EY Tax and Regulatory Alert

March 2022

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2.	**M/s. Honda Siel Cars India Ltd. Vs Commissioner of Customs (EXCISE Appeal No. 696 of 2010)**	Ruling wherein CESTAT Allahabad allowed refund of excise duty paid on vehicles lying in stock with the dealer in respect of which price was reduced subsequently on account of reduction of excise duty on cars.
3.	**M/s Raghav Metals vs State of Haryana and Others (High Court of Punjab & Haryana- CWP No.25057 of 2021)**	Ruling wherein it was held that Mis-match in actual quantity of goods and the quantity shown in Invoice and e-way bill when difference of weight in actual quantity of goods and the quantity shown in Invoice is less than 1% cannot be held contravention of provisions of CGST Act.

INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax

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

- **Budget Update 2022 Indirect Tax Key Highlights:-**

- **Internal Circular No 02A of 2022 dated 25.02.2022** was issued by Maharashtra State Government in order to express the guidelines with respect to legal issues pertaining to return scrutiny for tax periods 2017-18 and 2018-19.

- Firstly, clarification was provided for the issues arising from incorrect reporting in GSTR-1 wherein the taxpayer has by mistake reported B2B transaction as B2C and corrected it by re-reporting the same as B2C in later period GSTR-1 but without reducing B2C supply. Hence, excess liability was reported in GSTR-1 as compared to GSTR-3B. The clarification provided in such a case is that the proper officers may obtain the transaction-wise details of outward supplies from the taxpayer for the period under scrutiny and reconcile it with the category-wise outward supplies reported in GSTR-1 of the corresponding period. Further, he must identify the transactions reported in B2B and under B2C categories. Subsequently, they must figure out the transactions which have been shifted to B2B from its original B2C and they must take on record the details of GSTR-1 in which such shifting had been done.

- Secondly, clarification was provided for issues in relation to typographical errors in reporting details of outward supplies in table 4 (Details of B2B supplies), 5 (B2C large invoices), 6 (Export invoices), 7 (B2C other), 11 (Tax liability of advance liability of advance received) of GSTR-1 which lead to excess liability in GSTR-1 as compared to GSTR 3B. The clarification provided in such case is that the officer should obtain the transaction wise details of outward supplies from taxpayer for the period under scrutiny and reconcile it with category wise outward supplies reported in GSTR-1 of corresponding period. Thereafter, they must identify the category of difference, eg B2B, B2C, export or adjustment of advances. In case of B2B transactions, they must take an undertaking of recipient that he had not availed excess ITC on account of said errors committed by supplier.

In case of export, the officers must verify it with the turnover of export considered while granting the refund.

- Further, Maharashtra Government contended that the difference in ITC claim of GSTR-3B and ITC available in GSTR-2A of taxpayer under scrutiny can be on accounts of following the reasons:-
  - Supplier has reported B2B supplies as B2C supplies in GSTR-1 and they could not amend it till expiry of time limit. So, these transactions have not appeared in GSTR-2A of actual recipient to whom notices served.
  - Few supplies have reported B2B supplies against GSTIN of some other taxpayer instead of the actual recipient.
  - Supplier had missed reporting of B2B transactions in GSTR-1.
  - Supplier had reported B2B transactions taxable under forward charge in Table 4B of GSTR-1 instead of Table 4A.
- In respect of the above issue, the clarification issued is that in cases where the difference claim in ITC claim (CGST+SGST or IGST) as per the supplier is 2.5 lakh or more, the proper officers must ask the claimant to obtain certification from Chartered Accountant of the said supplier certifying the output transaction and tax paid thereon so as to comply with the provision of Section 16. Moreover, where difference in ITC is 2.5 lakh or less, the proper officer must ask the claimant to obtain ledger confirmation of the concerned supplier along with the certification. Difference in ITC may be allowed on the above basis.
- Further, in case the issue arises due to the reason B2B transaction in GSTR-1 are mistakenly reported as transaction liable to RCM by the supplier, the proper officer upon receipt of the reply of the taxpayer under scrutiny, may verify whether supplier has paid the due tax on such transaction which have been wrongly reported in Table 4B of GSTR-1.
- Additionally, for the issue relating to application of proviso to Section 16(4) for the recipients who have claimed ITC (by filing GSTR 3B) after the specified date (after due date of September'18 till due date of March'19 returns) clarification was provided that the pre-condition that GSTR-1 should have been filed by the supplier till the due date of filing GSTR-1 of March'19 is only applicable to taxpayers who have claimed ITC during the extended period i.e. after due date of September'18 return till due date of March'19 return.
- Furthermore, another issue cropped up wherein the ineligible ITC which has been pointed out in ASMT-10 was already reversed by taxpayer in return of the subsequent period, however the format in GSTR-3B is not so exclusive and no separate column is provided for such reversal hence the amount of ITC reversed for previous period is not eligible from the return form itself. In relation to this, a clarification was issued that where taxpayer replies with reference to specific return period, then the calculation of reversal in table 4(B)(2) of that specified return period along with transaction list should be obtained from the taxpayers and verified with ITC claim, reversal, other reversal, etc. Alternatively, it can be verified from DRC-03 filed by the taxpayer, if any.
- **Circular No. 15/2021-GST of State Tax dated 10.03.2022** issued by the Delhi Government in order to provide the Standard Operating Procedures (SOP) for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under Section 30 of the Delhi Goods and Services Tax Act(hereinafter referred to as "DGST Act") , 2017 and rule 23 of the DGST Rules, 2017.
- Section 30 of the Delhi Goods and Services Tax Act. 2017 was amended vide notification No. 92/2020- State 'Tax and the same has been notified with effect from 01.01.2021,..The amended provision provides for extension of time limit for applying for revocation of cancellation of registration on sufficient cause being shown and for reasons to be recorded in writing by:

- The Additional or Joint Commissioner, as the case may be, for a period not exceeding thirty days;

- The Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a) above

- Consequent to the said amendment in the Act, changes have been made in rule 23 and FORM GST REG-21 of the DGST, 2017. As a result, until an independent functionality for extension of time limit for applying in FORM GST REG-21 is developed on the GSTN portal, the Commissioner has provided the following guidelines for implementation of the provision for extension of time limit for applying for revocation of cancellation of registration under the said section and rule:

- As has been provided in section 30 of the DGST Act, any registered person whose registration is cancelled by the proper officer on his own motion, may apply to such officer in FORM GST REG-21 for revocation of cancellation of registration within 30 days from the date of service of the cancellation order.

- In case the registered person applies for revocation of cancellation beyond 30 days, but within 90 days from the date of service of the cancellation order, the procedure specified in the circular must be followed.

- A similar procedure shall be followed in case a person applies for revocation of cancellation of registration beyond a period of 60 days from the date of service of the order of cancellation of registration but within 90 days of such date.

- However, the circular shall cease to have effect once an independent functionality for extension of time limit for applying in Form GST REG-21 is developed on the GST portal.

- **Press Release No. 528 dated 03.03.2022-GSTN** was published by GSTN on auto-population of e-invoice details into GSTR-1.

- Generation of e-invoice is mandatory for certain class of taxpayers, as notified by the Government. These taxpayers are required to prepare & issue their e-invoices by reporting their invoice data in the prescribed format (e-invoice schema in FORM GST INV-01) and reporting the same on the Invoice Registration Portal (IRP). Invoices reported successfully on the IRP are given a unique Invoice Reference Number (IRN).

- The documents (invoices, debit notes, credit notes) reported on the IRP are then transmitted electronically to the GST system and are auto-populated in the respective tables of GSTR-1.

- These auto-populated documents appear as Saved records in GSTR-1 of the taxpayers, with source of the document mentioned as 'E-invoice' & IRN details also mentioned against every record.

- **Press Release No. 530 dated 10.03.2022-GSTN** was issued by CBIC to state the enhanced user interface with respect to the address fields in the Registration Application GST REG-01. It has been enhanced as follows:

  - Incorporation of a map tile along with a drag and drop facility of address pinhead on to the exact location of the applicant's address.

  - Once selected, the details will automatically fill in the various address input fields given in the application.

  - Address fields have been linked so as to auto-fill other macro level address entry fields based on the entry in one of such fields particularly PIN Codes. For example; on entering the PIN code, the corresponding State and Districts will get auto- filled.

  - The user can also directly fill-up the address input fields which are now aided with suggestive address input dropdowns from which the user can select the appropriate/relevant address field(s). This action will reduce errors in the address texts and will also ease the filling up of the appropriate address input fields by the user.

  - The address fields have been segregated appropriately to reduce confusions while

entering the relevant inputs under various address heads.

- Based on the address entries given by the user, the Latitude/ Longitude of the address will get auto populated which is non-editable.

- **Circular No. 169/01/2022-GST** was issued by CBIC to amend Circular No. 31/05/2018-GST, dated 09.02.2018 on 'Proper officer under section 73 and 74 of the CGST, 2017 and under the IGST Act, 2017.

- Para 3A had been inserted in Notification No. 02/2017 – Central Tax to empower Additional/ Joint Commissioners of specified Central Tax Commissionerate, with all India jurisdiction, for adjudicating SCNs issued by DGGI officers.

- Accordingly, Circular No. 31/05/2018-GST is amended to clarify that the Audit Commissionerate and DGGI shall exercise powers only to issue SCNs. The same shall be adjudicated by the competent Central Tax officer of the executive Commissionerate in whose jurisdiction the noticee is registered.

- Further, there may be cases where the principal place of business of a noticee falls under the jurisdiction of multiple Commissionerate or multiple SCNs are issued on the same issue to different noticees having same PAN (distinct persons) but with principal place under jurisdiction of multiple Commissionerates. Such notices, which are issued by DGGI, can be adjudicated by Assistant/ Joint Commissioners-empowered with all India jurisdiction as per the said notification 02/2022.

- In respect of SCN issued by Audit Commissionerate, where principal place of noticees fall in multiple jurisdictions, a proposal for appointment of common adjudicating authority may be sent to CBIC.

- For the SCNs already issued by DGGI officers and where no adjudication order has been issued till date, the same may be made answerable to the Additional/Joint Commissioners, having all India jurisdiction, by issuing corrigendum to such SCNs.

- **Instruction No. 02/2022-GST dated 22.03.2022** issued by CBIC stating the Standard Operating Procedure (SOP) for Scrutiny of Returns for FY 2017-18 and 2018-2019.

- SOP is issued as an interim measure till the time a Scrutiny Module for online scrutiny of returns is made available on the CBIC-GST application/AIO for CBIC officers.

- The relevant statutory provisions for scrutiny of returns i.e. Section 61 of CGST Act and rule 99 of CGST Rules, provides that 'Directorate General of Analytics and Risk Management' (DGARM) is tasked with selection of returns for scrutiny based on specific risk parameters and communicate the same to the field formations through the DDM portal for further action, whereas 'Superintendent of Central Tax' has been assigned the functions of 'proper officer' as per section 61(1).

- However, since there is a likelihood of data change at the time of scrutiny due to subsequent compliances by the taxpayer or by his suppliers, it was advised that the proper officer must rely upon the latest available data.

- After the list of GSTINs selected for scrutiny has been communicated, and the 'scrutiny schedule' is finalized by the proper officer, the GSTINs having riskier revenue implications are prioritized.

- Further, clarification is provided that scrutiny of one GSTIN shall mean scrutiny of all returns pertaining to a FY for which the said GSTIN has been identified for scrutiny;

- It was also recommended that the proper officer may rely on Information available on the system, statements furnished by assessee, data/details made available in DGARM, ADVAIT, GSTN, E-Way Bill Portal, etc to verify the correctness of the returns during scrutiny.

- However, it suggests that there should not be any need normally for seeking documents/ records from the taxpayers before issuance of FORM GST ASMT-10 (i.e. the show cause notice to assessee) to minimize the interface

between the proper officer and the registered person as far as possible.

- To ensure reporting and monitoring, the CBIC specifies maintenance of a Scrutiny Register by the proper officer of the GSTINs allotted and monitoring of scrutiny exercise as per the scrutiny schedule by jurisdictional Principal Commissioner/ Commissioner on a monthly basis.

- Lastly, it clarifies that till the time scrutiny module is made available, the aforesaid interim procedure may be conducted on manual basis and any communication with the taxpayer for the purpose of scrutiny shall be made with the use of DIN as per the guidelines of Circular No. 122/41/2019-GST dated 5th November 2019.

Customs and Foreign Trade Policy (FTP)

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

- **Notification No.11/2022- Customs (NT) dated 22.02.2022** issued by CBIC notifying the Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022.These regulations apply to shipping bills or bills of exports filed on or after publication of the notification in the official gazette.

- The said regulation specifies the manner and time limit for amendment of the declaration made in the shipping bill or bill of export to any other one or more instrument based scheme, after the export goods have been exported.

- The application for conversion shall be filed within a period of one year from the date of order for clearance of goods. However, the jurisdictional commissioner/Chief Commissioner may extend the said period in certain cases.

- The jurisdictional Commissioner may authorize conversion of shipping bill basis the documentary evidence existing at the time of export of goods and on payment of a fee in accordance with Levy of fees (Customs Documents) Regulations,1970.

- The conversion of shipping bill and bill of export shall be subject to the following conditions and restrictions:
  - Fulfilment of all conditions of the relevant instrument-based scheme.
  - Exporter has not availed benefit of the scheme from which conversion is being sought.
  - All conditions relating to presentation of shipping bill or bill of export in the Customs Automated System has been complied with.
  - No contravention has been noticed or investigation initiated against the exporter in respect of such exports.
  - The shipping bill or bill of export of which the conversion is sought is one that had been filed in relation to instrument based scheme.

- The notification may facilitate rectification of the shipping bill by converting it for an instrument-based scheme and thereby eliminate a litigation route for exporter.

- **Circular No. 04/2022- Customs dated 27.02.2022** was issued by CBIC to implement automation in the Customs (Import of Goods at Concessional Rate of Duty)Rules, 2017.

- Under the said rules the importers who intent to import goods at a concessional rate of duty shall give on e-time prior intimation of such goods on the common portal in form IGCR-1 subsequent to which a unique IGCR Identification Number (IIN) shall be generated. In case of any change of details, the importer has an option to update IGCR-1.

- Further, the importer shall furnish one-time continuity bond in the prescribed format to cover all the imports under this procedure.

- Subsequently, a physical copy of the bond shall be submitted by the importer to the jurisdictional officer for his approval.

- Moreover, once a bond/bank guarantee has already been furnished to the jurisdictional officer there is no requirement to give a fresh bond/bank guarantee thereafter.

- Further, in the case of units already covered under the existing provisions of IGCR Rules, 2017, the importers shall record electronically such details of intimation given in form IGCR-1 on the common portal and generate an IIN against the same.

- Additionally, specific provisions are provided in the circular for the goods sent for job work from importer's premises, receipt of goods from the job-worker, inter-unit transfer of goods, utilization of goods for intended purpose, re-export or clearance for home consumption, monthly statement and maintenance of accounts and transitional measures.

- **Advisory No.06/2022 dated 01.03.2022** is issued by CBIC for Importers to avail benefit of IGCR Rules, 2017.

- IGCR module is developed by ICEGATE, CBIC to provide a digital service to importers to avail benefits under the IGCR Rules (Import of Goods at Concessional Rate of Duty).

- This advisory is a guide for the user to declare an advance intimation of goods to be imported, access continuity bond management module, file monthly returns.

- **Trade Notice No.35/2020-2021 dated 24.02.2022U** was issued by DGFT to inform that the electronic platform to facilitate electronic issuance/renewal/amendment of Registration Cum Membership Certificate (RCMC)/ Registration Certificate (RC) has been implemented. The objective of the said platform is to provide an electronic, contact-less single window for RCMC/RC related processes.

- The prevailing procedure of submitting the applications directly to the designated Registering Authorities will continue only till 31.03.2022.

- Further, the notice specifies that from 1st April 2022, it will be mandatory for the exporters to file Registration Cum Membership Certificate (RCMC)/ Registration Certificate (RC) applications (for issue/renewal/amendment) through the common digital portal of e-RCMC Platform.

- **Trade Notice No.36/2020-2021 dated 25.02.2022** is issued by DGFT to operationalize a Helpdesk to support and seek suitable resolutions to issues faced by the Indian stakeholders on Russia/Ukraine trade related issues.

- Export-Import community may submit details of their issues on the DGFT website and may create a new request under the category "'Russia-Ukraine".
- Trade Notification No. 55/2015-2020 dated 24.02.2022 was issued by DGFT to amend the import policy of certain items falling under the HSN heading 8524 and 8525 of Chapter 85 of ITC (HS) 2022, Schedule – I (Import Policy). The import policy for the said goods was revised from 'Restricted' to 'Free' with immediate effect.

- **Trade Notification No. 58/2015-2020 dated 07.03.2022** was issued by DGFT to extend last date for applications under MESI, ROSCTL, ROSL.

- The last date for submitting online applications for MEIS (for exports made in between 1st April 2020 to 31st December 2020) and 2% additional ad hoc incentives (incentive under para 3.25 of the FTP for exports made in period 1 January 2020 to 31 March 2020 only) is extended to 30.04.2022.

- Moreover, the last date for ROSCTL (for the exports made from 7 March 2019 to 31 December 2020) and ROSL (for exports made upto 6 March 2019 for which claims have not yet been disbursed under scrip mechanism is extended to 30.03.2022.

- **Public Notice No.49/2015-2020 dated 14.03.2022** issued by DGFT to enlist Mewar Chamber of Commerce and Industry, Rajasthan under Appendix 2E of FTP, 2015-2020 for issuing Certificate of Origin (Non-Preferential).

- **Public Notice No.50/2015-2020 dated 17.03.2022** issued by DGFT for providing amendments in the guidelines of ANF-4F of Handbook of Procedures 2015-2020 by allowing submission of FIRC in case of exports made to OFAC listed countries under Advance Authorization.

- **Trade Notice No.38/2020-2021 dated 15.03.2022** was issued by DGFT for operationalization of new online IT Module for Interest Equalisation Scheme (IES) w.e.f. April 01, 2022.

- All the exporters seeking benefit under the said scheme need to apply online by navigating to the DGFT website →Services → Interest Equalization Scheme.

- A Unique IES Identification Number (UIN) will get generated automatically which is required to be submitted to the concerned bank when availing Interest equalization against their pre and post shipment rupee export credit applications.

- The procedure to generate the UIN by all the concerned exporters is given in detail in the said trade notice.

- Moreover, the notice specifies that after generation of a Unique Identification Number, the exporter needs to submit the same to the concerned bank along with prescribed application by the bank for availing benefit under the IES.

- It also states that the UIN generated shall have a validity of 1 year from the date of registration, during which an application for availing benefit of IES can be submitted to the concerned bank.

- Further, It will be mandatory for exporter to submit UIN acknowledgment to concerned bank for all applications made on or after 01.04.2022.

Direct Tax

Part-A Key Direct Tax updates

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

1. Circular issued by Central Board of Direct Taxes (CBDT) dated 17 March 2022 condones delay in filing Form 10- IC for tax year 2019-20. Under the Indian tax laws (ITL), Form 10-IC is required to be filed on or before the due date of filing return of income (ROI) by domestic companies opting for concessional tax rate (CTR) of 22%.

Background

- Under the ITL, domestic companies are liable to tax at 30% (excluding surcharge and cess). However, from tax year 2019-20, the domestic companies are granted an option to pay tax at CTR of 22% (totalling 25.17% inclusive of applicable surcharge and cess), subject to certain conditions. The companies opting for CTR are required to forego various incentives and deductions, including additional depreciation under the ITL. Further, such domestic company would also not be eligible to claim set off of any losses attributable to incentives/deductions, except that the taxpayers can adjust the written down value of block of assets with reference to unabsorbed depreciation pertaining to additional depreciation claimed in past years only in circumstances where the claim for CTR is made for the first time in tax year 2019-20 and not in later years. In addition thereto, any credit of minimum alternate tax paid also get lapsed.

- Further, the domestic companies are required to exercise the option for CTR in a prescribed form (being Form 10-IC) 5 on or before the due date of filing the ROI. The option once exercised shall be valid for all subsequent tax years. Further, the ROI form also provides for a column, wherein the tax taxpayers are required to exercise the CTR option. If taxpayer fails to furnish form 10-IC on time, there was no scope to file belated Form 10-IC online.

- In many cases, taxpayers, who desired to claim CTR, could not file Form 10-IC electronically for the tax year 2019-20 which was the first year of the provision. Non-furnishing of Form 10-IC could have disentitled them to claim the benefit of CTR for that year. Accordingly, representations were made by the stakeholders requesting the CBDT to condone the delay in filing Form 10-IC.

- In deference to the representations received by the CBDT in relation to difficultly in filing Form 10-IC for tax year 2019-20 within the due date, the CBDT has issued Circular 6/2022 dated 17 March 2022 condoning the delay for filing Form 10-IC, provided the following conditions are satisfied:

  - ROI for tax year 2019-20 is filed on or before due date under the ITL.
  - The domestic company has opted for CTR in the ROI filed.
  - Form 10-IC is filed on or before 30 June 2022 or three months from end of month of 17 March 2022,- being the date of circular, whichever is later.

Clarification provided in the Circular

- The Circular provides a much-needed relief to domestic companies who have otherwise opted for CTR of 22% for tax year 2019-20 in their ROI but failed to file Form 10-IC on or the before due date of filing ROI. It may be noted that recently the Gujarat High Court has, in the case of Rajkamal Healds and Reeds Pvt. Ltd., directed the taxpayer to file an application addressing Principal Chief Commissioner of Income Tax/Chief Commissioner of Income Tax requesting to permit filing of Form 10-IC electronically after condoning the delay. The Circular provides a general dispensation to all taxpayers who faced similar difficulty.

- Further, the Circular provides timeline of filing the form on or before 30 June 2022 or three months from end of month of 17 March 2022, whichever is later, which also coincides with 30 June 2022. It appears that the latter timeline has been provided to cover circumstances where the release of Circular was to be delayed beyond March 2022 due to any internal protocols.

- There may be scenarios that taxpayers would have submitted belated Form 10-IC manually considering that the belated filing of Form 10- IC was not possible electronically. Such taxpayers may like to regularize their claim by filing Form 10-IC online within the time specified by the Circular.

- Likewise, in many cases intimation under section 143(1) of the ITL has been issued denying the benefit of CTR and raising a demand, as Form 10 IC was not filed. In such cases, while taxpayer may explore rectification of intimation post the filing of Form 10-IC as per the timelines provided by the Circular or any other appropriate remedy applicable under the ITL, it would be desirable if the return processing software at Centralized Processing Centre may also be updated to provide the benefit of the Circular.

- Considering the uncertainty on admission of CTR claim for tax year 2019-20 for default in timely filing of Form 10-IC, many of the taxpayers may have, out of abundant caution, filed Form 10-IC for tax year 2020-21 to secure CTR benefit at least from that year, on a without-prejudice basis to the earlier claim made for tax year 2019-20. In such cases, the taxpayer may like to (i) regularize the claim for tax year 2019-20 by filing Form 10-IC online within the period specified by the Circular and (ii) withdraw Form 10-IC for tax year 2020-21 by writing suitable letter to the tax authority explaining the factual position.

- Under the provisions of the ITL, a taxpayer can claim CTR benefit even when ROI is filed belatedly, provided Form 10-IC is furnished online within the due date of filing of ROI. The Circular, however, provides the benefit of belated filing of Form 10-IC only in cases where the ROI has been filed within the due date under the ITL.

- It may be noted that the Circular does not extend any relief with respect to claim of CTR made for the first time for tax year 2020-21 or with reference to the CTR of 15% available to new manufacturing domestic companies, wherein Form 10-ID is required to be filed.

2. Budget Update 2022 Indirect Tax Key Highlights:-

Key Takeaways:

- **Amendments to the scheme of taxation of virtual digital assets (VDA):.**

  - Meaning of “transfer” clarified to be as same as per existing definition in the Income Tax Laws (ITL), applicable to capital asset even if VDA is held as stock-in- trade

- Denial of set-off of loss from transfer of DA against gains from transfer of another VDA.

- Powers given to the Central Government (CG) to issue guidelines to remove any difficulty in the application of withholding provisions applicable to grant of a benefit or perquisite to a resident arising from carrying on of business or profession.

- Gift taxation will apply to gift of specified property made by registered charitable trust or institution to persons who are specified related parties of the donor entities.

- Deduction claimed on account of surcharge and cess to be deemed to be under-reported income and may lead to initiation of penalty proceedings unless taxpayer makes application to tax authority to disallow the deduction and pays the amount due.

- The eligibility criteria to file an updated return made stricter. Amongst others, the taxpayer shall not be eligible to file an updated return for any year if search/survey/requisition proceedings are undertaken.

- Any proceedings initiated in the name of predecessor during the pendency of succession process is to be deemed to have been initiated in the name of successor.

- Timeline for completion of assessments for tax year 2019-20 is extended from 31 March 2022 to 30 September 2022.

- Definition of "books of account" expanded to include books maintained in electronic/digital form.

Amendments to the scheme of taxation of VDA:

FB 2022 proposed to introduce a special scheme of taxation for VDA, a specifically defined asset which covers crypto currencies/assets, non-fungible tokens and any other assets to be notified by the CG as VDA. Broadly under the proposed regime, inter alia, any income from transfer of VDA is proposed to be taxed @30% w.e.f. 1 April 2022, and consideration paid to a resident for such transfer, is subject to withholding @1% w.e.f. 1 July 2022.

- **Meaning of "transfer" clarified**

  - Under the existing provisions of the ITL, "transfer" is broadly defined with respect to a capital asset to, inter alia, include sale, exchange or relinquishment of the asset; or extinguishment of any rights therein;

  - The amended FB 2022 now provides that the same definition will apply for the term "transfer" used in the provisions relating to VDA as is applicable to capital assets.

  - This definition would apply irrespective of whether the VDA qualifies as a capital asset or stock-in-trade in the hands of the taxpayer.

- **Amendment to claim the cost of acquisition**

  - The FB 2022 proposed that no deduction shall be allowed in computing income from transfer of VDA except for the "cost of acquisition".

  - In this regard, the Minister of State for Finance clarified in Lok Sabha on 21 March 20224 that infrastructure costs incurred in mining of VDAs will not be treated as cost of acquisition as it is in the nature of capital expenditure not allowable as deduction under ITL.

  - The Amended FB 2022 now provides that the deduction in respect of "cost of acquisition" would be allowed only if it is available/ascertainable. This precludes a possible argument on part of taxpayers

that the taxation under the new regime fails where cost of acquisition of VDA is not ascertainable.

- **Denial of inter se set-off of gains and losses incurred from transfer of VDA**
  - As per FB 2022, loss arising from transfer of VDA shall not be allowed to be set-off against income computed under any other provision of ITL. Ambiguity arose on whether such loss can be set-off against income/gains arising from transfer of another VDA which is computed under the same provision of the ITL.
  - In this regard, the Minister of State for Finance recently informed the Lok Sabha on 21 March 2022 that loss from the transfer of VDA will not be allowed to be set off against the income arising from transfer of another VDA.
  - Consistent with the above, the Amended FB 2022 provides that the loss incurred on transfer of VDA will not be allowed to be set-off against income computed under any provision of ITL i.e., it may be interpreted to not permit a set off against income from transfer of another VDA as well. Further, such loss shall not be allowed to be carried forward to succeeding years.
  - The enacted provision also includes an additional non-obstante clause to the main provision which provides for 30% rate of tax on income from transfer of VDA.

- **Amendment to the interplay of TDS on transfer of VDA with other TDS provisions:**
  - As per FB 2022, the new tax withholding @ 1% on consideration paid for transfer of VDA to a resident was proposed to override any other provision of tax deduction at source (TDS) or tax collection at source (TCS) under the ITL. Further, it shall also override TDS obligation on ecommerce operators.
  - The amended FB 2022 now omits the overriding impact on any other provision relating to TDS and TCS under the ITL. In other words, the withholding of 1% applicable to transfer of VDA would now override only the withholding provisions applicable to e-commerce operators and no other TDS/TCS provisions. But this does not alter the overriding nature of TDS on transfer of VDA over TDS and TCS on purchase/sale of goods. This is because TDS on purchase of "goods" does not apply if the transaction is liable to TDS or TCS7 under any other provisions of the ITL. Likewise, TCS on sale of goods is unlikely to apply if the tax withholding on transfer of VDA is done under the special scheme.
  - Thus, TDS on transfer of VDA shall prevail over TDS on e-commerce operators where the transaction is covered under both the provisions. This means the buyer of VDA in an e-commerce transaction will be liable to withhold tax if the specified conditions (including threshold limits) are met and the e-commerce operator will be relieved from withholding taxes on such transaction.

TDS on benefit or perquisite arising in the course of business or profession

- As per the ITL, the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is taxable as business income in the hands of the recipient of such benefit or perquisite.
- In order to ensure correct reporting of particulars in the return of income and to widen and deepen the tax base, FB 2022 proposed to cast an obligation on the payer of such benefit or perquisite to a resident to withhold tax at the rate of 10% of the value

of such benefit or perquisite exceeding threshold value of INR 20,000.

- Further, it was proposed that in case where the benefit or perquisite is provided partly in cash and partly in kind or wholly in kind and the monetary component is not sufficient to cover the quantum of tax required to be deducted, then the person responsible for withholding should ensure that taxes are paid in respect of such benefit or perquisite before they are released. The amended Bill clarifies that the taxes required to be paid should be equal to the taxes which are required to be withheld by the provider of such benefit/perquisite. To illustrate, if value of benefit is INR 100,000, then payer should ensure payment of tax by payee of INR 10,000 (@ 10%) even if slab rate of tax applicable to payee is, say, 25%.

- The amended Bill has further amended FB 2022 to provide powers to the CG to issue guidelines for the purposes of removing any difficulty in giving effect to the above withholding provision. It is also provided that every guideline issued by the CG and laid before the Parliament would be binding on the taxpayer as well as the tax authority.

Gift received from charitable trust in certain cases is now taxable

- ITL provides for gift taxation if specified property is received by any taxpayer without or for inadequate consideration. But it provides an exclusion that gift taxation will not apply if such specified property is received by any taxpayer, inter alia, from a registered charitable trust or institution. Amended FB 2022 now provides that the exclusion from gift taxation will not apply if the recipient of specified property is a person who is a specified related party of the donor entities.

Deduction of surcharge and cess will be treated as under-reported income triggering penalty, unless voluntarily owned up by taxpayer

- FB 2022 clarified that deduction for surcharge and cess on income tax, being contrary to legislative intent, will not be allowed as deduction in the computation of business income of the taxpayer and same was proposed to be made applicable retrospectively from tax year 2004-05.

- Amended FB 2022 provides as follows:

  - If any deduction for surcharge and cess is claimed and allowed in any tax year, the tax authority is authorized to recompute the income by way of rectification within a period of four years from the end of the tax year commencing on 1 April 2021 (i.e., by 31 March 2026) and raise consequential demand. Further, if a deduction has been claimed for education cess and surcharge, then it will be deemed that the income is under-reported for the purposes of levy of penalty on the taxpayer @ 50% of tax payable on such disallowance.

  - However, where the taxpayer makes an application to the tax authority in a prescribed form and within the prescribed time for re-computation of income in respect of a tax year without considering the claim of surcharge and cess and pays amount due thereon within the specified time limit, then no penalty shall be levied on such taxpayer.

  - Thus, as it appears, if taxpayer voluntarily owns up the disallowance and makes payment of requisite amount, no penalty shall be levied whereas if tax authority makes re-computation, then penalty shall be levied in addition to amount due on disallowance.

Eligibility criteria for filing updated return of income

- The existing provisions of the ITL permits filing of a belated or revised return within

nine months from the end of the relevant tax year or prior to completion of assessment, whichever is earlier. FB 2022 proposed, vide a new provision effective from 1 April 2022, to permit a taxpayer to file an "updated return" within three years from the end of the relevant tax year, subject to various conditions.

- As per FB 2022, an updated return cannot be filed if, inter alia:
  - It is a loss return; or
  - It decreases total tax liability or increases refund as compared to return previously filed
  - It pertains to a tax year in which:
    1. Search has been initiated or books/documents/assets has been requisitioned in case of taxpayer
    2. Survey has been conducted in the case of taxpayer (excluding TDS survey)
    3. Notice has been issued stating that any money/bullion/jewellery/valuable article or thing, seized or requisitioned in case of any other person, belongs to the taxpayer
    4. Notice has been issued stating that books/documents seized or requisitioned in case of any other person pertain/s to taxpayer, or any other information contained therein relates to taxpayer.

  In case of search/survey/requisition proceedings as above, disqualification applied to two preceding tax years as well.

- Amended FB 2022 amends some of the conditions relating to filing of updated return as follows:
  - Taxpayer can file an updated return for a tax year even where a loss return was previously filed for such tax year, provided that such updated return is a return of income.
  - If an updated return filed for a tax year results in reduction of carried forward loss or unabsorbed depreciation or MAT8 /AMT9 credit for subsequent tax years, taxpayer shall file an updated return for all such subsequent tax years.
  - In case of search/survey/requisition proceedings as above, taxpayer shall be ineligible to file an updated return for that tax year as also all tax years preceding the tax year of search/survey/requisition.
  - In case of search/survey/requisition proceedings as above, taxpayer shall be ineligible to file an updated return for that tax year as also all tax years preceding the tax year of search/survey/requisition.

Resolution of administrative difficulties in tax proceedings on succession of business

- FB 2022 proposed that any proceedings made on the predecessor entity during the course of pendency of business reorganization will be deemed be validly carried out in the name of successor entity. This was to ensure that proceedings continue to be valid despite the predecessor entity ceasing to be in existence on completion of business reorganization process.
- The term "business reorganisation" was defined to mean reorganization of business involving amalgamation or demerger of companies or merger of business of one or more persons.
- Due to the reference to the term "merger" and "demerger" in the definition of the term "business reorganisation", there was an ambiguity whether it would cover all forms of succession of business. In order to

remove such ambiguity, the amended FB 2022 replaces the term "business reorganisation" with the term "succession", thereby covering all forms of succession of business.

- Further, there was an ambiguity whether proceedings which are initiated but not completed in name of predecessor prior to completion of succession process would continue to be valid by deeming it to be in the name of successor.

- The amended FB 2022 clarifies that any proceedings initiated in the name of predecessor during the pendency of succession process shall be deemed to have been initiated in the name of successor.

- Separately, FB 2022 proposed to introduce new provisions to enable the "successor" entity to file a modified return in lieu of the returns which were filed for tax year pertaining to the "business reorganisation" to reflect the impact of change due to the reorganization.

- The Amended FB 2022 defines the term "successor" to mean all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation or not.

Timeline for completion of assessments for tax year 2019-20 extended till 30 September 2022

- Amended FB 2022 extends timeline for completion of assessment for tax year 2019-20 from 31 March 2022 to 30 September 2022. The timeline for completion of assessment for other tax years remain unchanged.

Definition of books of account expanded to include books maintained in electronic/digital form

- The existing definition of "books or books of accounts" under ITL includes only ledgers, daybooks, cash books, account books and other books kept in written form or as print-out of the data stored in certain storage devices. Amended FB 2022 expands the scope of the term "books or books of account" under the ITL to include books maintained in an electronic or digital form as well.

Foreign Exchange Management Act (FEMA)

Part-A Key FEMA updates

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

1. Department for Promotion of Industry and Internal Trade ('DPIIT') permits foreign investment in Life Insurance Corporation of India ('LIC') and certain modifications for consistency in the existing Foreign Direct Investment ('FDI') Policy of 2020

- 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, Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ('NDI Rules') and SEBI (Foreign Portfolio Investors) Regulations, 2019.

  Further, following changes have been made in order to ensure consistency of NDI Rules vis-à-vis the extant FDI policy 2020

- 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 FDI Policy to include issuance of capital 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.

- A body corporate established or constituted under Central Act or State Act is included in the definition of Indian Company.

- Definition of real estate business has been harmonised in the FDI Policy with Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 to exclude Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014. Further, same definition of real estate business has been retained in the prohibited sector and the sectoral FDI policy on construction development.

- 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.

- The abovementioned changes shall be effective from the date of FEMA notification.

Part B- Case Laws

Goods and Service Tax

1. M/s BMW India Pvt [TS-772-AAAR(HAR)-2021-GST]

Subject Matter: Ruling wherein the Haryana AAAR had disallowed the ITC on the sale of BMW cars used by the Applicant as training fleet, press fleet, marketing fleet, sales fleet, etc and correspondingly the credit of repair, maintenance and insurance services in respect of such vehicles was also disallowed.

Background and Facts of the case

- An appeal had been filed by the appellant against the Advance Ruling No.HAR/HAAR/R/2018-19/17 dated 09.10.2018.
- The appellant M/s BMW India Pvt. Ltd. Gurugram, is registered in GST at Gurugram as a State administered taxpayer for running a training centre for the training of Engineers and Marketing professionals etc.
- The Appellant gets BMW branded vehicles made in Chennai plant as inter-state stock transfer on which IGST and compensation cess have been paid, and thereafter uses these vehicles for a very limited period of about 12 months, as under:
    - Training fleet: Vehicles for training of Dealers and Authorized Service Centre operators;
    - Press fleet: Vehicles provided to media houses/ senior journalists for test purpose;
    - Marketing fleet: Vehicles for undertaking various marketing and promotional activities such as road shows, exhibitions etc;
    - Sales fleet: Vehicles assigned to corporate sales team for giving it to customers for test drive and product experience;
    - Visitor cars: Vehicles used in Gurugram to service visitor transportation needs and business use of employees;
    - Personally Assigned Vehicles: Vehicles assigned to employees and Expats of the company for business purpose.
- After the said uses, the Appellant sells these vehicles to Company's authorized dealers, as old and used vehicles, after the said limited period use. Furthermore, such vehicles are capitalized in the book of accounts of the Appellant due to the applicable accounting standards.
- Subsequently, these vehicles are eventually supplied as old and used vehicles in terms of Notification No.08/2018-C.T. (Rate) dated 25.01.2018 and GST is paid on such supply at concessional rate as applicable on the old and used Motor Vehicles under the said Notification.
- The said exemption viz. the reduced rate of 18% (instead of normal 28%) is admissible if the ITC is not availed. Presently, the Taxpayer is not availing ITC on the vehicles used by Visitors and Employees.
- Basis above, the appellant had sought advance ruling on the following question:

- Whether the Applicant unit is entitled to avail Inputtor Tax Credit (ITC) of IGST and Compensation Cess paid on receipt of cars (on stock transfer basis) for use in relation to specified business activities and thereafter onwards supply to dealers after use by the Applicant unit for a limited period of time?

- For the above question, the AAR had passed an order that ITC on motor vehicles put to use as stated above will not be eligible.

- To contravene the order passed by the AAR, the Appellant filed an appeal with the AAAR and contended that the submissions of the Appellant were not considered and that the ruling was vague.

- Further, the Appellant contended that they are entitled to avail ITC as the vehicles were used for specific taxable supplies mentioned under Section 17(5)(a)(i)(A). It also held that vehicles were always intended for further supply by the Appellant after specified use and no time limit has been prescribed under the CGST Act for further supply of vehicles.

Discussions and findings of the case

- The AAAR took into consideration the facts submitted by the Appellant wherein the Appellant asserted that ITC on motor vehicles would be admissible as they are ‘capital goods’ and are further supplied as such after usage.

- The AAAR further examined the definitions of inputs and capital goods provided under the CGST Act,2017.

- It also took into account the conditions for availing ITC under section 16 and the restrictions on the availment under Section 17 of the CGST Act, 2017 an held that it is clear that when the motor vehicle is used for purposes other than the intended purposes, the ITC cannot be allowed on the Motor Vehicles of seating capacity up to 13 persons.

- Moreover, it pronounced that if the argument of the appellant is allowed then in that case all the motor vehicles, irrespective of the nature of Supply will be eligible for ITC across the industries. It will no longer be a restricted clause for Car Dealers, but will be an open-clause for all the trade and industry to avail the ITC on all the Vehicles purchased by them. This has never been the intent of the Parliament.

- It also held that the demo vehicles are akin to second hand and are hence, not to be treated as inputs.

Ruling

- Basis above, it was held that BMW Vehicles received by the Appellant under stock transfer have never been received with the intent to simply 'further supply of such motor vehicles or to sell as such'.

- The Input Tax Credit on these vehicles, thus, cannot be allowed.

2. M/s. Honda Siel Cars India Ltd. Vs Commissioner of Customs (EXCISE Appeal No. 696 of 2010)

Subject Matter: Ruling wherein CESTAT Allahabad allowed refund of excise duty paid on vehicles lying in stock with the dealer in respect of which price was reduced subsequently on account of reduction of excise duty on cars.

Background and Facts of the case

- The appellant is engaged in manufacture of Motor Cars and their parts. The appellant was paying duty on transaction value on the cars sold to the dealers in terms of section 4 of Central Excise Act 1944.
- In terms of notification number 58/2008-CE dated 10.12.2008, the Central Government reduced the rate of duty on motor cars from 24% to 20%.
- In view of this, the appellant passed the reduced excise duty benefit to the dealers through sales bulletin dated 8.12.2008 whereby the dealers were assured of compensation ranging from 50% to 100% on the price difference on their stock lying as on 8.12.2008.
- The reduction in price was passed on in the form of credit note to the dealers and amount of credit notes was paid by appellant to the dealers through cheques.
- Therefore, in respect of the vehicles lying in stock with the various dealers dated 8.12.2008, the prices were retrospectively reduced and the differential value along with corresponding duty thereon were reimbursed to the dealers through credit notes.
- In view of this, the appellant filed a refund claim of excise duty paid on the vehicles lying in stock with the dealer as on 8.12.2008.
- Consequent to the application of the refund, a show cause notice dated 5.6.2009 was issued to the appellant proposing to reject the refund claim on the ground that goods were sold for delivery at the time and place of removal at factory gate and therefore transaction value would be applicable on which excise duty has been paid by the appellant.
- Further, the authorities also held that the appellant did not apply for the provisional assessment nor the said discount and compensation was known at the time and place of removal.
- Therefore, the refund claim filed on discount given to the dealer is not admissible under section 4 of the Central Excise Act, 1944 read with section 11B of the Excise Act.
- Basis above, the refund claim was rejected by the authorities, hence the said appeal.

Discussions and findings of the case

- The appellant contended that in the present case the transaction value is the actual reduced price charged from the dealers after adjusting the credit note issue to them.
- Further, the Appellant referred to the case of **Purolator India Ltd. v CCE Delhi-III, 2015 (323) ELT 227 (SC)** wherein it was held that the transaction value which has to be read along with the expression “for delivery at the time and place of the removal and price actually paid and payable for the goods when sold.”
- In view of this, the expression ‘when sold’ does not relate to the time at which such goods were sold, but it is only indicative of an agreement of sale.
- Therefore, the price paid for the good is the actual price whether such price has been paid in full in part or not paid at all.
- The Appellant also relied on various other judgements such as Steel Authority of India Ltd. v CCE, Raipur, 2019 (366) ELT 769 (S.C.); CCE Pune v SKF India Ltd. 009 (239) LT 385 (SC) and CCE v International Auto Ltd. 2010 (250) ELT (S.C.); Prag Industries (India) Pvt. Ltd. v CCE & ST Lucknow, 2019 (369) ELT 1389 (Tri-All), Utkal Polyweave Industries Pvt. Ltd. v CCE Bhubaneswar, 2001 (136) ELT 818 (Tri-Kolkata), etc.

- Additionally, the Appellant contended that provisional assessment is not applicable in the current case as appellant had no knowledge that the rate of duty on the impugned goods would reduce subsequently from 24% to 20%.

- In contrary on the above, the Revenue submitted that it is a case where no provisional assessment was sought by the appellant and paid the duty applicable at the time of clearance of the goods.

- Therefore, it held that any subsequent deduction in the price is not applicable. Consequently, refund is also not maintainable.

- Pursuant to analysing the facts of the case, the Hon'ble Tribunal referred to the decision of Prag Industries (India) Pvt. Ltd. (Supra) wherein the lower rate was accepted by the appellant and he was thus entitled to refund of excess duty.

- The Hon'ble CESTAT held that the above judgement would squarely apply in the said case and hence held that as payments were made in accordance with the reduced price subsequently paid by the appellant, and in that circumstances the appellant is entitled to claim refund of the excess duty paid by them without any provisional assessment.

Ruling

- In light of the above, it was held that appellant is entitled for the refund claim and the appeal was allowed.

3. M/s Raghav Metals vs State of Haryana and Others (High Court of Punjab & Haryana- CWP No.25057 of 2021)

Subject Matter: Ruling wherein it was held that Mis-match in actual quantity of goods and the quantity shown in Invoice and e-way bill when difference of weight in actual quantity of goods and the quantity shown in Invoice is less than 1% cannot be held contravention of provisions of CGST Act.

Background and Facts of the case

- The petitioner is engaged in business of copper wires and copper scraps, which are purchased from the dealers located throughout the country and he is registered under Delhi GST Act, 2017/Central GST Act, 2017.

- The petitioner claims that in the ordinary course of business, he sold copper scraps to M/s R.N.T. Metals Pvt. Ltd., Bhiwadi (Rajasthan) for an amount of Rs.83,69,594/- (including IGST @18%). While the aforesaid goods were in transit, the same was intercepted by the authorities.

- The goods were accompanied by valid invoice and e-way bill which were produced before the authorities.

- However, the vehicle carrying goods was ordered to be stationed and Form GST MOV-02 was issued.

- Subsequently, the Authorities ordered detention of the goods under section 129(1) of the Act in Form GST MOV-06 and also issued a notice in GST MOV-07 to the petitioner.

- The petitioner filed the present writ petition claiming that the proceedings under Section 129 of the Act against him are without jurisdiction and thus deserve to be quashed.

Discussions and findings of the case

- In respect to the above facts, The Authorities held that on physical verification discrepancy was found in the actual quantity and the quantity shown in Invoice and e-way bill.

- The actual quantity was found to be 90 kgs. 700 gms. more than what has been found as per the invoice. Thus, it claimed that by showing lesser quantity the petitioner intended to evade tax.

- In contrary to the above, the petitioner held that from perusal of the e-invoice it was clear that that quantity of consigned goods is shown to be 10430.7 kilograms, whereas as per the Authorities it is 10520 kilograms. The said difference in weight is less than 1%.

- In light of the above, the Hon'ble High Court held that it cannot be said that the petitioner had any intent to evade the tax or the mismatch in the quantities is of such nature which shall entail proceedings under Section 129 of the Act. A person, who has already paid a tax of Rs.1276717.68/- on a consignment cannot be said to have an intent to evade tax amounting to Rs.11000/-.

Ruling

- Basis above, the Hon'ble High Court held that a fair stand was taken by the petitioner and the mismatch could not be held to be contravention of the provisions of the Act.

- Thus, the writ petition was allowed and proceedings against the petitioner were quashed.

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