EY Tax and Regulatory Alert

November 2020

Prepared for ACMA

Contents

S. No.	Particulars	Description
Part A	**Key Tax Updates**	
1.	**Goods and Services Tax (GST)**	Key Circulars and Notifications • Notification issued in relation to extension of GSTR 9 and GSTR 9C for FY 2018-19 • Notification issued in relation to amendment carried out in sub-section (1), (2) and (7) of section 39 • Notification issued in relation to amendment to CGST rules, 2017 • Notification issued to extend the due date of GSTR 1 • Notification issued to notify the class of persons under proviso to section 39(1) • Notification issued to notify special procedure for making payment of 35% as tax liability in first two month • Notification issued to rescind Notification 76/2020-Central tax dated 15.08.2020 • Notification issued to extend the due date for furnishing of FORM ITC-04 • Notification issued to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 100 Cr from 01.01.2021
2.	**Customs and Foreign Trade Policy**	Key Circulars and Notifications • Notifications issued in relation to amendment of notification No. 50/2017 – Customs dated 30.06.2017 • Clarification on MOOWR scheme • Press release approving Production Linked Incentives' (PLI) schemes for some additional sectors • Trade notice issued for inviting suggestions for new foreign trade policy.
3.	**Direct Tax**	Key circulars and notifications • CBDT notifies sunset date for filing declaration under Vivad Se Vishwas Act and extends due date for payment of disputed tax [Vide notification No.85/2020 dated 27 October 2020] • Clarification on date of payment for disputed tax under VSV post Notification no. 85 of 2020 [Vide Circular 18 of 2020 dated 28 October 2020] • CBDT amends rules to implement Equalization Levy on e-commerce supply and service • CBDT extends tax exemption for LTC Cash Voucher Scheme to non-central government employee • CBDT issues notification about the extension of the due date for furnishing tax returns and tax audit report for tax year 2019-20

4.	**Regulatory**	• Reserve Bank of India ('RBI') issues Foreign Exchange Management (Margin for Derivative Contracts) Regulations, 2020 ('FEMA – MDC Regulations') • Department for Promotion of Industry and Internal Trade ('DPIIT') has issued Consolidated FDI Policy Circular of 2020 and has revised the Standard Operating Procedure ('SOP') for processing foreign investment proposals on Foreign Investment Facilitation Portal ('FIFP') • RBI discontinues returns/ reports under FEMA • RBI amends regulations on compounding of contraventions under FEMA • RBI prohibits foreign law firms/companies or foreign lawyers from opening any branch office ('BO'), project office ('PO'), liaison office ('LO') or other place of business in India
Part B	**Judicial Precedents**	
	Goods and Services Tax (GST)	
1.	**M/s KLT Automotive and Tubular Products Limited** **[TS-929-HC-2020(BOM)-NT]**	Ruling wherein the High Court writ petition came to be filed with the primary contention that interest could be demanded only on the net liability and not on gross liability.
2.	**M/s Madhav Motors** **[TS-950-HC-2020(KER)-NT]**	Ruling for change in the effective date of the registration certificate from 04.01.2020 to 01.07.2017.
	Customs and Foreign Trade Policy	
1.	**M/s. Toyota Kirloskar Auto Parts Private Limited** **[2020 (10) TMI 1139]**	A writ petition was filed claiming the interest on the amount to be refunded by the Department.
	Direct Tax	
1.	**Pradeep Kumar Batra (Taxpayer)- Delhi ITAT** **[ITA No. 6384/Del/20190]**	Delhi Tribunal denied investment-linked incentive benefit where online audit report was approved by taxpayer post due date of filing tax return.
2.	**Bhaval Synthetics (India) Ltd.** **[TS-565-ITAT-2020(JPR)]**	Notice u/s 143(2) not mandatory for best judgment reassessment accepting returned income

INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax

This section summarizes the regulatory updates under GST for the month of November 2020

- **Notification No. 80/2020, dated 28.10.2020** issued by CBIC, to extend the due date of filing annual return and audit report for financial year (FY) 2018-19 from 31.10.2020 to 31.12.2020.

- **Notification No. 81/2020, dated 10.11.2020** issued by CBIC, to notify 10.11.2020 as date on which amendment in Section 39 of CGST Act, 2017 will be applicable.

- **Notification No. 82/2020, dated 10.11.2020** issued by CBIC, to notify that the below Rules have been substituted:

  - Rule 59 (applicable w.e.f. 01.01.2021):

  1. The registered person required to furnish quarterly return is allowed to furnish the detail of outward supplies made to the registered person for first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months using invoice furnishing facility ("IFF") from the 1st day of the month succeeding such month till 13th day of the said month.

  2. The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter

  3. The details of outward supplies of goods or services or both furnished using the IFF shall include:

     a) invoice wise details of inter-State and intra-State supplies made to the registered persons and

     b) debit and credit notes, if any, issued during the month for such invoices issued previously

  - Rule 60 (applicable w.e.f. 01.01.2021) Auto-population in GSTR-2A. In addition to the details auto populating earlier in GSTR 2A, the following additional details would be auto populated:

  1. The details of outward supplies furnished by the supplier using the IFF shall also be made available to the recipients in Part A of Form GSTR-2A, in Form GSTR-4A and in Form GSTR-6A, as the case may be;

  2. The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area ("DTA") from Special Economic Zone unit ("SEZ unit") or a Special Economic Zone developer ("SEZ developer") on a bill of entry shall be made available in Part D of Form GSTR-2A.

  - Auto-drafted statement in GSTR-2B

  1. An auto-drafted statement containing the details of input tax credit shall be made available to the registered person in Form GSTR-2B, for every month, electronically through the common portal, and shall consist of:

     a) Details of outward supply furnished by supplier in GSTR-1/GSTR-5/GSTR-6 including outward details furnished using IFF;

     b) The details of the integrated tax paid on the import of goods or goods brought in DTA from SEZ unit or SEZ developer on a bill of entry in the month.

  - Format for Form GSTR-2B has been notified.

  - Reference of GSTR 2 has been removed wherever it was appearing.

  - Rule 61 (applicable w.e.f 01.01.2021)

  1. Return is to be furnished in GSTR-3B instead of GSTR-3 for every month on or before the twentieth day of the month succeeding such month;

2. The words “GSTR-3” has been replaced with “GSTR-3B” wherever it was appearing.

- **Notification No. 83/2020, dated 10.11.2020** issued by CBIC, to notify that the due date for furnishing GSTR-1 has been notified as 11th day of succeeding month.

- **Notification No. 84/2020, dated 10.11.2020** issued by CBIC, to notify that the registered persons having an aggregate turnover of up to Rs 5 crores in the preceding financial year and who have opted for quarterly return filing under Rule 61A as mentioned above can furnish quarterly GSTR-3B provided:

  - The return for the preceding month, as due on the date of exercising such option, has been furnished;
  - Once exercised, such option shall continue unless revised by the registered person.
  - Default migration has been prescribed for registered persons who have furnished the return for the tax period October, 2020 on or before 30.11.2020. Such default option can be changed from 05.12.2020 to 31.01.2021.

- **Notification No. 85/2020, dated 10.11.2020** issued by CBIC, provides that two options are prescribed for monthly payment of taxes in case of quarterly return filers.

  - Fixed Method- A facility is being made available on the portal for generating a pre-filled challan in FORM GST PMT-06 for an amount equal to 35% of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly.
  - Self-Assessment Method-The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in FORM GST PMT-06.
  - In case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month. Similarly, for the second month of the quarter, in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the cumulative tax due for the first and the second month of the quarter or where there is nil tax liability, the registered person may not deposit any amount.

- **Notification No. 86/2020, dated 10.11.2020** issued by CBIC, to notify that the notification notifying the due dated for GSTR-3B for the months from October, 2020 till March,21 has been rescinded.

- **Notification No. 87/2020, dated 10.11.2020** issued by CBIC, to notify that the time limit to furnish ITC-04 for July 2020 to September 2020 has been extended till 30.11.2020.

- **Notification No. 88/2020, dated 10.11.2020** Issued by CBIC, provides that the turnover for applicability of E-invoicing provisions has been reduced from 500 crores to 100 crores. In other words, registered person [other than a SEZ unit and those referred in Rule 54(2), 54(3), 54(4) and 54(4A) of the CGST Rules], whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds 100 crores, is required to comply with the requirement of IRN and QR code in respect of supply of goods or services or both to a registered person or for exports. The same shall be made effective from 01.01.2021.

Customs and Foreign Trade Policy (FTP)

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

- **Notification No. 42/2020, dated 11.11.2020** issued by DGFT, provides that the further amendment of notification No. 50/2017 – Customs dated 30th June, 2017 so as to prescribe 5% BCD on specified parts for

manufacture of Open Cell for LED/LCD TV Panels subject to end user condition.

- **Circular No. 48/2020, dated 27.10.2020** issued by CBIC, providing clarification for the manufacturing and other operations undertaken in a bonded warehouse under Section 65 of the Customs Act.

1. Job work for a Section 65 unit

Clarification sought - Goods eligible to be sent for a job work and procedure to be followed for removal of goods for job work by a Section 65 unit.

Clarification provided:

- Annex B has been provided in the circular 34/2019-customs dated 1 October 2019 to provide for removal of goods from a Section 65 unit for job work and receipt of job work as a part of manufacture or other operation.
- Accordingly, on inputs are allowed to be sent out from a Section 65 unit of job work.
- Capital goods can be sent outside Section 65 unit for repair, with permission of the bond officer.
- Job work would be subject to conditions.
- Clarification sought - Trade has requested that moulds, jogs, fixtures, tackles, instruments, hangers, patterns and drawings be allowed to be sent to the job workers for use in the job work

Clarification provided:

- Board has decided to allow the said goods to be sent to premise of a job worker, subject to due accounting of the goods by the Section 65 units.
- Further, such goods will be used by the job worker exclusively for the concerned Section 65 units. The procedure and timeline will be in line with GST provision.
- It may be noted that the bond to be executed by Section 65 unit, prescribed through the circular would apply.
- In case there are any violation of the provisions mentioned, the goods shall be deemed to be cleared for home consumption on the date of clearance of the goods for job work. The applicable duties, interest and penalties shall be reckoned accordingly.

2. Job work for others by Section 65 units

Clarification sought - Trade has sought clarity on whether Section 65 unit can itself carry out job work for other units and procedure to be followed for the same

Clarification provided:

- It has been clarified that a Section 65 unit being a GST registered unit, can perform job work operations and shall maintain due accounting of such job work as per provisions of GST law.
- In case any imported inputs which are warehoused and consumed during job-work process, duty shall be paid on such goods (i.e. warehoused goods) by filing Ex-bond Bill of Entry when such job worked goods are returned to the principal/owner.
- In case the goods after job work are exported from the premises of the Section 65 unit, the import duty on the warehoused goods used for job work need not be paid as per Section 69 of the Customs Act.

3. Whether Section 65 unit can procure goods from FTWZ unit

Clarification provided:

- No restriction imposed on sourcing of goods by units operating under Section 65.
- Further, it has been provided that the units are GST registrants, which are allowed to procure goods from SEZ / FTWZ.
- Basis the above view, it has been clarified that a Section 65 may source capital goods or inputs from a SEZ/FTWZ, following the applicable procedure.

- **Press release, dated 11.11.2020** issued to approved 'Production Linked Incentives' (PLI) schemes for some additional sectors. This

also includes Automobiles and Auto Components sector with an incentive budget outlay of INR 57,042 crores. These schemes are aimed at increasing the domestic production capabilities and exports of the specified sectors.

- **Trade Notice No. 34/2020/21, dated 12.11.2020** issued by DGFT to invite suggestions for the purpose of formulation of new policy. The Government has requested industry members/ bodies and other stakeholders to send their inputs/ suggestions. The inputs/ suggestions, as requested above, can be shared by accessing the Google form link: https://bit.ly/3khHEI2. Also, the form needs to be filled within 15 days from the date of issue of notice.

Direct Tax

Part-A Key Direct Tax updates

1. CBDT notifies sunset date for filing declaration under Vivad Se Vishwas Act and extends due date for payment of disputed tax [Vide notification No.85/2020 dated 27 October 2020]

Background

- VSVA provides an opportunity to taxpayers to settle direct tax disputes by filing a declaration in the prescribed form to the Designated Authority (DA) and by paying the prescribed amount before a specified date. Once any litigation is settled under VSVA, a taxpayer is entitled to waiver from interest levied/leviable and immunity from penalty and prosecution.

- Before the Notification, VSVA specified the following procedure to settle a dispute:

  - Taxpayer should file a declaration on or before the notified date.

  - Upon receipt of the declaration, the DA shall, within a period of 15 days from the date of receipt of the declaration, grant a certificate to the taxpayer specifying the amount payable to settle the dispute.

  - Taxpayer shall pay the amount so determined in such certificate within 15 days of the date of receipt of the certificate and intimate the details of such payment to the DA.

  - The DA shall pass an order stating that the taxpayer has paid the amount, marking the conclusion of the dispute.

- VSVA, as originally enacted, provided two alternative timelines by which the payment could be made, based on which the amount payable under VSVA to settle the dispute was determined. Generally, for eligible disputes involving taxes (as against interest or penalty) viz., "disputed tax", the amount payable under VSVA was as under:

  - 100% of disputed tax - if payment is made on or before 31 March 2020
  - 110% of disputed tax - if payment is made after 31 March 2020

Since the enactment of VSVA, the aforesaid timelines have been extended on various occasions as part of various measures announced by the Government of India (GOI) in the wake of the COVID-19 pandemic. The following table summarizes the same:

Amount payable to settle the dispute	**Timelines for payment under VSVA**		
	As originally enacted	**As amended by the Taxation and other Laws (Relaxation of certain Provisions), Ordinance, 2020 [31 March 2020]**	**As amended by the Taxation and other Laws (Relaxation and amendment of certain Provision)Act, 2020 [29 September2020]**
At 100% of disputed tax	On or before 31 March 2020	On or before 30 June 2020	On or before 31 December 2020
At 110% of disputed tax	After 31 March 2020	After 30 June 2020	After 31 December 2020

The present Notification

The present Notification notifies the following three dates for different purposes under VSVA:

Notified date	Relevance of such notified date
31 December 2020	Date on which a declaration needs to be filed to the DA by a taxpayer to settle dispute under VSVA
31 March 2021	Date on or before which payment under VSVA can be made with 100% of disputed tax
1 April 2021	Date on or after which payment under VSVA can be made with additional 10% of disputed tax

- In other words, the Notification provides for sunset of 31 December 2020 for filing declaration under VSVA. The Notification also provides an extended date for payment under VSVA of 31 March 2021 with 100% of disputed tax, and for payment made after 31 March 2021 but before a date yet to be notified, with an additional amount of 10%.

2. Clarification on date of payment for disputed tax under VSV post Notification no. 85 of 2020 [Vide Circular 18 of 2020 dated 28 October 2020]

- As per the present scheme of VSV, once a declaration has been made by a taxpayer under VSV in Form 1, the Designated Authority (DA) is required to issue a certificate determining the amount of disputed tax payable within 15 days of such declaration in Form 3. Once Form 3 is issued by the DA, the taxpayer is required to make payment of disputed tax within 15 days from the date of issue of Form 3.

- While the date of payment of disputed tax is extended to 31 March 2021, the existence of 15-day time limit for payment from the date of issue of Form 3 under VSVA created an anomalous situation leading to undue hardship to the declarants in cases where the 15-day time period expires before 31 March 2021. In order to mitigate the undue hardships and remove the difficulties, the CBDT has, in exercise of the powers conferred under VSVA, issued Circular 18 of 2020 dated 28 October 2020, clarifying that in cases where the time period of 15 days to make payment under the existing VSV scheme expires on or before 31 March 2021, taxpayers can make a payment by 31 March 2021 without any requirement to pay additional tax. Any payment post such a date would require payment of additional tax of 10% of disputed tax.

- This swift clarification of CBDT is welcome and it may nip the unwanted litigation in the bud.

3. CBDT amends rules to implement Equalization Levy on e-commerce supply and service (ESS EL)

In order to implement the ESS EL provisions, the existing EL rules and accompanying forms have been modified to extend their application to ESS EL related amendments and the same is notified by the CBDT on 28 October 2020.

The key changes introduced in EL rules and accompanying forms are as below:

- The annual statement can be furnished electronically under digital signature or through electronic verification code (EVC). The procedures for filing annual statement electronically, revised statement, generation of EVC are yet to be notified.

- The due date for furnishing annual statement in case of Ad EL, i.e., 30 June of the immediately succeeding tax year, has also been made applicable in case of ESS EL.

- Unlike Ad EL, where a taxpayer is required to furnish information qua each service provider, in case of ESS EL the e-commerce operator is not required to provide transaction wise information and is only required to provide quarterly details of consideration received/receivable and EL discharged thereon.

- In case where the taxpayer or e-commerce operator is a company, verification of the annual statement can be made by the persons authorized to verify return of income under Income Tax Act (ITA) or the principal officer of the company.

- The taxpayer or e-commerce operator has the option to provide Aadhar number instead of Permanent Account Number (PAN) while filing the annual statement and also while filing for appeal before the appellate authorities.

- While filing the appeal forms, the taxpayer or e-commerce operator is required to provide details on disputed amount of EL, interest and penalty.

The amended rules are effective from 28 October 2020.

4. CBDT extends tax exemption for LTC Cash Voucher Scheme to non-central government employee [dated 20 October 2020]

- With a view to benefit other employees (i.e., other than CG employees) who were not covered by the OM dated 12 October 2020, the CG decided to grant similar tax exemption on the cash equivalent of LTC fare paid to them.

Briefly, the Press Release provides for the following:

- Payment of cash allowance to non-CG employees as deemed LTC fare will be eligible for tax exemption, subject to fulfilment of conditions described below.

- The tax exemption will be restricted to the deemed LTC fare up to a maximum of INR 36,000 per person for a round trip.

- However, the employees opting for this Scheme will be required to fulfil the following conditions:

  - The employee should exercise an option for the deemed LTC fare in lieu of the applicable LTC in the current block period of 2018-21.

  - The employee should spend a sum equal to three times the deemed LTC fare during the period of 12 October 2020 to 31 March 2021.

  - The sum must be spent on goods or services attracting GST of 12% or more from a GST-registered vendor.

  - The payment must be made through digital mode and the employee must produce GST invoice.

  - Where the amount spent by the employee falls short of three times of the deemed LTC fare on specified expenditure during the specified period, the tax exemption will be restricted to the pro rata amount of the shortfall of LTC fare and the excess LTC fare received by the employee, if any, should be refunded to the employer.

- The Press Release provides an example: if the deemed LTC fare is INR80,000, three times of the fare will be INR2,40,000. If the employee expends only INR1,80,000, then the deemed LTC fare and tax exemption would be available only to the extent of 75% i.e., up to INR6 0,000 only. If the employee has received an advance of INR 80,000, they should refund the excess INR20,000 to the employer.

- The DDOs (i.e., the employers) can allow tax exemption subject to the fulfilment of the above-mentioned conditions and after obtaining copies of invoices of the specified expenditure.

- Employees who have opted for payment of tax under the new concessional tax regime will not be entitled to this tax exemption since the same is in lieu of the exemption provided for LTC fare.

- The clarifications provided by the CG vide the OM dated 20 October 2020 and any further clarifications that may be issued in this regard, shall equally apply to non-CG employees.

- The legislative amendments to the ITL provisions for this purpose shall be proposed in due course.

5. CBDT issues notification about the extension of the due date for furnishing tax returns and tax audit report for tax year 2019-20. [Notification No. 88/2020 dated 29 October 2020]

Recently, the Government of India issued Press Release dated 24 October 2020 (Press Release) extending:

- Due date for furnishing tax return for tax year 2019-20 for taxpayers who are either required to get their accounts audited or furnish transfer pricing report, being 31 January 2021, and taxpayers who were originally required to furnish their tax return by 31 July 2020, being 31 December 2020.

- The language used in the Press Release had raised ambiguity about whether the due date for furnishing tax return for tax year 2019-20 is extended from 30 November 2020 to a later date or not in respect of corporate taxpayers required to neither get their accounts audited nor to file transfer pricing report.

- Due date for furnishing audit report and transfer pricing report to 31 December 2020 for all taxpayers.

- Necessary notification to that effect was to be issued.

CBDT has now issued Notification No. 88/2020 dated 29 October 2020 (CBDT Notification) to formalize the announcement made vide Press Release. CBDT notified various due dates for furnishing tax return, audit report and transfer pricing report for tax year 2019-20 for all taxpayers in consistence with Press Release which can be summarized as under:

Particulars	Original due date	Extended due date as per earlier Notification	Revised due date as per CBDT Notification
Extension for due date for furnishing tax returns:			
Taxpayer who is required to submit transfer pricing report	30 November 2020	No extension	31 January 2021
Taxpayer being: (a) corporate taxpayer (including foreign companies); or (b) who is required to get its accounts audited under ITL or any other law [6] (and its partners, if any) (Not covered in Sr. No. 1 above)	31 October	30 November 2020	31 January 2021
Extension for furnishing tax audit report, other audit reports and transfer pricing reports:			
Due date for furnishing tax audit Report	30 September 2020	31 October 2020	31 December 2020
Other audit reports required to be filed under various provisions of ITL (e.g., for book profit computation for corporate taxpayers, audit report for claiming incentive deductions, audit report for charitable trust)	Various due dates as specified under ITL	31 October 2020	31 December 2020
Due date for furnishing transfer pricing report	31 October 2020	No extension	31 December 2020

Key Regulatory amendments

This section summarizes the regulatory updates for the month of November 2020

Reserve Bank of India ('RBI') issues Foreign Exchange Management (Margin for Derivative Contracts) Regulations, 2020 ('FEMA – MDC Regulations')

The Financial Markets Regulation Department of the RBI has issued FEMA-MDC Regulations dated 23 October 2020, key features of the same are provided as under:

- In terms of these regulations, "margin" has been defined as the collateral that the parties to a derivative contract post with or collect from each other to cover some or all of the credit risk that the provider of the collateral poses for the receiver of the collateral

- Save as otherwise provided in any other rules or regulations issued under Foreign Exchange Management Act, 1999 ('FEMA'), prohibition has been imposed on any person to post or collect margin for derivative contracts and pay or receive interest on such margin without the prior permission of the RBI

- Authorized dealers have been granted the permission to post and collect margin, in India and outside India, on their own account or on behalf of their customers for a permitted derivative contract entered into with a person resident outside India, in the form and manner as specified by the Reserve Bank and receive and pay interest on such margin.

Source: Foreign Exchange Management (Margin for Derivative Contracts) Regulations, 2020 dated 23 October 2020.

Department for Promotion of Industry and Internal Trade ('DPIIT') has issued Consolidated FDI Policy Circular of 2020 and has revised the Standard Operating Procedure ('SOP') for processing foreign investment proposals on Foreign Investment Facilitation Portal ('FIFP')

The DPIIT has issued Consolidated FDI Policy Circular of 2020 ('2020 Policy'), which is a consolidation of the press notes and notifications issued post last consolidated policy published in 2017. Further, DPIIT has revised the SOP for processing proposals for foreign investment in cases where prior approval of the government is required for making foreign investment. The key changes introduced by the revised SOP are as follows:

- In respect of delayed proposals and those escalated by the administrative Ministry concerned, for quicker disposal, an inter-ministerial committee has been constituted in line with the erstwhile Foreign Investment Promotion Board ('FIPB'), consisting of secretaries from DPIIT, Department of Economic Affairs, Ministry of Corporate Affairs, Ministry of Home Affairs, concerned administrative Ministry and representatives from RBI and NITI Aayog

- It has been clarified that foreign investment proposals involving mergers /demergers/ amalgamations, can only be filed post obtaining approval from National Company Law Tribunal ('NCLT')

- Process/ guidelines for surrender/withdrawal of the approval letter have been provided

- Details of ownership and control along with details of significant beneficial owners of investee and investor companies/ entities as prescribed under Companies Act, 2013 need to be provided

  Source: Consolidated FDI Policy effective from 15 October 2020 and SOP for Processing FDI Proposals dated 09 November 2020

RBI discontinues returns/ reports under FEMA

With a view to improve the ease of doing business and reduce the cost of compliance, the RBI has discontinued 17 of the existing returns/reports which were required to be filed under FEMA by AD Banks, custodians and Asset Management Companies, for example, reporting for extension of Project Office/Liaison Office, Foreign Institutional Investors ('FII') /Foreign Portfolio Investors ('FPI') daily inflow/outflow of foreign funds and monthly returns, inflows/outflows of remittances on account of investments by Foreign Venture Capital Investor (FVCIs) and market value of investments made by FVCIs, inflow/outflow details in respect of Mutual Fund by Asset Management Companies etc.

Source: A.P. (DIR Series) Circular No.05 dated 13 November 2020

RBI amends regulations on compounding of contraventions under FEMA

The RBI has amended the regulations on compounding of contraventions under FEMA. The key changes are as follows:

- **Delegation of power to compound contraventions:**
  FEMA 20R has been superseded by Foreign Exchange Management (Non-Debt Instruments Rules), 2019 ('NDI Rules') and Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 ('Payment Regulations'). Accordingly, the power to compound contraventions under FEMA 20R delegated to the Regional Offices/Sub Offices of the RBI has been aligned with corresponding provisions under NDI Rules and Payments Regulation.

- **Discontinuation of classification of contravention as technical:**

  Classification of contraventions as technical, that was dealt with by way of an administrative/ cautionary advice, has been discontinued and such contraventions will be regularized by imposing minimal compounding amount as per the computation matrix provided in the Maser Direction- Compounding of Contraventions under FEMA, 1999.

- **Summary information of compounding orders to be made public:**

  The compounding orders issued by RBI after 01 March 2020 will not be made publicly available on RBI website. Instead, a summary of the orders would be made available, in the prescribed format.

  Source: A.P. (DIR Series) Circular No.06 dated 17 November 2020

RBI prohibits foreign law firms/companies or foreign lawyers from opening any branch office ('BO'), project office ('PO'), liaison office ('LO') or other place of business in India

In line with the decision of the Hon'ble Supreme Court of India, holding that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that foreign law firms/companies or foreign lawyers cannot practice profession of law in India, the RBI has prohibited foreign law firms/companies and foreign lawyers to establish any BO/PO/LO or other place of business in India for the purpose of practicing legal profession.

Source: A.P. (DIR Series) Circular No.07 dated 23 November 2020.

Part B – Case Laws

Goods and Services Tax

1. M/s KLT Automotive and Tubular Products Limited. [TS-929-HC-2020(BOM)-NT]

Subject Matter: Ruling wherein the High Court writ petition came to be filed with the primary contention that interest could be demanded only on the net liability and not on gross liability.

Background and Facts of the case

- Appellant is a limited company having its registered office at Andheri (East), Mumbai. It is engaged in the business of manufacture of automotive components.
- It is registered under the Central Goods and Service Tax Act, 2017 as well as under the Maharashtra Goods and Service Tax Act, 2017.
- Appellant has stated that it has availing input tax credit and discharging its output supplies after deducting the input tax credit.
- However, there was some delay made by Appellant in filing the monthly returns in form GSTR-3B and GSTR-1.
- The Appellant was intimated about the payment of interest on delayed payment of taxes for certain periods, it remitted the interest computed on net tax liability. It received an email levying interest of Rs.5,06,06,060.00 for late payment of GST for the months from July, 2017 to December, 2019. It is stated that the interest was computed on gross liability.
- By another email, revised the demand of interest amounting to Rs.7,62,15,267 for late payment of GST for the months from July, 2017 to March, 2020 was received. The interest was computed on the gross liability.
- The Appellant filed petition with the primary contention that interest could be demanded only on the net liability and not on gross liability.

Discussion and findings of the case

- Section 50 of CGST Act, 2017 prior amendment read as “every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.”
- By Finance (No.2) Act, 2019, section 50 has been amended by insertion of a proviso in sub-section (1). The proviso reads as “Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceeding under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.”

- The said amendment has been given effect from 01.09.2020 vide notification No.63/2020-Central Tax dated 25.08.2020.

- Further, a press release dated 26.08.2020 was issued wherein it was clarified that the notification dated 25.08.2020 relating to interest on delayed payment of GST has been issued prospectively due to certain technical limitations. However, Board has assured that no recoveries shall be made for the past period as well by the central and state tax administration.

- It was also clarified that for the period 01.07.2017 to 31.08.2020, to recover interest only on the net cash tax liability i.e., that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger. Further, in those cases where show cause notices have been issued on gross tax payable, to keep those show cause notices in the call book till retrospective amendment in section 50 of the CGST Act, 2017 is carried out.

Ruling

- Basis above, the Hon'ble Bombay HC, held that no live issue survives for adjudication in this case. And notices issued were quashed.

- Writ petition is accordingly allowed.

2. M/s. Madhav Motors [TS-950-HC-2020(KER)-NT]

Subject Matter: Ruling for change in the effective date of the registration certificate from 04.01.2020 to 01.07.2017.

Background and Facts of the case

- The Applicant is a dealer in automobiles and was registered as such under the erstwhile Kerala Value Added Tax Act.

- With the introduction of the GST Act, he had applied for a registration under the said Act and he was granted a provisional registration certificate dated 28.06.2017.

- With a view to getting a permanent registration, he had attempted to upload the Form TRAN-1 but couldn't upload the same.

- Also, he wasn't able to generate e-way bills through the web portal. This is because he had not received permanent registration certificate.

- Meanwhile, the applicant was granted a fresh registration certificate dated 04.01.2020, indicating the date of liability of the applicant as 01.07.2017, the date of introduction of the GST Act. However, it would be valid only from 04.01.2020.

- Noticing the said discrepancy, the Applicant filed a request to the officer but the same got rejected.

- Thereafter, the Applicant filed a Writ petition for the same.

Discussions and findings of the case

- It was observed that, from the applicant had applied for registration in accordance with Rule 24 interpretation of law.

- It was also observed that, when the provisional registration granted to the applicant was not cancelled.

- Also, the proper officer had granted a regular registration on 04.01.2020. The permanent registration must relate back to the date of the provisional registration and the petitioner ought to be entitled to upload the returns for the past period and to avail eligible input tax credit.

- Hence, no formal cancellation of certificate was communicated to the applicant.

Ruling

- It was directed to amend the Registration Certificate issued to the applicant and to make it valid from 01.07.2017.

- Also, to permit the applicant to upload the returns and pay taxes and avail the input tax credit based on returns so uploaded.

- Accordingly, the writ was allowed.

Customs and Foreign Trade Policy (FTP)

1. **M/s Toyota Kirloskar Auto Parts Private Limited [2020 (10) TMI 1139]**

   Subject Matter: A writ petition was filed claiming the interest on the amount to be refunded by the Department.

   Background and Facts of the case

   - The Applicant is 100% Export oriented unit engaged in the manufacture and exports of parts of motor vehicle which attracts duty under Central Excise Tariff Act, 1985.

   - The Applicant had imported certain capital goods, parts and accessories and availed off various custom exemptions.

   - On investigation, the revenue collected a sum of INR 80,51,536 towards duty. The applicant sought return of the said amount.

   Discussions and findings of the case

   - It was observed that entire amount has been refunded and only the dispute is regarding the interest on INR 80,51,536.

   - It was pointed out that the applicant is entitled for the aforesaid amount for a period from March, 2006 to September 2007 at the rate of 6% per annum. Thus, an amount of INR 7,25,638 is payable to the applicant on account of interest.

   - The aforesaid prayer is opposed on the ground of the instruction issued dated 22.08.2019 issued by Central Board of Indirect Taxes and Customs.

   - The relevant extract of instruction dated 22.08.2019, reads as "*In exercise of the powers conferred by Section 358 of the Central Excise Act, 1944 and made applicable to Service Tax vide Section 83 of the Finance Act, 1994, the Central Board of Indirect Taxes and Customs fixes the following monetary limits below which appeal shall not be filed in the CESTAT, High Courts and Supreme Court. The instruction applies only to legacy issues i.e., matters relating to Central Excise and Service Tax, and will apply to pending cases as well.*"

   - Section 35R of the Central Excise Act, 1962 made applicable to service tax vide Section 83 of the Finance Act, 1994 and Section 131BA of the Customs Act, 1962, the Central Board of Excise and Customs had fixed the monetary limit in respect of filing the appeal at ₹ 10 Lakhs.

   - Subsequently, the aforesaid limit was modified to ₹ 15 Lakhs vide instructions dated 11.12.2015.

Ruling

- Basis the above, it was observed that the amount in dispute is less than INR 15,00,000.

- Therefore, in view of instruction dated 11.12.2015, the appeal cannot be entertained. And hence dismissed.

Part B – Case Laws

Direct Tax

1. Pradeep Kumar Batra (Taxpayer)- Delhi ITAT [ITA No. 6384/Del/20190]

Subject matter: Delhi Tribunal denied investment-linked incentive benefit where online audit report was approved by taxpayer post due date of filing tax return

Background

- The Indian Tax Laws (ITL) provide for various investment-linked deductions subject to compliance of various conditions. These deductions are condition-ridden and one such condition is to get the account of the eligible undertaking audited and submit such audit report in the prescribed form4 along with return of income. Post the introduction of the e-filing regime, such audit report is mandatorily required to be submitted in online form, duly signed and verified.

- Before 1 April 2020, taxpayers were required to submit such audit report online along with their tax returns. However, with effect from 1 April 2020, an amendment was made in the ITL, vide Finance Act, 2020, which provides that such audit report shall be submitted one month prior to the due date of furnishing the tax return.

- In the online process, the audit report is required to be first uploaded by the taxpayer's-chartered accountant using their credentials on the income tax department's website and, thereafter, the taxpayer is required to accept/approve such audit report using their credentials on the same website. The report can be said to be furnished when the taxpayer accepts/approves the audit report by attaching their signature.

Facts

- The Taxpayer, being an Individual, had furnished his tax return for tax year 2016-17 on 6 November 2017 (within the extended due date i.e., 7 November 2017, extended by the Central Board of Direct Taxes) and claimed investment-linked deduction in relation to an eligible undertaking.

- The Taxpayer's chartered accountant had submitted the audit report for claiming investment-linked deduction online in the prescribed form on 6 November 2017 and it was approved by the Taxpayer on 12 December 2017.

- The Taxpayer's tax return was processed by the Central Processing Centre (CPC), Bangalore on 10 January 2019. In an intimation issued to the Taxpayer, the CPC denied the benefit of investment-linked deduction due to non-submission of the audit report along with the tax return. Against the said intimation, the Taxpayer preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)].

- The CIT(A) affirmed the intimation passed by the CPC and held that the requirement under law is to submit the audit report along with the tax return. The audit report was not approved as on the date of filing the tax return and, hence, is not to be considered as valid compliance.

Aggrieved by CIT(A)'s order, the Taxpayer filed an appeal before the Tribunal.

Taxpayer's contentions

It is not the case that the audit report was not submitted at all by the Taxpayer. It is a case where the audit report was uploaded in time, but the Taxpayer's approval was at a later date, but before the CPC passed an intimation.

- Whether the requirement of submitting the audit report is mandatory or directory, is a debatable issue. Therefore, the CPC has no authority to make such adjustment under the relevant provision.

- Delay in approving the audit report is a procedural default and can be cured even at the time of assessment proceedings. Furthermore, the Taxpayer was not aware of the process of online submission of the audit report and, hence, there was a delay in approving the same.

Tax authority's argument

Heavy reliance was placed on the order of the CIT(A). Furthermore, as per the provisions of the ITL, it is mandatory to furnish the audit report along with the tax return for the purposes of claiming investment-linked deduction. Since the audit report was approved much beyond the due date of filing the tax return, there is a default in compliance with the requirement, leading to valid disallowance of the claim.

Tribunal's Ruling

The Tribunal upheld the CPC's intimation disallowing the investment-linked deduction for non-submission of the audit report along with the filed return of income. The Tribunal held as under:

- The ITL provision is clear that the audit report is required to be submitted along with the tax return but, in the present case, the Taxpayer had delayed approving the said audit report.

- The argument that the Taxpayer was not aware of the process for submission of the audit report is also incorrect. The Taxpayer approved, suo moto, the audit report within a short period post the due date. This suggests that the Taxpayer was aware of the process of submission of the audit report.

- It is true that there are judicial precedents wherein courts/tribunals have held that the requirement of filing of the audit report along with the tax return is directory in nature and can be furnished to the tax authority even in the course of assessment proceedings. However, these rulings are in the context of an era of physical filing of tax returns. These rulings will have no applicability in the context of online filing requirement where there can be no question of delay in submission of the audit report.

- Provisions of the ITL strictly provide that all necessary documents must be filed and approved along with the tax return or prior thereto. Any subsequent filing of the documents cannot be considered for processing of the tax return and issuance of intimation.

2. Bhaval Synthetics (India) Ltd. [TS-565-ITAT-2020(JPR)]

Notice u/s 143(2) not mandatory for best judgment reassessment accepting returned income

Background

As per the provision of ITA:

- The legal necessity to issue notice u/s 143(2) arises where the Assessing Officer (AO) considers it necessary or expedient to ensure that the assessee has not understated the income/ computed excessive loss /under-paid the tax in any manner.

- The return of income filed in response to notice u/s 148, shall apply as if such return was a return required to be furnished under section 139 of the Act.

Facts

- Assessee had filed its return of income on 22 October 2013 claiming loss of Rs. 1,88,72,993 and the assessment was completed u/s 143(3) on 13 January 2016 assessing total loss at Rs. 1,87,60,143. Consequently, proceedings u/s 147 of the Act were initiated and notice u/s 148 was issued on 14 June 2017 which was duly served on the assessee on 16 June 2017.

- In response the assessee did not file any return of income and accordingly, notice u/s 142(1) was issued on 11 December 2018, stating why the assessment should not be completed u/s 144 as no return was filed by the company in compliance to notice u/s 148 of the Act.

- In response, the assessee submitted that it has filed its return of income on 12 December 2018 in compliance to the notice u/s 148 of the Act. The AO held that since return of income was filed much beyond the statutory time period of 30 days of having received the notice issued u/s 148 on 16.06.2017, the same cannot be given any cognizance.

- The AO accordingly passed the best judgment assessment u/s 144 allowing only the current year loss of Rs. 1,87,60,143, as originally assessed u/s 143(3), to be carry forward to the subsequent assessment years.

- The ld. CIT(A) held that, since no substantive grievance arise to the assessee from the order of the AO as only loss pertaining to A.Y. 2013-2014 can be carry forward and not of any earlier years, which is very position taken by the assessee in the return filed U/s 148 on 12 December 2018

  Aggrieved by CIT(A)'s order, the Taxpayer filed an appeal before the Tribunal.

Taxpayer's contentions

- We had filed the return of income on 12 December 2018, in response to the notice u/s 148 of the Act however, the AO did not issue any notices U/s 143(2) and proceeded to complete assessment U/s 144 on 28 December 2018.

- In absence of notice u/s 143(2), the reassessment order passed cannot be sustained and is bad in law and deserve to be quashed.

- Reliance should be placed on the decision of the Honourable Rajasthan High Court in case of Pr. CIT- III vs. Kamla Devi Sharma (DB Appeal No. 197/2018 dated 10.07.2018).

Tax authority's argument

- Tax authority contended that where the return of income has not been taken cognizance of and the best judgment order has been passed u/s 144 of the Act, then there is no legal necessity to issue notice u/s 143(2) of the Act.

- It has been further contended that no prejudice has been caused to the assessee by non- issuance of notice u/s 143(2) as in the impugned order u/s 148, the only finding of the A.O is that of losses for A.Y 2013-14, and not of any earlier years that can be carried forward, which is the very position taken by the assessee in the return so claimed to be filed u/s 148 on 12 December 2018.

Tribunal's Ruling

- The reason for initiating the reassessment proceedings u/s 147 was precisely the wrong and incorrect claim of carry forward of losses for A.Y 2005-06 while filing the original return of income on 22 October 2013 which was assessed u/s 143(3) dated 13 January 2016.

- As per the facts of the case, where the return filed by the assessee has been accepted and the reassessment order has been passed u/s 147 accepting the returned income and there is no variation or addition made by the Assessing officer to the returned income, we do not see any necessity for the Assessing Officer to call for the explanation from the assessee and to issue notice u/s 143(2) of the Act.

- In case of Kamla Devi Sharma (supra), relied upon by the ld AR, AO had made the addition to the returned income and therefore, it was necessary that before making such an addition, he should have issued a notice u/s 143(2). In the present case the facts are distinguishable and therefore, does not support the case of the assessee.

- In light of above discussions and in the entirety of facts and circumstances of the case, sole ground of appeal is dismissed.

Our offices

Hyderabad
Oval Office
18, labs Centre
Hitech City, Madhapur
Hyderabad – 500 081
Tel: +91 40 6736 2000
Fax: +91 40 6736 2200

Jamshedpur
1st Floor,
Shanti Niketan Building
Holding No. 1, SB Shop Area
Bistoury, Jamshedpur – 831 001
Tel: + 91 657 663 1000

Kochi
9th Floor "ABAD Nucleus"
NH-49, Maraud PO
Kochi - 682 304
Tel: +91 484 304 4000
Fax: +91 484 270 5393

Kolkata
22, Camaca Street
3rd Floor, Block C"
Kolkata - 700 016
Tel: +91 33 6615 3400
Fax: +91 33 6615 3750

Mumbai
14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (west)
Mumbai - 400 028
Tel: +91 22 6192 0000
Fax: +91 22 6192 1000

5th Floor Block B-2
Nylon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: +91 22 6192 0000
Fax: +91 22 6192 3000

Pune
C—401, 4th floor
Pinch-hit Tech Park
Yeravda (Near Don Bosco School)
Pune - 411 006
Tel: +91 20 6603 6000
Fax: +91 20 6601 5900

Ahmedabad
2nd floor, Shavlik Ishaan
Near. C.N Vidyalaya
Amba wadi
Ahmedabad – 380 015
Tel: +91 79 6608 3800
Fax: +91 79 6608 3900

Bengaluru
12th & 13th floor
"U B City" Canberra Block
No.24, Vital Malia Road
Bengaluru - 560 001
Tel: +91 80 4027 5000
+91 80 6727 5000
Fax: +91 80 2210 6000 (12th floor)
Fax: +91 80 2224 0695 (13th floor)

Ground Floor, 'A' wing
Devisee Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru – 560 025
Tel: +91 80 6727 5000
Fax: +91 80 2222 9914

Chandigarh
1st Floor
SCO: 166-167
Sector 9-C, Madhya Marg
Chandigarh - 160 009
Tel: +91 172 671 7800
Fax: +91 172 671 7888

Chennai
Tidal Park
6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salami
Tar Amani, Chennai – 600 113
Tel: +91 44 6654 8100
Fax: +91 44 2254 0120

Delhi NCR
Golf View Corporate
Tower – B
Sector 42, Sector Road
Gurgaon – 122 002
Tel: +91 124 464 4000
Fax: +91 124 464 4050

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Atrocity New Delhi – 110 037
Tel: +91 11 6671 8000
Fax +91 11 6671 9999

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
NOIDA - 201 304
Gautam Bodh Nagar, U.P.
Tel: +91 120 671 7000
Fax: +91 120 671 7171

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

For more information, please visit
www.ey.com/india

EY refers to the global organization and may refer to one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/india.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 22 Camaca Street, 3rd Floor, Block C, Kolkata - 700016

- This work product has been prepared by EY LLP on the basis of a scope of work agreed with the Automotive Components Manufacturers' Association of India (ACMA), and does not purport to be all-inclusive or to contain any information that a prospective reader may expect or desire. Accordingly, if made available to ACMA's members or any other person or entity, this work product is solely for their information and should not be used, circulated, quoted, relied upon, or otherwise referred to for any other purpose, nor included or referred to in whole or in part in any document without EY LLP's prior written consent.
- The information in this document has been printed on the basis of data from various EY subscribed databases, media reports, publicly available information, internal data and other reliable sources believed to be true. While every effort is made to ensure the accuracy and completeness of information contained, EY LLP takes no guarantee and assumes no liability for any errors or omissions of the information.
- Due to the dynamic nature of the subjects covered by this document, readers of this document are cautioned that (a) any information contained in this document may not be current after the date hereof, and (b) any forward-looking statements are not predictions and may be subject to change without notice.
- Information in this publication is intended to provide only a general outline of the subjects covered, on the basis of a scope of work agreed with ACMA. It should neither be regarded as comprehensive nor sufficient for making decisions, nor should it be used in place of professional advice. EY LLP accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.
- This disclaimer forms an integral part of this work product.

EY contacts for ACMA Knowledge Partnership:

- Rakesh Batra, National Automotive Sector Leader – rakesh.batra@in.ey.com / +91 124 464 4532