

EY Tax and Regulatory Alert

January 2022

Prepared for ACMA

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INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax

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

- ▶ **Notification No.40/2021 – Central Tax dated 29.12.2021** was issued by CBIC to notify amendments in the Central Goods and Service Tax Rules 2017. The amendments are summarized below:
 - ▶ Due date for filing of Annual Return and self-certified reconciliation statement under Form GSTR 9 and Form GSTR 9C respectively for FY 2020-21, has been extended to **28 February 2022**, vide amendments notified under Rule 80 of the CGST Rules.
 - ▶ Vide the Finance Act 2021, Section 16(2)(aa) was inserted in the CGST Act 2017 (w.e.f. 1 January 2022), in terms of which ITC on any invoice/debit note shall be available only to the extent such documents are furnished in Form GSTR-1 by the vendor/ supplier and the details of such documents is communicated to the recipient.
 - ▶ Accordingly, Rule 36(4) of the CGST Rules has been amended **w.e.f. 1st January 2022** to align the said rule with Section 16(2)(aa). In terms of the amended Rule 36(4), ITC on invoices and debit notes raised by suppliers shall be available subject to the cumulative fulfilment of the following conditions:
 - i) The details of such invoices or debit notes are furnished by the supplier in his Form GSTR-1; and
 - ii) The details of such invoices or debit notes are communicated to the recipient in Form GSTR-2B.
 - ▶ Relaxation has been provided retrospectively w.e.f. from 01 April 2021 for claim of refund by certain specified persons such as Unique Identity Number ('UIN') holders in cases where UIN is not mentioned on such invoices. In this regard, it has been provided that such refund would be granted if the copies of inward invoices are attested by the authorized representative of UIN holders and submitted along with refund application in Form GST RFD-10.
- ▶ Inserted new Rule 144A w.e.f. 01 January 2022 to increase power of the proper officer to recover amount of applicable penalty by selling goods or conveyance detained or seized in transit in cases where the taxpayer fails to pay applicable penalty within 15 days from the date of receipt of order passed for such detention or seizure.
- ▶ With effect from 01 January 2022, changes has been introduced in the mechanism for utilization of proceeds recovered from sale or goods, conveyance, movable or immovable property of the defaulting person.
- ▶ With effect from 01 January 2022, for payment of unpaid amount under Section 129(1) by defaulting person, the time limit has been reduced from 14 days to 7 days of detention or seizure of the goods and conveyance.
- ▶ **Advisory issued in relation to implementation of Rule 56(6) as amended on the Portal dated 03.01.2022** was issued by GSTN and by the way of this amendment from January 1, 2022 onwards if a monthly filer has not filed the GSTR 3B for the preceding month then such taxpayer can will not be allowed to file GSTR1 for the subsequent month, till the GSTR 3B for the preceding month is filed. The functionality will be available shortly after which the portal will keep checking the filing of preceding GSTR 3B before permitting to file GSTR1 of the subsequent month.
- ▶ **Instruction No. 01/2022-GST dated 07.01.2022** states that where the tax payable in respect of details of outward supplies furnished by the registered person in GSTR-1, has not been paid through GSTR-3B return, either wholly or partly, or any amount of interest payable on such tax remains unpaid, then in such cases, the tax short paid on such self-assessed and thus self-admitted liability and

the interest thereon, are liable to be recovered under the provisions of section 79.

▶ There may be cases where there may be differences in GSTR 1 and 3B where the amount of tax is short paid and is not able to justify the same to the officer or reply to the officer in due time then said officer can proceed with the recovery of the said amounts under section 79.

▶ **GST Advisory on Revamped Search HSN code Functionality:** In order to make the functionality user friendly the search HSN functionality has been revamped and linked with the e-invoice database and Artificial Intelligence tools.

▶ The taxpayers can access the same from Home>Services>User services>Search HSN Code and search the HSN using two options provided as radio buttons 1.HSN 2.Description which can be selected as per requirement. Taxpayer can also view HSN related to the search.

▶ In case the taxpayer is not able to find the HSN he can raise a ticket on the GST Self Service Portal. The entire list is also available in excel format at the bottom of the said page under the link '*Download HSN in Excel Format*'.

▶ **Module wise new functionalities introduced on the GST Portal:** The following functionalities were introduced on the GST portal with respect to returns and appeal:

▶ To improve the taxpayer experience some enhancements have been done in GSTR-1/IFF user interface wherein taxpayers are provided with re-organized dashboard, easy amendment and addition of records, Document counts on les with colour coding, Increase in number of records per page, Recipient wise count of records, etc.

▶ To help the taxpayer in making data entries faster and to reduce errors while creating their Statement of outward supplies in Form GSTR-1, 'My Master' facility has been created wherein

taxpayers can save details of their recipients and suppliers and the HSN of the commodities they deal in for following two masters on the portal and in the offline tool.

▶ The system used to return an error message if a supplier entered GSTIN of a suspended taxpayer in the B2B, B2BA, CDNR and CDNRA tables of Form GSTR-1/IFF. This validation has now been removed and taxpayer would be able to enter a suspended GSTIN as a recipient of taxable supplies in respective tables of Form GSTR-1/IFF.

▶ The Enforcement module has now been integrated with Appeal module. The taxpayers will now be able to file an online appeal against orders passed by an Enforcement Officer.

▶ The Assessment module has now been integrated with Appeal module. The taxpayers will now be able to file an online appeal against orders passed by a Tax Officer.

Customs and Foreign Trade Policy (FTP)

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

▶ **Trade Notification No. 48/2015-20 dated December 31,2021** was issued by DGFT to extend the last date of submitting applications under MEIS, SEIS, ROSTCL, ROCL and 2% additional ad-hoc incentive to January 31,2022 with immediate effect.

▶ **Trade Notice No. 28/2021-2022 dated 31.12.2021** was issued by DGFT in order to ease the difficulties expressed by the Advance Authorities holders in their representation and to also ease the process of filing applications for closure of Advance Authorizations and give them an option of to file manual/physical EODC applications for all such AAs which have been issued prior to 1.12.2020.

▶ In case where the applications for EODC/closure has been received in manual or physical mode, Regional Authorities on approval of such physical files are required to upload the closure letters in the online system and update the status of the Advance Authorization suitably.

▶ **Trade Notice No. 29/2021-2022 dated 06.01.2021** was issued by the DGFT stating that the Department of Commerce and DGFT have undertaken to monitor the status of export and imports and difficulties being faced by trade stakeholders in view of the surge of COVID-19. For filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23.

▶ For filing of refund application in FORM RFD-01 under rule 89.

▶ For refund under rule 96 of the integrated tax paid on goods exported out of India.

In case the Aadhar number is not assigned to the person required to undergo Aadhar Authentication, a certain set of authentication documents as stated in this notification will be required to be submitted.

▶ **Amendment to Rule 23:** The said rule shall now be applicable subject to Rule 10B of the CGST Rules, 2017 .

▶ **Amendment to Rule 45:** In sub-rule (3), with effect from the 1st day of October, 2021, the period quarter shall be replaced with a specified period. Moreover, the specified period has been defined as:

(a) the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and

(b) a financial year in any other case.";

▶ **Amendment to Rule 59:** In sub-rule (6), with effect from the 1st day of January, 2022, the time limit of preceding two months has been reduced to the preceding month. Other amendments were also introduced.

▶ **Amendment to Rule 89:** The said rule shall now be applicable subject to Rule 10B of the CGST Rules, 2017.

Moreover, after sub-rule (1), the following sub-rule shall be inserted, namely:-

(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force."

- ▶ **Amendment to Rule 96:** The said rule shall now be applicable subject to Rule 10B of the CGST Rules, 2017.
- ▶ **Insertion of Rule 96B:** with effect from the date as may be notified, Rule for "Bank Account for credit of refund" shall be inserted

The said rule states that for the purposes of sub-rule (3) of rule 91, sub-rule (4) of rule 92 and rule 94, "bank account" shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number:

Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.

- ▶ **Trade Notice No. 31/2021-2022 dated 14.01.2021** was issued by the DGFT drawing reference to the previous notifications and public notices in regards to extension of time limit for updating the IEC electronically.
- ▶ In continuation to the above notifications it is informed that all IEC's which have not been updated after 01.07.2021 shall be deactivated from effect from 01.02.2022. The concerned IEC holders are provided an opportunity to update their IEC in the interim period.
- ▶ It is also further stated that any IEC so deactivated, would have the opportunity for automatic re-activation without any manual intervention or any visits to the DGFT RA. For IEC re-activation after 31.01.2022, the said IEC holder may navigate to the DGFT website and update their IEC online. Upon successful updating the given IEC shall be activated again and transmitted accordingly to Customs system with the updated status.
- ▶ **Trade Notice No. 32/2021-2022 dated 24.01.2021** was issued by the DGFT stating that

that the transition period for mandatory filing of applications for Non-Preferential Certificate of Origin through the e-CoO Platform has been extended till 31st March 2022. The existing systems for submitting and processing non-preferential CoO applications in manual/ paper mode is permitted for the stated time period and the electronic system is not being made mandatory.

- ▶ There have been various enhancements such as:
 1. Bulk upload of line items from file (to save efforts on keying-in each item).
 2. Creation of duplicate/cloned application from an existing application (to save efforts on repetitive entries).
 3. E-Wallet facility for bulk payments of user charges (to avoid payment gateway interaction in each CoO submission).
 4. Aadhaar e-sign facility for authentication (in-lieu of Digital Signature Certificates)
- ▶ **Department of Foreign Trade No 524/11/2021 dated 20.12.2021** was issued in order to inform the taxpayers that the new 7th edition of HSN Nomenclature shall come into existence from 1st January 2022, in which there have been a total of 351 amendments at the six digit level covering a wide range of goods. For ease of transition to HS 2022, a guidance document on correlation has been prepared by the officers and can be accessed under the head "Manual" under the tab "Customs" on the CBIC website.
- ▶ **Instruction No. 01/2022- Customs dated 05.01.2022.** issued by the Central Board of Indirect Taxes and Customs (CBIC) on the implication of Supreme Court (SC) Larger Bench judgment in case of Westinghouse Saxby Farmer Ltd.
- ▶ Earlier, SC had held that relays were classifiable as parts of railway signaling system under Chapter Heading 8608 of the Central Excise Tariff. The court gave precedence to 'sole or principal use' test under Note 3 over Note 2(f) of Section XVII which specifically excluded 'electric equipment' from being classified under the said Section. CBIC received representation from the trade and field formations pointing out difficulties

owing to the divergent practices arising in assessment of 'automobile parts' pursuant to the above judgment under Customs.

- ▶ In the Instruction, reference has been made to other SC judgments wherein the exclusionary clause under Note 2 was given precedence over the 'sole or principal use' test after considering HSN explanatory notes issued by World Customs Organization (WCO). These judgments did not come up for consideration in the Westinghouse case and hence it appears at variance with the stand taken in classifying other parts of goods falling under Section XVII.
- ▶ It is further stated that the Westinghouse case pertains to the classification of 'relays' used in railway signaling equipment of Chapter 86 and not automobile parts falling under Chapter 87. The judgment itself does not refer to its wider applicability to any other case or issue of similar nature. Accordingly, it is advised that classification of various parts of Section XVII is to be decided by considering all the facts and details of individual cases, HSN explanatory notes, Section or Chapter notes and various decisions on the subject matter.
- ▶ Instruction also highlighted the fact that Revenue has filed a review petition against the Westinghouse judgment, taking cognizance of other SC judgments and on the grounds of interpretation of Section Notes and HSN explanatory notes.

Direct Tax

Part-A Key Direct Tax updates

This section summarizes the Direct Tax updates under for the month of January 2022

- 1. Central Board of Direct Taxes (CBDT), vide Circular No.1/2022 dated 11 January 2022 granted further extension in due dates for furnishing of tax returns, report of audit (including tax audit reports) and transfer pricing report for tax year (TY) 2020-21.**

Background

 - ▶ While the country was returning to normalcy from the outbreak of COVID-19, there was an outbreak of a new variant of the virus in late December 2021, leading to significant difficulties to all the stakeholders including taxpayers and tax professionals.
 - ▶ Further, the CBDT had revamped the erstwhile income tax e-filing portal on 7 June 2021. Upon migration to the new income tax portal, several technical glitches arose in respect of furnishing of tax returns, income tax forms, generation of Aadhaar OTP, etc. Recognizing such difficulties being faced by the taxpayers on the new income tax portal, the CBDT vide Circular No. 16/2021 dated 29 August 2021 and Press Release dated 29 August 2021 had extended the due dates in relation to various direct tax related compliances other than relating to furnishing of tax return and audit reports.
 - a. However, such glitches continued and consequently, the CBDT vide Circular No. 9/2021 dated 20 May 2021 and Circular No. 17/2021 dated 9 September 2021 granted extension in the due dates for furnishing of tax return as well as various audit reports for TY 2020-21.
 - b. Since the third wave of COVID-19 is at its peak and together with issues with new income-tax portal, the CBDT vide Circular No. 1/2022 dated 11 January 2022 (CBDT Circular) has further extended the due date for filing tax returns, audit report and transfer pricing report for TY 2020-21.
- d. e. CBDT Circular:**

 - a. The extensions granted vide CBDT Circular is tabulated as under: Please refer Table 1.1 on Page 10.
 - b. The due date for payment of self-assessment tax (SA tax), not exceeding INR0.1m, without interest has been correspondingly extended till the revised due date of filing of tax return for taxpayers at Sr. nos. 1 to 3 above. This relief is not available where SA tax exceeds INR0.1m.
 - c. Further, in case of resident taxpayer being a senior citizen not having any business/professional income, the SA tax paid up to the original due date of filing of tax return shall be deducted while computing the above threshold limit of INR0.1m. In other words, the SA tax paid up to the original due date shall be treated as advance tax and no interest shall be levied on such amount for belated filing of return

Table 1.1:

Sr. no.	Particulars	Original due date as per ITL	Due date extended as per last circular	Extended due date as per CBDT Circular
A.	In relation to tax returns:			
	Taxpayers who are required to furnish transfer pricing report (including partners of a taxpayer being a firm/LLP who is covered in this category).	30 Nov'21	28 Feb'22	15 Mar'22
	Taxpayers who are required to get their accounts audited (including partners of a taxpayer being a firm/LLP who is covered in this category) and not covered in Sr. No. 1 above.			
B.	In relation to audit/transfer pricing reports:			
	Any report of audit (including tax audit report) for taxpayers covered under Sr. no. 1 above.	31 Oct'21	No formal extension was granted	15 Feb'22
	Any report of audit (including tax audit report) for taxpayers covered under Sr. no. 2 above	30 Sep'21	15 Jan'22	15 Feb'22

Part B - Case Laws

Goods and Service Tax

1. Hon'ble Guhati High Court in the case of M/s Anamika Motors vs the State of Assam and 8 ORS (WP(C)/2286/2015)

Subject Matter: Ruling wherein it was held that paints used during restoration and reconditioning of vehicles at Authorised Service Station is in the nature of composite work of denting and painting contract and it is not a sale of paint leviable to VAT

Background and Facts of the case

- ▶ The said writ petition was filed wherein the petitioner (M/s Anamika Motors) had assailed (i) the assessment order dated 10.08.2010 (Annexure-5) passed by the Deputy Commissioner of Taxes, Jorhat (respondent no.4), and (ii) the revisional order dated 18.02.2015 (Annexure-7) passed by the Additional Commissioner of Taxes, Assam (respondent no.3). The petitioner is a partnership firm and is a registered dealer under the Assam VAT Act and is also registered with the Superintendent of Central Excise and Service Tax, Jorhat under the Finance Act, 1994.
- ▶ The petitioner had submitted that when damaged vehicles come into the workshop of the petitioner, the condition of the vehicle is inspected and if any denting and painting service is required to be provided for reconditioning and/or restoration of the damaged panels of vehicles, such repair work is carried out with the aid of expert laborers/ painters.

Discussions and findings of the case

- ▶ Accordingly, it is submitted that any painting and/or denting materials that are consumed in the process would fall within the realm of a contract of service as no one would send a vehicle for denting and painting with a view to purchase paint and other denting consumables.

Further, the petitioner also referred to the C.B.E.C. Circular No.699/15/2003-CX dated 05.03.2003 (Annexure-9) wherein it has been clarified that items such as paints used in painting body, etc., during the course of providing service form intrinsic part and parcel of service in so much as that these are not distinctly and separately identifiable from the services rendered and therefore value of such items, which form intrinsic part of service is included in the value of taxable service.. Therefore, if the petitioner is required to pay VAT on the same nature of work, it would amount to double incidence of tax by the State on the same component on which the Central Government is realizing Service Tax from the petitioner.

- ▶ In contrary to the above, the Revenue Authorities referred to the definitions of goods, sale, sale price and works contract as provided in the Assam VAT Act and provided that paint is covered by the definition of goods and can be interpreted as "consumables". It can also be divisible from the works contract and can be considered as sale of goods lawfully subjected to tax.
- ▶ Subsequently, the Hon'ble High Court referred to the definitions of goods, raw materials, sales and sales price as provided under the Assam VAT Act.

- ▶ The court also referred to the definition of goods provided under the constitution wherein it was held that a transfer of property in goods under clause 29-A(b) of [Article 366](#) is deemed to be a sale of the goods involved in the execution of a works contract by the person making the transfer and the purchase of those goods by the person to whom such transfer is made.
- ▶ Furthermore, the Court inferred that the term “works contract” is amply wide and cannot be confined to a particular understanding of a term. It also held that the additional obligations in the contract would not alter the nature of contract so long as the contract provides for a contract for works and satisfies the primary description of works contract. Once the characteristics or elements of works contract are satisfied in a contract then irrespective of additional obligations, such contract would be covered by the term 'works contract'.
- ▶ The High Court further contended that for sustaining the levy of tax on the goods deemed to have been sold in execution of a works contract, three conditions must be fulfilled: (one) there must be a works contract, (two) the goods should have been involved in the execution of a works contract and (three) the property in those goods must be transferred to a third party either as goods or in some other form.
- ▶ In furtherance of the above, the Hon'ble court also inferred the ruling of [BSNL v. Union of India, \(2006\) 3 SCC 1](#) wherein it was held that the exposed photographic film rolls and negatives have no utility and are not marketable, hence, they cannot be described as sale of goods.
- ▶ Going by the above principle, it was also contended that the denting and painting

work is not marketable. The marketability test, thus, appears to be the first test to decide the issue, which is decided in favour of the petitioner as the painting work on a vehicle, of its own, not marketable.

- ▶ Similarly, in the composite work of denting and painting contract, the combination would be a composite contract of labour and service and as in the present case, the petitioner is liable for and is paying service tax as imposed on the work of denting and painting, being a service provided by a "authorised service station" which is covered by the provisions of Section 65(9) of the Finance Tax Act, 1994 (as amended).

Ruling

- ▶ Basis the above, it was held that the use or application of paint in a vehicle workshop is not “sale” of paint and thus, not taxable to VAT. The impugned orders is set aside and the petition is allowed.

2. Cummins India Limited:
(Maharashtra AAAR- Order No
MAH/AAAR/AM-RM/01/2021-22)

Subject Matter: Ruling wherein it was held that the Head Office will have to take ISD registration in order to allocate the ITC availed on the common services and cannot cross charge the same.

Background and Facts of the case

- ▶ The Appellant is engaged in the business of manufacturing & sale of variety of diesel engines and related services.
- ▶ The Appellant being a register person and engaged in the activity of making taxable supply are eligible to avail Input Tax Credit ('ITC') of tax paid on all the inputs, capital goods and input services procured in the course of furtherance of business. Among the said services, certain common input services are availed by Head Office ('HO') and by some other units.
- ▶ The costs incurred by HO for procurement of such common input services, is booked by such unit/HO in its own books of accounts. Such cost is then allocated and recovered proportionately from each of the recipient units.
 - ▶ Basis these facts, the appellant has sought Advance Ruling on the following questions:
 - ▶ Whether the availment of ITC on common input supplies on behalf of other units register as distinct person and further allocation of cost incurred to such other units qualifies as supply and attracts levy of GST?

- ▶ Whether the body building activity on the chasis provided by the principal would amount to manufacturing services attracting 18% of GST?
- ▶ If GST is leviable, whether assessable value can be determined by arriving at nominal value?
- ▶ Once GST is levied and ITC thereof is availed by the recipient unit, whether the Applicant is required to register itself as an Input Service Distributor for distribution of ITC on common input supplies?

Discussions and findings of the case

- ▶ In its rebuttal, the Appellant has contended that the Facility for registering as an ISD is an option provided by the Statute and there is no compulsion for a Taxable person to register itself as an ISD.
- ▶ The Appellant also submitted that an ISD office under the GST regime is meant to receive tax invoice towards receipt of input services and further distribute the credit to the supplier units proportionately by issuing the prescribed documents. Hence, the GST law stipulates that a unit can be treated as ISD and must compulsorily register under section 24 only if it uses the prescribed document to distribute ITC. In case if any assessee opts not to utilise the facility of ISD, it is not required to register as an ISD.
- ▶ Additionally, it was submitted by the Appellant that in case of services provided by the employees at one distinct unit to another distinct unit of the Appellant, the employees are essentially performing functions for one legal entity. Hence, the same must fall within the

ambit of employer-employee relationship which is excluded from levy of GST as per Schedule III.

- ▶ In regard to the Assessable value, the Appellant has submitted that all the units of the Appellant are registered as distinct persons and are engaged in providing taxable services, thereby, eligible to avail ITC of the input supplies. Accordingly, as per the second proviso of Section 28 would be applicable in the said case and any nominal value can be considered as the open market value for the purpose of charging GST.
- ▶ After considering the submissions made by the Appellant and by the Department, the Appellate Authority observed that the common input services received by Appellant's HO are being used or consumed by Branch Office/Units in the course of furtherance of their business and not by HO, as the HO receives these common input services on behalf of Branch Offices/Units and ISD is the only option available to appellant to pass on credit of tax paid by HO on the availment of common input services received from third party vendor on behalf of their Branch offices.
- ▶ Further, it was also highlighted that Appellant HO fulfils the condition of ISD as provided under section 2(61) of Central Goods and Services Tax ('CGST') Act, 2017 and intends to distribute the credit of tax paid on account of availment of common input services on behalf of their Branch Offices will have to compulsorily register themselves as an ISD under section 24 of the said Act apart from normal registration.
 - ▶ In reference to the Assessable value, the Appellate Authority has held that the second proviso to clause c of Rule 28 of the CGST Rules will apply if the open Market Value and value of services of the same kind and quality is also not available. In the instant case, the same

are not available for the said facilitation services from the Head Office received by Branch Office. Hence, the value declared in the invoice shall be deemed to be the open market value of the services under question.

- ▶ In regard to the services provided by employees of distinct person to the other distinct person, the Appellate Authority has held that the contention put forth by the Appellant is incorrect as the said transaction is between the Head Office and Branch Office and is not effected between the employers and employees. Thereby, the same will be taxable to GST.

Ruling

- ▶ Basis the above, it was ruled by AAAR that :
- ▶ Availment of common input services from the third-party service on behalf of Branch Office/units register as distinct person and qualify as supply of services. However, cost of the said common credit availed on behalf of Branch Office and allocated to them by HO will not attract levy of GST as the said cost incurred by HO in capacity of Pure Agent.
- ▶ Assessable Value of the service provided by HO to BO can be determined by second proviso to clause (c) of Rule 28 of CGST Rules, 2017 i.e. open market value of the services. However, previously the Authority for Advance Ruling has ruled that the same shall be arrived in terms of Rule 30 of CGST Rules, 2017 i.e. 110% of cost of provision of service.
- ▶ The appellant is required to register himself as an ISD other than normal registration bound by the provisions of CGST Act, 2017.

Customs and Foreign Trade Policy (FTP)

1. M/s Hero Motorcorp Limited vs Commissioner of Customs (NS-I)

Subject Matter: Ruling wherein it was held that imported goods used in manufacture of components and systems for assembly in “motorcycles” merits classification of heading 8483 as declared by assessee under Bill of Entry (BoE) and not under the residuary description of Heading 8714.

Background and Facts of the case

- ▶ The appellant, having imported the impugned goods for use in the manufacture of components and systems for assembly in ‘motorcycles’, sought clearance at the rate of duty applicable to ‘*toothed wheels, chain sprockets and other transmission elements presented separately*’ corresponding to tariff item 8483 9000 of First Schedule to Customs Tariff Act, 1975.
- ▶ The customs authorities did not find this acceptable and, in view of the undisputed use for which the goods had been procured, the description as ‘*Parts and accessories of vehicles of heading 8711 to 8713*’ which covered ‘motorcycles’ corresponding to heading 8714 of First Schedule to Customs Tariff Act, 1975, the absence of the imported goods or of the product for which it was intended from among the exclusions in note 2 of section XVII of First Schedule to Customs Tariff Act, 1975 and the exclusion of ‘articles of section XVII’ by note 1(l) of section XVI, proposed classification as tariff item 8714 1090 of First Schedule to Customs Tariff Act, 1975.

Discussions and findings of the case

- ▶ However, the appellant contended that the classification claimed by him is comprehensively elaborate as compared to the residuary classification. It was also contended that a more descriptive entry must be adopted and the exclusion in note 1 of section XVI must be resorted to only after ascertainment of fitment of the heading within which it was proposed to classify the said goods.
- ▶ Further, the appellant referred to a plethora of judgements such as decision of Tribunal in case of **Shiroki Auto Components India Pvt Ltd v. Commissioner of Central Excise & Service Tax, Ahmedabad [2020-VIL-348-CESTAT-AHM-CU]**, judgement of Hon’ble Supreme Court in the case of **Commissioner of Central Excise, Mumbai - III v. Uni Products India Ltd [2020-VIL-17-SC-CE]** wherein it was held that proximate deployment must prevail over ultimate use when goods are not specifically described in the latter enumeration.
- ▶ Further, the appellant cited the decision of the Hon’ble Supreme Court in the case of **Intel Design Systems (India) Pvt Ltd v. Commissioner of Customs & Central Excise [2008 (223) ELT 135 (SC)]** wherein it was demonstrated that notes in sections and chapters are indispensable for determining classification. Hence, the appellant argued that except where an exclusion is specific, the notes can only afford guidance in isolating the appropriate tariff item in the First Schedule to Customs Act, 1975 to which the test of rule 3 of the General Rules for the Interpretation of Import Tariff appended to Customs Tariff Act, 1975 is applied.

▶ Accordingly, the appellant contended that the said goods must be classified under tariff entry 84839000 which classifies *'Transmission shafts (including cam shafts and crank shafts) and cranks; bearing housings and plain shaft bearings; gears and gearing; ball or roller screws; gearboxes and other speed change as, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)'* and not under chapter heading 87141090 as *"other"* within the description *'Parts and accessories of vehicles of headings 8711 to 8713'*.

▶ In this backdrop, the Revenue observed that from the placement of 'parts and accessories' in chapter 87 combined with exclusion from chapter 84, under the authority of note 1(l) of section XVI of First Schedule to Customs Tariff Act, 1975, it is apparent that this was intended to cover those parts which can directly be assembled as vehicles.

▶ It also observed that the goods were not solely employable for the production of motorcycles and except for familiarity with the with the business activities of the importer or the elaboration in the invoice. The absence of a finding that the impugned goods are, from their description, best described as 'parts and accessories' of 'motorcycles' invalidates the proposed classification by failing to discharge the onus of determining the appropriate tariff item to qualify as a rival to the claimed classification. The exclusion note is not a tenable alternative to fulfillment of this obligation on the part of customs authorities.

▶ It was further held that the note relied upon by the customs authorities is restricted to those parts which are exclusively designed for fitment on

vehicles and not on 'Gears' which are a subsystem of engines of 'motorcycles'. It further held that the decisions in the cases of re Telco Ltd and re Mahindra & Mahindra Ltd would not be applicable in the said case as the facts are inapplicable.

Ruling

▶ In light of the above, it was held that the classification under heading 8714 of First Schedule to Customs Tariff Act, 1975 fails the test of law and is, therefore, set aside.

▶ The classification under heading 8483 of First Schedule to Customs Tariff Act, 1975 as declared by the appellant in the bills of entry is upheld.

Direct Tax

1. SC restores general extension granted in computing limitation period for various proceedings (including filing) before courts/tribunals in India.

Background and Facts of the Case

- ▶ In the wake of the outbreak of COVID-19 pandemic, last year the SC had suo-moto taken cognizance of the situation and extended the period of limitation prescribed under general laws or special laws (Central or State Law) for filing of petitions/applications/suits/appeals/all other proceedings in all courts/tribunals across India with effect from 15 March 2020 till further orders [2] (March 2020 order).
- ▶ Since the situations appeared to be normalized, the SC vide its order dated 8 March 2021 (March 2021) had put an end to the general extension granted vide the March 2020 order and had revised the guidelines as under:

In computing the period of limitation for filing of any suit/appeal/application/other proceedings, the period from 15 March 2020 till 14 March 2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15 March 2020 if any, shall become available with effect from 15 March 2021.

For cases where the limitation period has expired between 15 March 2020 to 14 March 2021, a general period of 90 days is to be granted. If balance period left is more than 90

days, then such higher period should be allowed.

- ▶ However, due to the outburst of the second wave of COVID-19 pandemic, the SC, in April 2021 on account of representations made by various stakeholders, had recalled its March 2021 order and restored March 2020 order and further extended the period of limitation indefinitely [3] (April 2021 order).
- ▶ Thereafter, when the situation appeared to have been normalized in September 2021 after the end of second wave as also on account of the rapid vaccination drive being implemented across the country, the SC withdrew the general extension granted vide March 2020 order. The revised guidelines issued by SC in September 2021 order were as under:
 - ▶ The period from 15 March 2020 till 2 October 2021 shall be excluded while computing the period of limitation for any suit/appeal/ application/other proceedings under any laws prescribing period of limitation for institution/termination of proceedings in all courts/tribunals all over India.
 - ▶ In cases where period of limitation would have expired between 15 March 2020 and 2 October 2021, an additional period of 90 days from 3 October 2021 shall be granted, regardless of the balance period of limitation remaining as on 15 March 2020.

However, where the actual balance of period of limitation as on 15 March 2020 is greater than 90 days, such longer period shall apply.

- ▶ In cases where period of limitation would have expired between 15 March 2020 and 2 October 2021, an additional period of 90 days from 3 October 2021 shall be granted, regardless of the balance period of limitation remaining as on 15 March 2020. ▪ However, where the actual balance of period of limitation as on 15 March 2020 is greater than 90 days, such longer period shall apply.
- ▶ Now, there is once again an exponential surge in COVID-19 cases due to new variant namely 'Omicron'. Taking cognizance of the outbreak of the new variant of COVID-19 and its impact on public health and adversities faced by litigants in the prevailing conditions, and provided certain guidelines as well.

SC ruling:

The SC, amongst others, issued following directions:

- ▶ The SC has restored its March 2020 order and provided further directions as below in continuation of March 2021, April 2021 and September 2021 orders.
- ▶ The period from 15 March 2020 till 28 February 2022 shall stand excluded for computing the period of limitation

for any suit/appeal/ application/other proceedings under any general or specific laws in respect of all judicial or quasi-judicial proceedings.

- ▶ Consequently, the balance period of limitation remaining as on 3 October 2021 if any, shall become available with effect from 1 March 2022.
- ▶ In cases where period of limitation would have expired between 15 March 2020 and 28 February 2022, an additional period of 90 days from 1 March shall be granted, regardless of the balance period of limitation remaining.
- ▶ However, where the actual balance of period of limitation as on 1 March 2022 is greater than 90 days, such greater period shall apply.

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