGFT website by the original owner (transferor), before the new owner (transferee) can utilize the scrip to obtain any ARO/ Invalidation. It is mandatory for both transferor and transferee to ensure that information regarding transfer is recorded. After the information is confirmed on the DGFT e-platform, the old owner cannot re-record the transfer, and only the new owner can record and further transfer/retransfer

- It was also stated that unless the scrip is recorded on DGFT website, the new owner will not be able to utilize the scrip. Therefore, the new owner (transferee) has to ensure that the scrip is recorded in his favour by the old owner (transferor).

- It further stated that Applicants will continue to apply for DFIA as per online procedure and the Regional Authorities will continue to issue the DFIA scrips in online module. The applicant would also continue to apply for ARO/Invalidation as per online procedure. The applicant for ARO/Invalidation shall be the current owner of the scrip as recorded in the DGFT online system.

- For the guidance on these new processes, the Help manual & FAQs may be accessed at https://dgft.gov.in -- > Learn -- > 'Application Help & FAQs'. Further, the instructions for recording of the information about transfer of DFIA scrip is mentioned in Annexure A of the given notice.

Direct Tax

Part-A Key Direct Tax updates

Background

1) CBDT permits manual filing of Form 15CA and Form 15CB till 30 June 2021

- As per the provisions of Indian Tax Laws (ITL), a Remitter making payment of any sum to a Non-Resident is required to furnish certain information on the e-filing portal (before submitting the copy to the authorized dealer for any foreign remittance) relating to the payments. Such information comprises of (i) Self-declaration of information by remitter in Form 15CA; and (ii) Certificate from a Chartered Accountant in Form 15CB (where applicable). This requirement of electronic reporting of information applies irrespective of whether the payment is chargeable to tax or not.

- In this regard, the Income Tax Department had recently launched a new e-filing portal, with an aim to provide taxpayers convenience and a modern and seamless experience. However, Taxpayers faced various difficulties with regard to the new portal and hence apprehended delays in various filings and compliances under the ITL, including in filing Form 15CA and Form 15CB.

- In view of the above, the Press Release states that the CBDT has now decided that taxpayers can submit the aforesaid Forms in manual format to the authorized dealers till 30 June 2021, and the same may be accepted by the authorised dealer for foreign remittances.

- Further, the Press Release states that a facility will be provided on the new e-filing portal to upload these forms at a later date for the purpose of generation of the Document Identification Number (DIN).

- Issue of formal notification with regard to the captioned development is awaited.

2) CBDT amends quarterly TDS/TCS statements to expand scope of reporting to payments exempt from TDS/TCS

The amendments expand the scope of reporting to payments exempt from TDS/TCS and also carry out changes consequential to amendments made to statutory provisions of the Income Tax Act. The changes are listed in the table below:

Form	Additional reporting requirements
26Q—Quarterly statement of TDS	Payments to residents which are exempt from withholding: ▶ Payment of income arising from "zero-coupon bond" issued on or after 01 June 2005 by an infrastructure capital company or an infrastructure capital fund or infrastructure debt funds or public sector company or scheduled bank ▶ Payment of dividend income to business trusts, being Real Estate Investment Trusts (ReIT) and Infrastructure Investment Trusts (InvIT) ▶ Payment of dividend, which is exempt from TDS by notification issued by the central government ▶ Payment made for purchase of goods exempt from withholding under Section 194Q, being subject to TDS/TCS obligation under other provisions (except TCS on sale of goods under Section 206C(1H)) Consequential amendment to report cases where taxes have been deducted at higher rates on account of non-filing of return of income by payee
27EQ—Quarterly statement of TCS	Consequential amendment to report cases where taxes have been collected at higher rates on account of non-filing of return of income by payer
27Q—Quarterly statement of TDS in respect of payments made to non - residents	Payments which are exempt from withholding: ▶ Income in respect of securities to specified fund (set up in International Financial Services Centre) exempt from tax under Section 10(4D) ▶ Capital gains income payable to foreign institutional investors (FIIs)
26A – Certificate by a chartered accountant	Consequential amendment to cover non-resident payees (in addition to resident payees) as per amendment to Section 201(1), in terms of which payer can be relieved from TDS default if payee has filed return and paid taxes

3) CBDT announces introduction of new "compliance check" functionality for identifying the "specified person (SP)" for applicability of higher rates of TDS/TCS for non-filing of returns

Background

- With a view to improve ROI filing compliance by taxpayers who suffer a reasonable amount of TDS/TCS, the Finance Act 2021 inserted S. 206AB and S.206CCA (TDS/TCS Punitive rates) in the ITL which provide for higher TDS/TCS rate for deductees/ collectees who have failed to file ROI for two consecutive tax years and have suffered cumulative TDS/TCS of INR 50,000 in both years.

- In order to ease the compliance burden and due diligence requirements for the deductors/collectors of TDS/TCS, the CBDT has announced the issuance of a new functionality vide the Circular to verify whether a person would be a SP to apply higher TDS/TCS rates.

- The key highlights of the new compliance check for Sections 206AB and 206CCA as explained in the Circular are as follows:

- Place where functionality will be available : The functionality is made available through the reporting portal (https://www.incometax.gov.in/iec/foportal) of the Income tax Department.

- Manner of data extraction: The data can be extracted by the tax deductor/collector by entering the PAN of the deductee/collectee in the functionality. This search can be made either for a single PAN or for bulk PAN. The output data can thereafter be retained by deductor/collector for records.

- Preparation of the SP list: The list of SP's contained in this functionality will be prepared as at the start of the FY beginning from FY 2021-22, taking the past two years for which the time limit for furnishing the ROI has expired (illustratively FY 2018-19 and FY 2019-20 for FY 2021-22), as the base for preparation for such a list.

- The deductor/collector needs to check the status only once at the beginning of the FY. If a particular PAN is not identified as SP, the deductor/collector need not check the status again when tax is to be deducted/ collected at source as there will be no new additions to this list during the FY.

- Frequency and manner of the updation of the list:

  - The list will be drawn only once a year, i.e. the list of SPs will not have any additions during the relevant FYs. The Circular aims to reduce the tax burden on the deductor/ collector of TDS/TCS by avoiding the need for repetitive checking of status of the deductee/collectee on the functionality.

  - However, the List will be amended in the following cases:

1) If the SP complies with the ROI condition and files a valid ROI for any of the two FYs for which a default has been committed. Illustratively, if during FY 2021-22, the SP files a valid ROI for either FY 2018-19 or FY 2019-20, such SP's name shall be deleted from the list of SPs' in the functionality. The deletion shall be done on the date on which a valid ROI is filed by the SP.

2) The SP shall also be deleted from the list of SPs' if the SP files a valid ROI for the financial preceding the relevant FY (illustratively FY 2020-21) in the above illustration.

3) If the aggregate of TDS/TCS of a SP in the year preceding the relevant FY (FY 2020-21), is less than INR 50,000, the name of the SP would be deleted from the list of SPs' on the functionality.

   The deletion would be carried out on the first due date of filing ROI falling in such FY. For FY 2021-22, this date was originally 31 July 2021. However, it has been extended to 30 September 2021.

4) Belated and revised TDS/TCS returns filed during the relevant FY would also be considered for deletions from the list of SPs'

- Higher TDS/TCS does not apply to a NR who does not have a PE in India. Hence, if such NR's name is appearing in the list of SPs on the functionality, the deductor/ collector must conduct an independent due diligence exercise and exclude the SP from such list of SPs.

  CBDT order to implement the new functionality

- In addition to the above, the CBDT has also issued an order dated 21 June 2021 to direct that Director General of Income tax (Systems) (DGIT) will be the specified authority for furnishing the information to the 'Tax deductor/collector' who have registered in the e-filing portal for obtaining such information. To facilitate the process of furnishing information DGIT will notify the procedure and format of the functionality after taking approval from the CBDT.

  The information of deductee/collectee for which SP check is performed shall be furnished in the following manner;

- Name: Name as per PAN record

- PAN allotment date:

- PAN-Aadhar link status: Status of linking of PAN and Aadhar for individual PAN holders as below:

  - Linked: PAN and Aadhar are linked

  - Not linked: PAN and Aadhar are not linked

  - Exempt: PAN in exempted from linking asper CBDT's notification 37/2017 dated 11 May 2017

  - Not applicable: PAN belongs to non-individual person

- Specified person as per S.206AB/CCA (Yes/No)

4) Central Government announces tax exemption on COVID-19 related payments and extension in timelines for different compliances under Income Tax Laws and other laws

CBDT Press Release – Tax exemptions in relation to COVID-19 global pandemic:

Background

- The taxation of financial assistance provided by employers and closely associated persons like relatives, friends, colleagues to support to individuals adversely impacted by COVID-19 under the ITL was a grey area.

- Currently the available exemption from tax for medical expenditure paid for the employee, by the employer, is very restrictive since it merely covers premium paid for health insurance policy, hospitalization expenses at employer's own hospital or expenditure incurred on specified ailments at hospitals approved by the tax authority . Items like home care expenses or medical treatment at non-approved hospitals are not covered within scope of income tax exemption.

- Hence, stakeholders made representations to the CBDT to clarify non-taxability of financial and other assistance provided to employees and family members by employers and other persons on account of COVID-19 to avoid unwarranted taxation of such receipts.

Proposed relief for COVID-19 medical treatment and ex-gratia on death:

- Taking cognizance of the fact that employers and well-wishers are providing financial help to the taxpayers impacted by COVID-19 pandemic, and pursuant to representations made by the stakeholders, the CG has announced the following tax exemptions:
  - In respect of financial help provided for COVID-19 medical treatment: Tax exemption under the ITL will be provided on the amount received by taxpayer from employer or any other person for medical treatment of COVID-19 during TY 2019-20 and subsequent years.
  - In respect of financial assistance received by family members on death of an individual:
    - Tax exemption under the ITL will be provided for ex-gratia payment received by the family members from the employer or any other person on the death of the individual on account of COVID-19 during TY 2019-20 and subsequent years.
    - The exemption shall be allowed without any limit for the amount received from employer, but the exemption shall be limited to INR 1m in aggregate for the amount received from any other persons.
- Necessary legislative amendments for the above announcements shall be proposed in due course of time.

CG Notification

Extension for Aadhaar-PAN linking compliance under the ITL:

- Finance Act (FA), 2017 inserted a provision in the ITL, w.e.f. 1 April 2017 which mandated taxpayers being individuals (barring certain exceptions) who are holding a valid permanent account number (PAN) as on 1 July 2017 to link their PAN with Aadhaar number on or before a sunset date.
- The sunset date is extended from time to time and was last extended to 30 June 2021.
- The CG has further extended the sunset date for linking of Aadhaar with PAN by taxpayers till 30 September 2021.

Extension for payment of disputed tax under VSV Act and notification of sunset date of payment (with additional sum):

- The due date for payment of 100% of disputed tax (i.e. without an additional amount) was last extended to 30 June 2021. The CG has now extended the said date for payment of disputed tax till 31 August 2021.
- Thus, any payment of disputed tax during the period from 1 September 2021 to 31 October 2021 will be with additional payment.
- Payments schedule under VSV Act can be summarized as under:

Relaxations

Compliance pertaining to	Last operative disruption period	Last operative compliance date	Revised disruption period	Revised compliance date
Passing of assessment or reassessment order (including search cases) under ITL	20 March 2020 to 30 March 2021	30 June 2021	No change	30 September 2021
Passing of penalty order under ITL	20 March 2020 to 29 June 2021	30 June 2021	20 March 2020 to 29 September 2021	30 September 2021
Sending intimation of processing of statements filed by taxpayers under EL	20 March 2020 to 31 March 2021	30 June 2021	No change	30 September 2021

CBDT Circular

In order to avoid genuine hardship to the taxpayer and pursuant to general powers granted under the ITL, the CBDT has provided following extensions for certain compliances on the part of the taxpayer:

Particulars	Brief description	Original due date as per ITL	Extended due date as per last CBDT Circular	Revised compliance date
Objections to be filed before Dispute Resolution Panel (DRP) and tax authority in relation to draft assessment order	DRP is an alternate dispute resolution forum to CIT(A) wherein taxpayer may file its objections against draft assessment order within thirty days from the date on which the draft order is received	1 June 2021 or thereafter	Not covered	Later of due date under ITL or 31 August 2021
Statement of taxes withheld in last quarter of TY 2020-21	ITL imposes an obligation of withholding of taxes on the taxpayer making specified payments such as salary, rent, payment to non-resident. Such taxpayers are also required to submit a statement of taxes withheld on a quarterly basis	31 May 2021	30 June 2021	15 July 2021
Issuance of Certificate of taxes withheld by employer in Form No. 16 to employees for TY 2020-21	Employer is required to furnish annually to its employees a certificate in Form No. 16 in relation to taxes withheld in respect of salary	15 June 2021	15 July 2021	31 July 2021
Exemption from capital gains	ITL provides certain provisions for exemption from capital gains if taxpayer made investments in specified modes within specified time	1 April 2021 to 29 September 2021	Not covered	On or before 30 September 2021
Furnishing of statement of specified services by the taxpayers or e-commerce operators for TY 2020-21	Specified taxpayer or e-commerce operator is required to deliver a Statement of Specified Services in respect of every TY up to 30 June of the following TY.	30 June 2021	Not covered	31 July 2021

Particulars	Brief description	Original due date as per ITL	Extended due date as per last CBDT Circular	Revised compliance date
Uploading of declarations received from recipients in Form No. 15G/15H for the first quarter of TY 2021-22	Form No. 15G/15H is required to be furnished by taxpayers who wish to remit any amount without any withholding of tax	15 July 2021	Not covered	31 August 2021
Exercising of option to withdraw application filed before Settlement Commission	ITL grants a onetime opportunity to withdraw any pending application filed before Settlement Commission due to discontinuance of Settlement Commission vide FA 2021	27 June 2021	Not covered	31 July 2021

Part B- Case Laws

Goods and Service Tax

1. Daebu Automotive Seat India Private Limited [GST AAR Tamil Nadu- Order No 17/AAR/2021 dated 07.05.2021]

Subject Matter: Ruling wherein the AAR held that the Track assembly of Car seating has to be classified under Customs Tariff Heading 8708 of the First Schedule to the Customs Tariff Act, 1975.

Background and Facts of the case

- The applicant is engaged in the manufacture of seat components and accessories which is added to the manufacturing of full seat of four wheelers
- The parent company which is situated in Korea is called as DAS Corporation and they are engaged in the manufacture of automobile seats.
- The products manufactured by the applicant are Base Sub Assembly, Set Bracket, Floor Mounting Bracket, Track Sub Assembly, Base Plate, Pipe Assembly, Pipe Assembly height, Cushion Frame Assembly, Cushion Frame Sub Assembly, Recliner + Set Bracket Nut Assembly, Rail + Link Assembly, Spring + Track Lever Assembly etc.
- The goods manufactured by them are not essential parts of a seat. They are basically adjuncts affixed on the floor of the motor vehicle, on which seats are mounted. These goods/mechanisms enable the passengers and drivers of automobiles to adjust seat positions for their comfort and convenience.
- The HSN adopted is 87089999 and GST is levied at 28%.
- The applicant has stated that divergent practices are being adopted among the manufacturers of similar goods and the automobile/automobile seat manufacturers many times, insist on classifying the goods under HSN 9401 99 00, which attracts lower rate of GST. Since HSN cannot be changed according to the needs of the customer and as they follow, HSN 940199 00, they are unable to cater to the demands of such customers and lose business on this account.
- Thus, the Applicant has preferred an application seeking advance ruling on the following questions:
  - What is the correct classification of goods manufactured by the applicant viz. "Automotive Seating System"?
  - Will the goods manufactured fall under CH 87089900 attracting GST@ 28% or under CH 940199990 attracting GST@ 18%

Discussion and findings of the case

- The Authority observed that the product in question namely, Track Assembly is fitted on the floor of the car. When seats are fixed on this TRACK ASSY it can slide back and forth with the operation of a lever for varying the positions of the seats, which is basically intended to improve the comfort and efficiency of the persons sitting thereon.

- Subsequently, the Authority referred to the Explanatory Notes and entries of Customs Tariff Heading 8708 and 9401. It held that chapter heading 9401 covers only seats and parts thereof. So only such items, which constitute as specific parts of a seat such as backs, bottoms, armrests etc can be termed as parts of seats .Whereas, CTH 8708 covers 'Parts and accessories of Motor Vehicles'.

- Referring to the dictionary definitions of 'parts' and 'accessories', the authority further interposed that 'part' is an essential component of the whole without which the whole cannot be complete or cannot function. However, an 'accessory' is not an essential component without which the whole cannot function, but it is a component which when added improves utility, appearance or efficiency of the whole thing.

- Thus, the Authority held that the seat and track assembly are two individual, independent products, manufactured separately and fixed together to make the seat movable for a comfortable position of the driver and the front co passenger. They are not parts of each other but are two products put together in a motor vehicle for aiding the front and backward movement of the seat. Seats are complete even without the said track assembly and so the said assembly cannot be termed as 'Parts of seat' and would not merit classification under CTH 9401.

Ruling

- In light of the above observations by the Court, it was ruled that the track assembly manufactured is classifiable under CTH 8708 and the applicable rate of CGST & SGST is 14%.

2. Chariot International Pvt. Ltd. Vs Commissioner of Central Tax, Bengaluru East [CESTAT]

Subject Matter: Ruling wherein it was held by the CESTAT Bangalore that procedural delay cannot disentitle assessee from claiming refund when credit had been reversed under GSTR-3B.

Background and Facts of the case

- The appellants were engaged in the manufacture and export of granite slabs and tiles classifiable under Chapter sub-heading 68022390 of CETA, 1985 and had availed the cenvat credit of service tax paid on input services used in the manufacture of their finished goods under the provisions of Cenvat Credit Rules, 2004(CCR).

- The Appellant had filed three refund applications for refund of Cenvat credit under Rule 5 of CCR, 2004 read with Notification No27/2012-CE(NT) dt. 18/06/2012.

- Thereafter, the appellant had received a show-cause notice proposing to reject the refund claims on the ground that the appellant had not debited the amount in the CENVAT register as required under para 2(h) of the Notification No.27/20212.

- Hence, the Appellant filed reply to the show-cause notice and submitted that on 30.06.2017, they had a cenvat credit balance of Rs.31,55,064/- and the same was carried forward in the TRAN1 under GST.

- They have also submitted that the amount claimed as refund has been debited in the GSTR3B for the period December 2017.

- After following the due process, the original authority sanctioned the refund.

- Aggrieved by the sanctioning of the refund, the Department filed three appeals before the Commissioner(Appeals) who passed the impugned order allowing all the three appeals filed by Department against the order sanctioning the refund granted by the original authority. Thus, the appellant filed an appeal to the CESTAT.

Discussions and findings of the case

- The Hon'ble Tribunal had observed that original adjudicating authority allowed the refunds by holding that non-reversal of the credit at the time of filing refund claims is only a minor procedural lapse and reversal is ensured before sanctioning of the refund. Hence the delay was condoned.

- The department had filed an appeal with the Commissioner (Appeals) who had set aside the Order-in Original and disallowed the refund on the ground that credit reversal in GSTR 3B pertains to GST credit and not CENVAT credit. Thus, invoking the provisions under Section 142(3) and 142(4), the refunds were disallowed.

- However, the Hon'ble Tribunal contended eligibility of the appellant to claim refund is not disputed and it is also not disputed that the appellant has debited the amount claimed in the GSTR3B. It also contended that the credit reversed without being utilised can be considered as if the credit had not been taken. Hence the credit reversed in GSTR-3B would tantamount to not been taken credit in clause 1.

- The Hon'ble Tribunal also inferred that the appellant had reversed the credit in GSTR 3B but there was only delay in debiting the same and hence, this is procedural delay and will not disentitle the assessee from claiming the refund.

Ruling

Basis above, it was held by the Hon'ble Tribunal that the impugned order rejecting the refunds was not sustainable in law and should be set aside along with providing consequential relief.

Part B – Case Laws

Direct Tax

1. Prime Oceanic Pvt. Ltd. [TS-450-ITAT-2021(JPR)]

Subject matter: ITAT held that Sales, marketing services rendered abroad by NR-agent not FTS, not liable to TDS

Background

- Assessee, a commission agent providing shipping services to its clients at various ports located all over world, availed sales and marketing services of M/s Trans Coral Shipping FZE, company incorporated under the laws of UAE.

- Assessee claimed such sales promotion expenses of Rs. 28.40 lacs in its P&L account for AY 2013-14 and submitted that such payments were made for procuring the business outside India for which no technical services were required or rendered and the recipient company's income is not chargeable to tax in India and therefore the payment of sale promotion expenses is not subject to tax deduction at source.

- AO founds that Assessee is engaged in the joint venture business with Trans Coral and has intentionally credited the sales promotion expenses for tax avoidance and it is actually distribution of income and not an expense. AO observed from the agreement that a fixed amount equivalent to 10% of total commission receipt is shared in addition to one-third of the commission, in case of total commission received by the Assessee exceeded Rs.50 Lacs. Thus, AO invoked provisions of Sec. 9(1)(vii)(b) and Sec. 195 and CBDT Circular No.7/2009 dated 22.10.2009, disallowing Rs. 28.40 lacs by virtue of Sec. 40(a)(i) on failure to deduct tax at source.

- Aggrieved Assessee preferred an appeal before CIT(A), who confirmed the assessment order by observing Expl. to Sec. 9(2) inserted by Finance Act, 2010 w.e.f. Apr 1, 1976, and held that income of NRI shall be deemed to accrue or arise in India as per clause (v), (vi) or (vii) of Section 9(1), irrespective of any business connection in India or rendering of services in India.

Assessee's submission

- Assessee submitted that a particular sum is subject to TDS only if the same is covered by any of the Sections 192 to 196D and as per Sec. 195 tax is deductible only if such sum is chargeable under the provisions of this Act which is supported by CBDT Circular No. 3/2015 dated 12.02.2015, whereby the CBDT, supplemented its earlier Instruction No. 02/2014 on Section 195/201 and has clarified that only sums which are chargeable to tax under the Act should be considered for purpose of disallowance u/s 40(a)(i).

- Referred to SC ruling in G. E. India technology Centre Pvt. Ltd. wherein it was held "…tax deducted at source obligations u/s 195(1) of the Act arises, only if the payment is chargeable to tax in the hands of the non-resident recipient".

- Assessee further proved that the Trans Coral did not have any PE in India and thus, sum received by him shall be chargeable to tax in India only if the same falls under clause (v)/(vi) or (vii) of Sec. 9 and the payment of sales promotion expenses can be categorized as 'Commission', but not 'Fees for Technological services' as defined u/s 9(1)(vii).

- Assessee remarked that if remittance is for Commission to non-resident agents for services rendered outside India, no tax is deductible as overseas agents operated in their own country and no part of their income had accrued in India.

- Assessee referred to SC ruling in GVK Industries Ltd. where it is clarified that the exception provided in terms of clause (b) to Section 9(1)(vii) was not overridden by insertion of Explanation to Section 9(2).

- Further, with respect to treatment of sales promotion expenses as 'distribution of profit', Assessee proved that various reasons given by the AO have no substance and rather are based on very casual observations and deserved to be held bad in law.

ITAT Ruling

- ITAT analysed the relationship between the Assessee and Trans Coral by taking note of the agency agreement entered into between them and observed that Trans Coral was appointed as a sole service provider to promote the activities and services provided by the assessee company in return for 1/3rd commission share on commission received by the Principal and an additional incentive @ 10% of commission where total commission earned by the Principal exceeds Rs 50 lacs.

- Thus, ITAT concluded that the relationship between the two companies is that of principal and agent and cannot be termed as that of joint venture partners. Held that the structure of commission as mentioned in the agreement cannot be sole determinative of a joint venture and is merely a mode of determination of fees as agreed between the two companies.

- ITAT held that the nature of payment to be that of sales promotion expenditure for services rendered outside of India where the corresponding revenues have been offered to tax by the assessee company.

- Relied on SC ruling GVK Industries, where it was held that retrospective effect of Expl to Sec. 9(2) did not override the exceptions to Sec. 9(1)(vii)(b) and holds, "where the source of assessee's income for which the services are utilized is outside of India and the services are also rendered outside of India, the deeming provisions of section 9(1)(vii) are not attracted".

- Thus, ITAT concluded that the said amount paid to the non-resident entity does not fall within its scope of total income and consequently it is not chargeable to tax in India. Further, in the absence of PE in India during the subject AY, such business income is not chargeable to tax in India. Therefore, when the Assessee is not eligible to deduct tax u/s 195, consequently the provisions of Section 40(a)(i) also cannot be invoked for making the disallowance.

2. Sucon India Ltd [TS-416-ITAT-2021(DEL)]

Subject matter: ITAT held that setoff of speculative loss against business income, not concealment of income u/s 271(1)(c)

Background

- Assessee, a company engaged in trading in shares & securities and works contract assignments, filed its return of income for AY 2009-10 declaring loss of Rs.25.94 Cr. AO completed the assessment u/s 143(3) determining the total income of the assessee at Rs.1.59 Cr. wherein AO made an addition of Rs.27.63 Cr. u/s 73 by holding that speculative loss on derivative transactions cannot be set off against the business income.

- AO initiated penalty proceedings u/s 271(1)(c) and thereby rejecting the various explanations given by the assessee and observing that the assessee furnished inaccurate particulars of income to the extent of 27.63 Cr., it levied penalty of Rs. 9.39 crores u/s 271(1)(c) at 100% of the tax sought to be evaded.

- Aggrieved, assessee approached the CIT(A) who deleted the penalty by observing that assessee had disclosed and explained its transaction as regards to business income of Rs.27.63 Cr. with full degree of openness and transparency and that the genuineness of the transactions and the loss incurred had been accepted in the assessment proceedings.

ITAT Ruling

- ITAT noted that AO had levied a penalty of Rs.9.39 crores u/s.271(1)(c) on account of addition of Rs.27.63 crores being speculative loss on derivative transactions which according to AO cannot be set off against business income. ITAT observed that the AO had done so on the premise that assessee had furnished inaccurate particulars of business income.

- ITAT relied on jurisdictional HC ruling in Bhartesh Jain, Auric Investment & Securities Ltd, Aretic Investment Pvt. Ltd amongst others wherein it was categorically stated that penalty u/s 271(1)(c) was not leviable where the addition was made on account of treatment of business loss as speculation loss.

- Accordingly, ITAT opined that "merely because the Assessing Officer has treated the business loss claimed by the assessee as speculation loss, the same cannot tantamount to concealment of income warranting levy of penalty u/s 271(1)(c)." Relied on jurisdictional HC rulings in Bhartesh Jain and Aretic Investments.

- ITAT further relied on SC ruling in Reliance Petro Products wherein it was held that making of an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. Merely because the assessee claimed a deduction which had not been accepted by the Revenue, the penalty u/s 271(1)(c) is not attracted since this is not the intention of the legislature.

- On perusal of AO's notice issued u/s.274 r.w.s 271, ITAT observed that it was not known as to under which limb of the provisions of Sec.271(1)(c), had the AO initiated penalty proceedings i.e. whether for concealment of income or for furnishing of inaccurate particulars of such income. Accordingly, ITAT opined that the notice "is in only a printed form without striking off the inappropriate words in the said notice".

- ITAT relied on jurisdictional HC ruling in Sahara India Life Insurance Company and thereby held that the notice issued by the AO was bad in law since it did not specify under which limb of Sec.271(1)(c), the penalty proceedings had been initiated. Accordingly, ITAT upheld CIT(A)'s order and dismissed Revenue's appeal.

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