EY Tax and Regulatory Alert

April 2022

Prepared for ACMA

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2.	**M/s Exide Industries Limited vs the State of Jharkhand**	Ruling wherein the Hon'ble High Court had held that ITC cannot be denied on Inter-State sale or transfer of stock (scrap batteries) u/s 18(8)(ix) of the JVAT Act, 2005 if there is no manufacturing activity within the state of Jharkhand but only a trading activity.

3.	**M/s Star Motors Limited [MVAT AAR Maharashtra-2022-VIL-111-AAR]**	Ruling wherein it was held that payments received and paid on behalf of the customer towards RTO taxes and Insurance premium will form the price of vehicle before delivery and also forms a part of Sales Price as defined in 2(25) of MVAT Act 2002. Further, the payments made by the customer to the dealers prior to the actual delivery will attract tax liability under the MVAT Act and therefore are recoverable from the dealer.
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INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax (GST)

This section summarizes the regulatory updates under GST for the month of April 2022

- Notification No. FA3-08/2018/1/V(18) dated **23.03.2022** was issued by the Madhya Pradesh State Government in order to bring in the new rule of E-Way Bill in M.P. from 15 April 2022.

- It hereby notifies that no E-Way Bill is required for be generated for the movement of the goods as mentioned below:

  1) Intra-district movement of all Goods of any value
  2) Inter-district movement of all Goods except Goods mentioned in serial no. 3 and 4 of the notification not exceeding INR one lakh.
  3) Inter-district movement of all types of Tobacco and its Products i.e. Chewing Tobacco, Khaini, Cigarettes, Bidi etc. (All goods of Chapter 24) and Pan Masala (Tariff heading 2106) not exceeding INR Fifty thousand.
  4) Inter-district movement of Medicine, Surgical goods and Active Pharmaceutical Ingredients of medicine having HSN code 3003, 3004 and 3006 of any value.

- However, all the provisions and the procedures laid down in rules 138, 138A, 138B, 138C, 138D and 138E shall apply mutatis mutandis for the intra-state movement for all the goods other than those mentioned above in the state.

- **Notification No. F.17 dated 24.03.2022** is issued by the Government of Rajasthan to extend the E-Way Bill limit to INR 2 lakh in Rajasthan w.e.f. 1 April 2022, for the movement of all goods except all type of Tobacco and its Products i.e. Chewing Tobacco, Khaini, Cigarettes, Bidi etc. (All goods of Chapter 24), Pan Masala (Tariff heading 2106), Wood and articles of wood (as mentioned in chapter 44) and Iron and steel (All goods of Chapter 72). where the movement commences and terminates within the area of same city without crossing the area of the city.

- **Circular No. 6/2022 dated 06.04.2022** is issued by the Kerala Government to state that there shall be no detention of goods or no show-cause notice shall be issued to the goods under transport or stored in parcel agencies, on the sole reason that the said goods are undervalued as compared to its Maximum Retail Price (MRP).

- If any undervaluation cases are suspected in such cases, the officers are directed to upload the details of such invoices using the option provided in the mobile app and send a report to the jurisdictional Officer, marking a copy to the jurisdictional district Joint Commissioner.

- Further, the intelligence squads shall gather evidence to establish the case by collecting documents about the actual value of the supply. The jurisdictional officer concerned shall verify the same with the help of the report and the uploaded details. Thereafter, the jurisdictional officer of the taxpayer vertical or the Intelligence formation can take further action as provided in the law.

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of April 2022

- **Notification No. 19/2022-Customs (N.T.) dated 30.03.2022** is issued by CBIC to exempt the following deposits from all of the provisions of Section 51A of the Customs Act, 1962:
  - goods imported or exported in customs stations where customs automated system is not in place;
  - with respect to accompanied baggage; and
  - other than those used for making payment of :
    1) any duty of customs, including cesses and surcharges levied as duties of customs;
    2) Integrated tax;
    3) Goods and Service Tax Compensation Cess;
    4) Interest, penalty, fees or any other amount payable under the said Act, or the Customs Tariff Act, 1975.
- This notification shall come into force with effect from **1 June 2022**.
- **Notification No. 20/2022-Customs (N.T.) dated 30.03.2022** is issued by CBIC to notify the Customs (Electronic Cash Ledger) Regulations, 2022 w.e.f 1 June 2022.
- The notification states the definitions for the said regulations and provides that Electronic Cash Ledger (ECL) shall be maintained in FORM ECL-1 on the common portal for each person in regard to every deposit made towards duty, interest, penalty, fee or any other sum payable for the purpose of crediting the deposit and for debiting when the amount available in the ECL is used for making payment towards duty, interest, penalty, fee or any other amount.
- It apprises that deposit made in the electronic cash ledger shall not accrue any interest and the deposit shall be made by a person by generating a deposit challan in FORM-ECL-2 on the common portal. The validity of FORM-ECL-2 shall be 15 days.
- A unique identification number shall be generated at the common portal when a credit or debit, as the case may be, is made to the electronic cash ledger.
- The notification further prescribes 3 methods of making the deposit, i.e. internet banking through an authorized bank, NEFT or RTGS from any bank and the OTC payment through an authorized bank.
- In case of an OTC payment, the deposit by a person shall be limited to INR. 10,000 a day except when made by the Government Department or where the Jurisdictional Commissioner of Customs has authorized a higher amount.
- Upon use of an authorised mode to make deposit, on successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the said amount shall be credit to the electronic cash ledger of the person. The Challan identification number shall be indicated in the deposit challan as generated in FORM ECL-2.
- Additionally, any person may use the amount available in the electronic cash ledger for making payment through payment challan in FORM ECL-3 generated in the manner prescribed in the notification.
- The notification also prescribes the method to debit the electronic cash ledger for the payment of duty. On successful debit of electronic cash ledger, the credit shall be shown in the Electronic Duty Payment Ledger (Cash) maintained in FORM ECL-4.

- Furthermore, the balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be applied for refund by the person on the common portal in FORM ECL-5. The amount of refund shall be decided within 30 days of its application on the common portal.

- **Notification No. 30/2022-Customs(N.T) dated 31.03.2022** is issued by CBIC to notify that in the case of goods for which entry was made under the Act and assessment has already been made but such a case falls outside the purview of section 110AA of the said Act by virtue of there being absence of duty having been short-levied, not levied, short-paid or not paid, then the officer of customs shall, after causing inquiry or investigation, transfer the relevant documents along with report in writing for further required action, for the purpose of section 124 of the said Act,-

  (i) to the officer of customs at the customs station where the entry was made; or

  (ii) in case of multiple jurisdictions, to the officer of customs at the customs station having the highest value of goods as per the report in writing at the stage of transfer.

- This notification shall come into force from the date of publication in the Official Gazette.

- **Notification No. 17/2022-Customs dated 31.03.2022** is issued by CBIC to give effect to 2nd tranche of tariff concessions as per India Mauritius CECPA. It has introduced changes in notification no 25/2021- Customs dated 31st March,2021. The rate changes from the latter mentioned notification have been mentioned in detail in the notification no 17/2022-Customs.

- **Notification No.18/2022-Customs dated 31.03.2022** is issued by CBIC to amend notification number 52/2003- customs for extending the exemption from IGST and Compensation Cess to EOUs on imports till 30 June 2022.

- **Notification No.19/2022-Customs dated 31.03.2022** issued by CBIC is seeking to extend the exemption from Integrated Tax and Compensation Cess by three months i.e. upto 30.06.2022 on goods imported against AA/EPCG authorizations.

- **Public Notice No. 06/2022 dated 28.03.2022** issued by the commissioner of customs for waiver of penalty for late filing of Bill of Entry due to the error 511 and 512 showing in the Customs portal.

- It has been decided that for the consignments where the Bill of Entry under IGCR is filed on or before 22 March 2022, there will be no charge on late presentation of Bill of Entry. In all such cases, waiver of late filing charges pertaining to the above said period will be 'dealt by the respective Deputy/Assistant Commissioner of the concerned Groups directly.

- In case of any further delay in generation of Bill of Entry after 22 March 2022, the Customs Brokers or the importers are required to submit the evidence like Job No., screenshot of the Job No. from ICEGATE/Message received in ICEGATE, to show that the efforts were made for submitting a job in ICEGATE for filing Bill of Entry but no positive acknowledgement was received from ICES.

- All such cases of waiver of late filing charges pertaining to a Bill of Entry filed after the above-mentioned date shall be dealt by the concerned JC/ADC on merits.

- **Public Notice No. 03/2015-2020 dated 13.04.2022** issued by DGFT to amend chapter 5 of the Handbook of procedures 2015-20 related to EPCG scheme to relax the compliance requirement to enhance the ease of doing business.

- The detailed revised provision with respect to the existing provision is elucidated in the said public notice.

- **Public Notice No. 04/2015-2020 dated 20.04.2022** is issued by DGFT for inviting online application of Tariff Rate Quota (TRQ) under the India-Mauritius CECPA for the current financial year 2022-23 to be considered by DGFT on first come, first served basis, with no end date.

- **Public Notification No. 64/2015-2020 and Public Notice No. 53/2015-2020 dated 31.03.2022** issued by DGFT to extend the validity of the Foreign Trade Policy 2015-2020 by further six months.

- Hence, the existing Foreign Trade Policy which was valid till 31.03.2022 is extended upto 30th September 2022.

- **Public Notification No. 66/2015-2020 dated 01.04.2022** is issued by DGFT to amend the Foreign Trade Policy 2015-2020 and to extend the exemption timelines under the various schemes:

  - Exemption from Integrated Tax and Compensation Cess under Advance Authorisation under para 4.14 of FTP 2015-2020 is extended upto 30.06.2022;

  - Exemption from Integrated Tax and Compensation Cess under EPCG scheme under para 5.01(a) of FTP 2015-2020 is extended upto 30.06.2022;

  - Exemption from Integrated Tax and Compensation Cess under EOU scheme under para 6.01(d)(ii) of FTP 2015-2020 is extended upto 30.06.2022;

- **Trade Notice No.01/2022-2023 dated 11.04.2022** issued by DGFT on re-operationalization of the Scrip Transfer recording module in DGFT portal which was earlier suspended due to complaints from exporters about fraudulent scrip transfers.

- The additional features which have been added in the Scrip Transfer Recording Module are:-

  - Introduction of Time Lag features for transfer of scrip;

  - Email and SMS notifications to IEC holders and Directors/Partners attached to IEC on transfer of scrips, change in email/mobile for correspondence and changes in director/partner section and linking of users to IEC;

  - Automatic de-linking of users from IEC every six months;

  - Automatic de-linking of Digital signature and Aadhar registration every ninety days;

  - Certain IECs which have been flagged in the IT database based on certain rules like same mobile number linked to more than three IECS, PAN mis-match, Director/Partner name mis-match etc will not be allowed to use the Scrip transfer recording module until the flag is suitably rectified by the IEC holder.

- The original duty scrip holder is required to register the duty credit scrip at Port of Registration and the transfer of scrip from one IEC to another IEC will be as per the negotiated terms and conditions between the buyer and the seller.

Foreign Exchange Management Act (FEMA)

Part-A Key FEMA updates

This section summarizes the FEMA updates under for the month of April 2022

Department of Economic Affairs ('DEA'), notified the amendment in Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ('NDI Rules') in line with Press Note 1(2022 series) issued by Department for Promotion of Industry and Internal Trade ('DPIIT')

- FDI in LIC is now permitted up to 20% under the automatic route subject to certain conditions and compliance of the provisions of Insurance Act, 1938, LIC Act, 1956, Indian Insurance Companies (Foreign Investment) Rules, 2015 and SEBI (Foreign Portfolio Investors) Regulations, 2019.

- Convertible Note, an instrument permitted to be issued by startup company is now repayable at the option of the holder or convertible into equity shares of such startup company within a period of 10 years from existing time period of 5 years from the date of issue of such convertible note.

- Term 'Share Based Employee Benefits' has been inserted in the NDI Rules to include issuance of equity instruments to employees, pursuant to share based employee benefits schemes formulated by body corporate established or constituted under any Central or State Act and the provisions as applicable to issuance of ESOP or Sweat Equity Shares shall equally apply to the Share Based Employee Benefits.

- It has been clarified that a scheme of compromise or arrangement or merger or amalgamation of two or more Indian companies, or a reconstruction by way of demerger or otherwise of an Indian company, or transfer of undertaking of one or more Indian company to another Indian company, or involving division of one or more Indian company, approved by National Company Law Tribunal or any other competent authority, to be governed by the same provisions as that of merger or amalgamations.

- It has been clarified that a body corporate established or constituted under Central Act or State Act is included in the definition of 'Indian Company' or 'investee company' or 'transferee company' or 'transferor company'.

- It is also clarified that 'Indian company' does not include a society, trust or any entity, which is excluded as an eligible investee entity under the FDI Policy.

- The abovementioned changes are effective from 12 April 2022.

Part B- Case Laws

Goods and Service Tax

1. Musashi Auto Parts India Pvt [TS-1269-AAAR(HAR)-2020-GST]

Subject Matter: Ruling wherein the Haryana AAAR had held that the ITC of GST charged by vendor for canteen services provided by appellant to employees is not admissible. Further, on the question of GST on distribution of coupons among employees, AAAR observes that, as activity itself has been held outside the tax net, hence, there is no need for the valuation of the same for taxation purposes. Moreover, the AAAR also denied ITC on gift items namely, sweets, dry fruits, electronic items and gold-silver coins etc. used in 'Business Promotion.

Background and Facts of the case

- M/s Musashi Auto Parts India Pvt. Ltd., Rewari (hereinafter referred to as "the appellant") is engaged in the manufacture and supply of auto parts and is registered under GST in Faridabad.

- In terms of Factories Act 1948, the Appellant is mandatorily providing canteen facility to its employees as it has 2400 full-time employees, viz. more than 250.

- A nominal amount, i.e. without commercial objective, is recovered from the employees to avoid wastage of food and resource and in order to maintain discipline. The same is recovered by way of card punch or coupon sale.

- The Appellant avails Input tax credit of GST amount paid to Service Provider and creates GST liability on the amount recovered from sale of coupons to its Employees

- Furthermore, the Appellant also purchases Gold/Silver coins, electronic gift items, sweets, dry fruits etc. for the purpose of business promotion.

- Accordingly, the Appellant sought advance ruling on the following questions:

  - "Whether company is eligible to take Input Tax Credit on GST charged by vendor for Canteen services availed by it for its employees;

  - Whether distribution of Coupons among employees attracts GST liability? If yes, under which SAC (Services Accounting Code) tax shall be deducted;

  - Is it correct to determine the fair market value of coupons, based on the rate charged to employees;"

  - "Whether company is eligible to take ITC on such business promotion expenses or not?"

- The AAR gave the following ruling:

  - The company is not eligible to take ITC on GST charged by vendor for Canteen services availed by it for its employees;

  - The distribution of coupons among employees will attract tax liability;

  - The Coupon value shall form part of the total taxable value of the caterer i.e. service provider; and

  - The company is not eligible to take ITC on business promotion expenses".

- Aggrieved by the above decision, the Appellant presented an appeal before the Appellate Authority for Advance Ruling.

Discussions and findings of the case

- The Appellant contended that the AAR did not understand the intention of law regarding eligibility to Input Tax Credit against canteen facility, it being a mandatory facility to be provided to its employee.

- Further, it also argued that the said ITC is eligible in accordance with section 16 of the CGST Act, 2017 and that the common proviso to Section 17(5) has been inserted in the Act w.e.f 1st February, 2019 vided amendment Act of 2018, "Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force". That, the proviso clarifies that something mandatorily done in furtherance of business is allowable for Input Tax credit.

- The Appellant further held that the authority for advance ruling (AAR) mis-interpreted the said proviso that it gives 'mandatory' effect to goods or services pertaining only to 17(5)(b)(iii) rather than to 17(5)(b) of CGST Act, 2017 as a whole. That, a careful reading of relevant provisions makes the law very clear.

- The Appellant also stated that authority have given only partial answer and have left out a ruling on SAC to be used in case of coupon distribution.

- It also held that the ITC to the extent of recovery from employee shall be reversed by the company, hence, there is no SAC applicable to distribution of coupons.

- It also held that the Canteen expenses have to be mandatorily been borne as per Factories Act compliance and not as a business/ venture activity. Further, the expenses recovered from employees are highly subsidized. Hence, proceeds from coupon or card punch cannot be construed as a supply as it is not even for recovery of the cost of item being a simple activity for the employees and as per compliance of Factory Act.

- In reference to the taxability of the canteen services, the appellant held that if the canteen services are treated as supply under Section 16 of the CGST Act, ITC on the inward canteen services shall be allowable to the appellant.

- Additionally, in relation to the business promotion expenditures, the appellant held that being in the manufacturing business, the company has to give some benefits to its employees and customers by the way of presents in order to promote its business and if the applicant company would be denied of taking credit on expenses related to business promotion then the same shall lead to a cascading effect of tax. The Appellant also cited certain landmark judgements in ord/er to affirm its contention.

- The AAAR took into consideration all the contentions placed by the appellant and made the following observations:

    - Basis the provisions of the Factories Act, 1948, canteen services are non-profit and mandatory services being provided under a legal obligation and are tied to the employer's obligation towards employees. These canteen services are, therefore, available to the employees essentially as a facility in the course of their employment and is not a taxable activity under GST.

- Further, the AAAR also held that since the canteen services are outside the tax net,

there is no need for valuation of the same for taxation.

- It was also observed by the AAAR that it is very clear from the respective positioning of colons (:) and the semi-colons (;) in sub-Section 17(5) that the proviso to clause (i) under Section 17(5) is applicable only to the said clause (i) and the proviso to clause (iii) is only applicable to clause (iii).

- Hence, the AAAR held that the proviso "Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force" is applicable only to the clause (iii) "travel benefits extended to employees on vacation such as leave or home travel concession". Accordingly, it was held that the ITC on canteen services will not be eligible to the Appellant.

- Furthermore, in relation to admissibility of ITC on gift items, the AAAR observed that although Section 16 elucidates the eligibility and conditions for availing ITC, ITC under Section 17(5) forbids ITC on the items of personal consumption. Hence, ITC cannot be availed on Sweets; Dry fruits; Electronic Items and Gold & Silver Coins etc. are essentially being given to the relevant persons as items of personal use/ consumption.

Ruling

- Basis above, it was held that:

  - The appellant is not eligible to ITC on the GST charged by the vendor for the canteen services availed by it and provided to its employees.

  - Distribution of Coupons among employees does not attract GST liability.

  - Since distribution of Coupons among employees does not attract GST liability, there is no need to determine any value for that purpose.

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

2. M/s Exide Industries Limited vs the State of Jharkhand

Subject Matter: Ruling wherein the Hon'ble High Court had held that ITC cannot be denied on Inter-State sale or transfer of stock (scrap batteries) u/s 18(8)(ix) of the JVAT Act, 2005 if there is no manufacturing activity within the state of Jharkhand but only a trading activity;

Background and Facts of the case

- The petitioner was assessed under the Jharkhand Value Added Tax Act, 2005 (hereinafter referred to as the "JVAT Act") for the financial year 2012-13 vide assessment order dated 05.10.2015.

- Vide the said assessment order, the petitioner was disallowed the Input Tax Credit amounting to INR 128617/- for the reason that the petitioner could not produce Form JNVAT-404 in support of the said amount of ITC of INR 128617.

- Further, as per the said Assessment order, ITC amounting to INR 1598657.48 was disallowed to the petitioner on the basis of Section 18(8)(ix) of the JVAT Act.

- Aggrieved by the assessment order, the petitioner subsequently filed an appeal against it.

- The Joint Commissioner of Commercial Taxes (Appeal) partly allowed the appeal but disallowed the ITC amounting to INR 1598658 to the petitioner by affirming the Assessment order dated 05.10.2015 in respect to the same by applying Section 18(8)(ix) of the JVAT Act.

- Further, the said assessment order was confirmed by the appellate authority. Thereafter the Ld. Tribunal, again by relying on Section 18(8)(ix) of the Act, confirmed the Assessment order.

- Subsequently, the petitioner presented the said appeal before the Hon'ble High Court.

Discussions and findings of the case

- The petitioner submitted that the order passed by the Assessing officer, Appellate Authority and revisional appellate authority were based on incorrect interpretation and erroneous application of Section 18(8) (ix) of JVAT Act.

- The petitioner further submitted that the petitioner was claiming ITC of INR 30,62,285/- on the intra state purchases of scrap batteries made by the petitioner during the relevant period.

- Accordingly, the petitioner held that in order to apply Section 18 (8) (ix) of the JVAT Act, 2005, in the case of the petitioner and to disallow the said Input Tax Credit on purchase of scrap batteries, the Department had the onus to show that the said scrap batteries were consumed by the petitioner for manufacture of goods in the State of Jharkhand and such manufactured goods were meant for Inter State transfer of stock or for sale outside the State. However, it is clear from the impugned orders that the Department has not shown or established the above. As such, the Input Tax Credit has been wrongly disallowed to the petitioner for the relevant period.

- It was also contended by the petitioner that they were solely engaged in trading activities which was relevant from the Registration certificate of the petitioner. Hence, the department had erred in not considering the undisputed facts.

- In contrary to the above, the department contended that petitioner has failed to produce any document before the assessing officer as well as the appellate authority to show that there was compliance of Rule 26 (12) of the Jharkhand Value Added Tax Rule 2006 to establish that the petitioner was selling the goods in the same form as he had purchased.

- Post going through all the submissions, the Hon'ble High Court observed that the petitioner is a battery manufacturing and trading company. However, no manufacturing activity is carried out in the State of Jharkhand and the Petitioner only engages in trading activity.

- Further, upon perusal of Section 18(8)(ix) of the JVAT Act, it was clear that it is only applicable in case when some manufacturing activity is undertaken by the dealer. In the present case, admittedly, no manufacturing activity is carried out by the Petitioner in the State of Jharkhand. It is only a trader and hence Section 18(8)(ix) cannot be applied in the case of the Petitioner.

- The Hon'ble High Court also held that the language of Section 18(8)(ix) of the JVAT Act cannot be stretched to deduce some non-existent intention that the said section would apply even if the dealer is not a manufacturer. Thus, the findings of Ld. Tribunal are patently erroneous.

- Further, Court also observed that the finding that scrap batteries could only have been used for processing or manufacturing is also incorrect, in as much as, a dealer such as the Petitioner is also free to trade in the said scrap batteries, i.e., sale and re-sale.

Ruling

- In light of the above, it was held that that Section 18(8) (ix) of the JVAT Act is not applicable in the case of this Petitioner.

- Consequently, the writ petition to the High Court was allowed and the assessment order was quashed and set aside.

3. M/s Star Motors Limited [MVAT AAR Maharashtra- 2022-VIL-111-AAR]

Subject Matter: Ruling wherein it was held that payments received and paid on behalf of the customer towards RTO taxes and Insurance premium will form the price of vehicle before delivery and also forms a part of Sales Price as defined in 2(25) of MVAT Act 2002. Further, the payments made by the customer to the dealers prior to the actual delivery will attract tax liability under the MVAT Act and therefore are recoverable from the dealer.

Background and Facts of the case

- The applicant M/s. Star Motors Private Limited, a registered dealer under Maharashtra Value Added Tax Act, 2002 who deals in sell of Motor Vehicles viz. Passenger cars, parts and components and accessories thereof, and renders various services to various persons.

- For the number of tax period of assessments 2015-16 and 2016-17 the applicant dealers received a show cause notice from respective assessing authority of State Tax officers.

- In the case of the applicant, the Assessing officer had issued show cause notice dated 19/03/2020 for the assessment period 2015-2016 to the said applicant and called upon to submit the details of other charges like RTO charges, RTO tax, insurance charges, Insurance premium and registration charges recovered from customer and paid on behalf of them. The officer also questioned as to why MVAT should not be levied on these amount including RTO Tax and Insurance Premium. Hence, the applicant has sought for an Advance Ruling for the amount on which MVAT is leviable.

- According to the applicant, the said Advance ruling deals with the Registration charges only but do not deal with “RTO Tax “which has to be paid under section 2 of the Motor Vehicle Act. It also contends that the registration charges, registration fees and one time road tax are different.

- It is further submitted by the applicant that Insurance premium is to be paid by the purchaser /owner of the motor vehicle and that is after becoming the owner of the motor vehicle and hence do not attract tax liability under the MVAT Act.

- Thus, the applicant prayed that RTO Tax and Insurance Premium do not form or be treated as forming part of Sale price as per definition 2 (25) of the MVAT Act, 2002

Discussions and findings of the case

- The Applicant has stated that the registration charges and registration fees are different from “One Time RTO tax”. The registration charges and registration fees are required to be paid to the RTO office for the preparation of the documents for registration or for issuing a license, postage and other expenses.

- Further, after paying the registration charges and registration fees then only the vehicle gets registered in the name of purchaser.

- Moreover, only after the purchaser becomes the owner of the motor vehicle, the one-time RTO tax can be paid to the RTO on the cost

of vehicle as provided in the section 2 of the motor vehicle and taxation Act.

- The Applicant also stated that the amount paid for insurance premium does not form the part of sales price as per the definition of sales price.

- In light of the submissions by the applicant and the department, the AAR observed the definition of sales price under the MVAT Act and held that under Section 2(25), by deeming fiction "any sum" charged for anything done by the seller in respect of the goods at the time of or before delivery her there're of, pre delivery charges are brought within the meaning of the expression "sale price" and even if a sale has taken place, but delivery has not been taken, all pre-delivery charges would for form part of the sale price.

- Accordingly, every registered owner, or person who has possession or control, of a motor vehicle used or kept for use in the State shall fill up, sign and deliver, in the manner provided in sub-section (4), declaration, and shall along with such declaration, pay to the Taxation Authority the Tax which he appears by such declaration to be liable to pay in respect of such vehicle. Thus, it appears that there is no barrier in MV Act that only purchaser of the car / register owner is liable to pay taxes.

- Furthermore, the AAR also observed the definition of sale under the act wherein it is stated that an agreement to sell fructifies and becomes a sale when the conditions for delivery are fulfilled. Hence, only upon valid registration, as, the vehicle is appropriated to the purchaser.

- Hence, the lawful possession with the right of use is permissible to be given to the intended owner only after reaching the vehicle to the office of Registering Authority. Thus seen, in practical terms though sale precedes the event of registration, in normal circumstances and as the law stands, it is co-terminus with registration of a new motor vehicle.

- The AAR observed the procedure under which typically, a vehicle is booked by a customer. It also observed that in the process of booking, the customer makes or arranges the final payments to the Dealer, and then the Dealer proceeds to undertake activities like Registration of the vehicle with the RTO, Insuring the vehicle with Insurance Agency, etc.

- For a vehicle to be pliable on road, it needs to be registered with the RTO as per the Motor Vehicle Act and similarly it is mandatory to be insured at least in respect of Third Party insurance as per the Provisions of the Chapter X & Chapter XI , Motor Vehicles Act ,1988.

- Hence, at the time of issuing of Proforma invoice details of all costs and taxes, whether it is shown in the cost of the invoice or collected separately, are discussed with the consumer and final cost of vehicle on road is communicated to the customer.

- Basis above, since these charges / taxes represent expenditure incurred by the dealer in making the goods available to the purchaser at deliverable state, the seller constitutes an addition to the cost of the goods and would clearly be the component of price to the purchaser. Though the amount of RTO tax paid here is a statutory requirement, it forms a part for consideration to the consumer.

- In the instant case, the applicant collects all the taxes and insurance premium from the customers, makes the necessary payment, then issues the final invoice and the delivery

of vehicles is affected. Unless the registration taxes are paid and vehicle is properly insured it is not a legal vehicle which is pliable on road.

- Hence the collection and payment of the taxes and insurance premium amounts to the “anything and everything to be done before the delivery of goods” and will form part of sale price and will be taxable.

Ruling

- Basis above, the AAR held that the payments received and paid on behalf of the customer towards “RTO taxes and Insurance premium” will form the price of vehicle before delivery and also forms a part of Sales price as per definition 2(25) of MVAT Act 2002.

- Thus, Applicant is entitled to pay taxes under MVAT Act over the payments made by the Customer to the Dealer/Applicant on or before the date of actual delivery wherein purchaser is entitled to take legal possession of vehicle on road.

Direct Tax

1. Supreme Court allows deduction of foreign exchange loss on loan utilized for asset leasing business

Background

- The tax treatment of forex gain/loss has been a controversial issue in Indian tax jurisprudence. Through a catena of rulings, including those of the SC, the law finally settled on the issue was that forex gain/loss on revenue account is taxable/deductible whereas forex gain/loss on capital account is neither taxable nor deductible. On the test for distinction between revenue and capital nature of forex gain/loss, the following was the position of law settled by the SC in the landmark case of Sutlej Cotton Mills Ltd. v. CIT.

  - *"The law may, therefore, now be taken to be well-settled that where profit or loss arises to an assessee on account of appreciation or depreciation in the value of foreign currency held by it, on conversion into another currency, such profit or loss would ordinarily be trading profit or loss if the foreign currency is held by the assessee on revenue account or as a trading asset or as part of circulating capital embarked in the business. But, if on the other hand, the foreign currency is held as a capital asset or as fixed capital, such profit or loss would be of capital nature."*

  - In another case of CIT v. Tata Iron & Steel Co. Ltd, the SC held that forex fluctuation on loan borrowed for capital asset cannot alter the "actual cost" of capital asset for computing depreciation. The SC held that the cost of an asset and the cost of raising money for purchase of the asset are two different and independent transactions.

  - As an exception to the above principle, in the wake of devaluation of Indian rupee in 1966, a special provision (section 43A) was inserted in the Income Tax Laws (ITL) to, inter alia, permit capitalization of forex gain/loss on actual cost of the capital asset acquired from outside India or foreign currency borrowing made specifically for the purpose of acquisition of such asset. Till tax year 2001-02, section 43A permitted capitalization of forex fluctuation on marked-to-market (MTM) basis. From tax year 2002-03 onwards, it permits capitalization on actual payment of cost of capital asset or repayment of borrowing (i.e., on realization basis). This special provision applies only for capital asset acquired from outside India.

- Section 37(1) of the ITL provides deduction for expenses (other than capital and personal) which are incurred wholly and exclusively for the purpose of business or profession while computing income under the head Profits and Gains from Business or Profession. As per the law settled by the SC in the case of CIT v. Woodward Governor India (P) Ltd., for a taxpayer following mercantile method of accounting, such deduction of forex loss is allowable on MTM basis.

Facts

- The Taxpayer is engaged in the business of providing equipment and plant and machineries on lease and hire purchase basis to other Indian enterprises.

- The Taxpayer borrowed a foreign currency loan of GBP5mn from a foreign corporation for the purposes of expansion of its leasing/hire purchase business.

- The Taxpayer utilized the loan for financing the existing Indian enterprises for procurement of capital equipment on hire purchase or lease basis.

- The Taxpayer incurred forex loss of INR35.65mn on the said loan in the tax year 1996-97. While furnishing its return of income, the Taxpayer partly claimed as

revenue deduction (INR11.05mn) to the extent the loan was relatable to assets given on hire purchase to its constituents and partly capitalized to asset cost (INR24.60mn) to the extent it was relatable to assets given on lease to its constituents. The Tax Authority disallowed the claim of forex loss on the ground that entire loan was utilized for the purpose of acquisition of capital asset thereby being capital in nature.

- The Taxpayer appealed to the First Appellate Authority (FAA) who upheld the disallowance.

- The Taxpayer appealed further to the Tribunal. Before the Tribunal, the Taxpayer put forth an additional claim for allowance of forex loss (INR24.60mn) which was capitalized in the tax return and thereby claimed deduction for full loss of INR35.65mn.

- Relying upon the SC ruling in the case of National Thermal Power Co. Ltd., the Tribunal admitted the fresh claim made by the Taxpayer for allowance of forex loss capitalized by the Taxpayer in its tax return. Further, the Tribunal ruled in favor of the Taxpayer on deductibility of forex loss on the ground that entire borrowing and utilization of the loan is in trading operations of the Taxpayer to carry its business more profitably and the fixed capital is untouched. The loan was not used for non-business purpose.

- The Tax Authority appealed against the Tribunal's order before the Karnataka High Court (HC). The HC reversed the Tribunal ruling by holding that that the Tribunal had not recorded sufficient reasons in support of its conclusion in favor of allowability of forex loss.

- Being aggrieved by the HC ruling, the Taxpayer filed further appeal before the SC.

S Ruling

The SC ruled in Taxpayer's favor and held that the entire forex loss of INR35.65mn is allowable as revenue deduction for the following reasons:

- The purpose of borrowing forex loan as mentioned in the loan agreement was for financing by the Taxpayer of plant, machinery and equipment to be used in its leasing business in accordance with applicable laws and regulations of India and the Taxpayer's Memorandum and Articles of Association.

- Indeed, the Taxpayer utilized the forex loan for the purpose of financing the existing Indian enterprises for procurement of capital equipment on hire purchase or lease basis. But the fact remains that the activity of financing by the Taxpayer for procurement or acquisition of plant, machinery and equipment by other Indian enterprises on leasing and hire purchase basis, is an independent transaction or activity, leasing being the Taxpayer's main business.

- The transaction of loan between the Taxpayer and foreign corporation was in the nature of borrowing money by the Taxpayer which was necessary for carrying on its business of financing. It was certainly not for creation of the Taxpayer's asset as such or acquisition of asset from a country outside India for the purpose of its business.

- In such a scenario, the Taxpayer would be justified in availing deduction of entire forex loss incurred by it on the said loan as revenue expenditure since it was incurred wholly and exclusively for Taxpayer's business of financing the existing Indian enterprises, who in turn, had to acquire plant, machinery, and equipment to be used by them. Even if they acquired them under lease or hire purchase from the Taxpayer, it would be, nevertheless, an activity concerning Taxpayer's business.

- The Tribunal Correctly relied the SC rulings in the cases of India Cements Ltd.6 and Empire Jute Co. Ltd7 for the propositions that (a) loan obtained is not an asset or advantage of enduring nature; expenditure made for securing use of money for a certain period is revenue expenditure regardless of the object with which the loan was obtained and (b) any expenditure which does not result in any advantage in capital field but merely facilitates taxpayers' trading operations for carrying business more efficiently or profitably while leaving the fixed capital base untouched is allowable as revenue deduction.

- The special provision of section 43A is not applicable in the present case since the Taxpayer has not acquired any asset from a country outside India for the purpose of its business.

- Hence, the Tribunal correctly allowed the forex loss as revenue expenditure while the Karnataka HC missed the relevant aspects while reversing the Tribunal ruling.

- The Tribunal's action of accepting fresh claim for claiming the entire forex loss as revenue was also the ratio of National Thermal Power Co. Ltd. (supra). Furthermore, the Tax Authority had expressly conveyed no-objection on Tribunal's admission of the Taxpayer's fresh claim before the Tribunal.

- It is true that there is limitation on Tax Authority's power to entertain fresh claims during assessment in view of the ratio of SC ruling in the case of **Goezte (India) Ltd**. but that ruling itself makes it clear that would not impinge upon the plenary powers of the Tribunal to accept the fresh claims.

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