EY Tax and Regulatory Alert

April 2023

Prepared for ACMA

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2.	**M/s OHMI Industries Asia Private Limitedv. Assistant Commissioner, Central Tax W.P.(C) 6838/2022 – Delhi High Court)**	The High Court allowed the refund of integrated tax along with interest and held that the market research services rendered to its affiliated entities not to be construed as intermediary services.

3.	**M/S. Sony India Pvt. Ltd v. Union of India & ANR (Special Leave Petition (Civil) Diary No. 2319/2023)**	The Supreme Court had dismissed Revenue's appeal against the judgment of Hon'ble Telangana High Court (HC) allowing Sony India to seek amendment of its Bill of Entries (BoE) under Section 149 of the Customs Act, 1962 ('Customs Act') and upheld the decision of Telangana High Court.
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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 April 2023

- **Notification No. 02/2023 – Central Tax dated 31.03. 2023** was issued by CBIC wherein the Late fees for Composition Taxpayers for failure to furnish return in FORM GSTR-4 for the periods July2017 till FY 2021-22 has been waived completely in case of NIL returns. In other cases, the late fees has been waived over and above Rs 500/-, provided that the returns are filed between 01 April 2023 to 30 June 2023.

- **Notification No. 03/2023 – Central Tax dated 31.03. 2023** was issued by the CBIC wherein Taxpayers whose GSTIN number was cancelled due to non-filing of returns on or before 31 December 2022 now have a one-time option to apply for its revocation up to 30 June 2023. However, application for revocation can only be made after filing all the returns along with payment of tax, interest and late fees upto the effective date of cancellation of registration.

- **Notification No. 04/2023 and 05/2023 – Central Tax dated 31.03. 2023** was issued by the CBIC wherein the case of taxpayers opting for authentication by way of Aadhaar Number, the date of submission of application for GST registration will be the earlier of the following dates-

  - Date of authentication; or
  - Expiry of 15 days from the date of submission of Part B in application.

- **Notification No. 06/2023 – Central Tax 31.03. 2023** was issued by CBIC wherein an assessment order shall be deemed to be withdrawn, where a registered person has failed to furnish GST return (GSTR-3B) within 30 days of issuance of assessment order u/s 62 of CGST Act, provided that such assessment order is issued on or before 28 February 2023 and that such registered persons has furnished the said return on or before 30 June 2023 with payment of interest and late fees.

- **Notification No. 07/2023 – Central Tax dated 31.03.2023** was issued by CBIC wherein and Amnesty for waiver of late fees has been provided to taxpayers who have not submitted their annual returns for FY 2017-18 to 2021-22 by the due date, however furnishes the same between 01 April 2023 to 30 June 2023.

- Late fees in such cases shall be limited to Rs. 20,000. Further late fees on GST Annual Return has been rationalized from FY 2022-23 onwards as below:

Turnover upto 5 Cr	Rs.50/- per day subject to 0.04% of Turnover
Turnover 5cr to 20 Cr	Rs.100/- per day subject to 0.04% of Turnover
Turnover greater than 20 Cr	Rs.200/- per day subject to 0.5% of Turnover

- **Notification No. 08/2023 – Central Tax dated 31.03. 2023** was issued by CBIC wherein an amnesty scheme is now available for Final Return in FORM GSTR-10, where the said return is furnished between 01 April 2023 to 30 June 2023, the maximum late fee payable shall be Rs 1000/-.

- **Notification No. 09/2023 – Central Tax dated 31.03. 2023** was issued by the CBIC wherein CBIC by invoking Section 168A, has extended the time limit for issuance of orders under Section 73 of the Act for recovery of tax not paid, short paid or ITC wrongly availed or utilized as below:

  - FY 2017-18: Upto 31st December 2023;
  - FY 2018-19: Upto31st March 2024;and

- FY 2019-20: Upto 30th June 2024.

- Further, time limit for issuance of Show Cause Notice ('SCN') for above FYs shall also stand extended which shall be at least three months prior to above stated dates.

- **Crucial development in E-invoicing: 7 days limit to generate e-Invoice IRN on Portal for turnover above Rs. 100 crores:** In order to streamline e-invoice generation, the time for reporting for invoices, credit notes and debit notes for IRN generation by taxpayers having an aggregate annual turnover in excess of 100 crores shall be restricted to 7 days, i.e., IRN generation for invoices dated May 1 would not be allowed after May 8

- In this regard, please note the following:

  - Restriction will be applicable only to taxpayers with an annual aggregate turnover in excess of 100 crores.
  - This is applicable for invoices, credit and debit notes.
  - The above change shall be effective from May 1, 2023.

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of April 2023

- Notification No. 26/2023 – Customs dated: 01.04.2023 was issued by the CBIC in exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table 1 in the said notification.

- The whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act); and

- The whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3 of the Customs Tariff Act, when specifically claimed by the importer.

- The exemption under this notification shall be subject to the following conditions, namely:

- The goods imported are covered by a valid authorisation issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at zero customs duty.

- The authorisation is registered at the port of import specified in the said authorisation and the goods, which are specified in the Table 1 in the said notification, are imported within validity of the said authorisation and the said authorisation is produced for debit by the proper officer of customs at the time of clearance.

  Provided that the catalyst for one subsequent charge shall be allowed, under the authorisation in which plant, machinery or equipment and catalyst for initial charge have been imported, except in cases where the Regional Authority issues a separate authorisation for catalyst for one subsequent charge after the plant, machinery or equipment and catalyst for initial charge have already been imported.

- The goods imported shall not be disposed of or transferred by sale or lease or any other manner till export obligation is complete.

- The importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to comply with all the conditions of this notification

as well as to fulfill export obligation on Free on Board (FOB) basis equivalent to six times the duty saved on the goods imported as may be specified on the authorisation, or for such higher sum as may be fixed or endorsed by the Regional Authority in terms of Para 5.15 of the Handbook of Procedures, within a period of six years from the date of issue of Authorisation, in the following proportions, namely.

S. No.	Period from the date of issue of authorization	Minimum Export Obligation to be fulfilled
1	Block of 1st to 4th Year	50%
2	Block of 5th and 6th Year	Balance Export Obligation

Provided that in case the authorisation is issued to a Common Service Provider (CSP), it shall execute the bond with bank guarantee and the bank guarantee shall be equivalent to 100 per cent. of the duty foregone, and the bank guarantee shall be given by CSP or by anyone of the users or a combination thereof, at the option of the CSP.

Provided further that the export obligation shall be 75 per cent. of the normal export obligation specified above when fulfilled by export of following green technology products, namely, Solar Energy Generating Systems and parts or Equipments thereof, Wind Energy Generating Systems and parts or equipment thereof, LED lights of various kind, Vapour Absorption Chillers, Waste Heat Boiler, Waste Heat Recovery Units, Unfired Heat Recovery Steam Generators, Water Treatment Plants, Battery Electric Vehicles (BEV) [other than Hybrid Electric Vehicles (HEVs) and Plug-in Hybrid Electric Vehicle (PHEV)] of all types, Vertical Farming equipment, Wastewater Treatment and Recycling, Rainwater harvesting system and Rainwater Filters, and Green Hydrogen.

Provided also that for units located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Jammu and Kashmir and Ladakh, the export obligation shall be 25 per cent. of the normal export obligation specified above.

Provided also that where a unit holding Export Promotion Capital Goods authorisation and have been admitted under provisions of the Insolvency and Bankruptcy Code, 2016 [31 of 2016] for commencement of insolvency proceedings and in respect of whom the resolution plan has been approved under section 31 of Insolvency and Bankruptcy Code, 2016 by Adjudicating Authority shall be permitted to relief, concessions and waivers in accordance with the resolution plan approved or finalized by Adjudicating Authority or Appellate Authorities as the case may be.

- If the importer does not claim exemption from the additional duty leviable under sub-sections (1), (3), (5), (7) and (9) of section 3 of the Customs Tariff Act, the additional duty so paid by him shall not be taken for computation of the net duty saved for the purpose of fixation of export obligation provided the Input Tax Credit of additional duty paid has not been taken.

- Where the importer fulfills 75 per cent. or more of the export obligation as specified in condition (4) [over and above 100 per cent. of the average export obligation] within half of the period specified for export obligation as mentioned in sub-para (4) of para 2, his balance export obligation shall be condoned and he shall be treated to have fulfilled the entire export obligation:

  Provided that the benefit of reduced export obligation in terms of second and third provisos of sub-para (4) of para 2 above is not availed.

- Capital goods imported, assembled or manufactured, are installed and put to use, after their import, in the importer's factory or premises and a certificate from Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over importer's factory or premises or from an independent Chartered Engineer, is produced

within a period of six months from the date of completion of imports before the Deputy Commissioner of Customs or Assistant Commissioner of Customs at the port of import confirming such installation and use of the capital goods in the importer's factory or premises.

Provided that where the Regional Authority grants extension of the said period beyond six months from the date of completion of imports, the said overall period shall be extended by the Deputy Commissioner of Customs or Assistant Commissioner of Customs as the case may be.

Provided further that an importer (including an importer who is a CSP) opting for the independent Chartered Engineer's certificate shall send a copy of the certificate, upon its issuance, to the jurisdictional Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, having jurisdiction over importer's factory or premises, as intimation or record.

Provided also that in case of import of spares, the installation certificate shall be produced within three years from the date of import.

Provided also that in the case of manufacturer exporter and merchant exporter having supporting manufacturers or in the case of import of irrigation equipment for use in contract farming for export of agricultural products or in the case of importer rendering services, the capital goods may be installed at the factory or premises of such other person whose name and address is endorsed, prior to installation, by the Regional Authority on the authorisation referred to in sub-para (1) of para 2. This would apply even when Regional Authority endorses a change in the factory or premises or person. The name and address of such other person shall also be mentioned on the relevant shipping bills. This shall not apply to a CSP.

Provided also that agro units located in Agri Export Zones or service providers in Agri Export Zones may move the capital goods within the Agri Export Zones under intimation to the jurisdictional Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, subject to the condition that the importer shall maintain accurate record of such movement.

- The imports and exports are undertaken through the seaports, airports or through the inland container depots or through the land customs stations as mentioned in the Table 2 in the said notification or a Special Economic Zone notified under section 4 of the Special Economic Zones Act, 2005 (28 of 2005).

  Provided that the Commissioner of Customs may, by special order or a public notice and subject to such conditions as may be specified by him, permit import and export through any other sea-port, airport, inland container depot or through a land customs station within his jurisdiction.

- Notwithstanding anything contained in sub-para (4) of para 2 above, where the Regional Authority grants extension of block-wise period for any block(s) or overall period of fulfillment of export obligation up to a period of two years, the said block-wise period or overall period of export obligation shall be extended by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be:

  Provided that in respect of the units referred to in the fourth proviso to sub-para (4) of para 2 above, extension of overall period of export obligation shall not be allowed.

- Where the goods specified in the Table 1 are found defective or unfit for use, the said goods may be re-exported back to the foreign supplier within three years from date of clearance of said goods:

- Public Notice-Customs dated the March, 2023 was issued by the CBIC wherein it proposed a system of normally publishing the currency exchange rates on ICEGATE website every day, replacing the existing system of notifying exchange rates fortnightly (twice a month).

- Circular No. 09/2023-Customs dated 30.03.2023 was issued by the CBIC regarding the phased Implementation of Electronic Cash Ledger (ECL) in Customs w.e.f, 01.04.2023.

- The Electronic Cash Ledger (ECL) functionality is envisaged in Section 51A of the Customs Act, 1962. It provides enabling provision whereby the importer, exporter or any person liable to pay duty, fees etc., under the Customs Act, has to make a non-interest-bearing deposit with the Government for the purpose of payment.

- Deposits under ECL provision requires the person to be registered at ICEGATE portal and to create ECL Account. In addition to importers/exporters (IECs), the customs brokers, couriers who are making payments on behalf of the importers/exporters are also enabled in ECL. Similarly, the importers who are assigned Unique Identification Number (UIN) under GST are also enabled in ECL. The detailed advisory for registration and the creation of ECL Account will be available on the said portal.

- The manner of utilising ECL to make the payments is outlined in Regulation 4 of ECLR.

- The payment using the deposit available in ECL may be made by selecting the payment challan generated at ICES/ECCS or other application, with ECL as a mode of payment.

- A functionality to make payment without first depositing into ECL is also provided, that allows user to select the payment challan and choose amongst internet banking/NEFT/RTGS options and complete the payment process. In such situation, at the back-end, a deposit challan for the same amount will be generated on the portal, deposited in ECL and debited from ECL as payment.

- In case, there is a rejection of payment challan at the application end, the payment can be re-initiated from the ECL by log into the portal.

- With internet banking as authorised mode, 12 banks3 are already enabled for deposit into ECL.

- When other banks complete testing, they shall be onboarded for this purpose.

- NEFT/RTGS mode of deposit into ECL is permissible for all banks. The users of those banks, which are not yet onboarded for internet banking, may also utilize this.

- The NEFT/RTGS facility shall be operational from 3rd April, 2023.

- The balance of deposits after utilising for payments may be utilised for subsequent payments. However, if the refund is applied for, the amount applied for will no longer be available for use and refund decided and thereafter credited to the bank account of the person registered on customs automated system.

- The process is described in Regulation 5 of ECLR. The Systems advisory for ECL balance refund is being made available on ICEGATE. The balance in ECL being deposit, its refund is not governed by section 27 of Customs Act.

- As segments of e-payment shall get migrated in phases to ECL, the existing ICEGATE payment system hitherto in use would not run in parallel.

- The deposits into ECL, being non-interest-bearing, are suited for purposes of planned impending or immediate payment needs, thereby also minimizing the need for applying

for refunds. Their attention should also be drawn to ECLR, notifications and DG Systems implementation advisories.

- **Circular No. 10/2023-Customs Dated: 11.04.2023** was issued by the CBIC wherein in line with the government's Digital India initiative, the Board has decided to launch a new version (V 3.0) for on-boarding of AEO-LO applicants by way of online filing, real-time monitoring, and digital certification.

- This updated version of the existing web application will be made accessible for both applicants and the Customs officials from 11.04.2023

- The new version (V3.0) of the web application is designed to ensure continuous, real-time, and digital monitoring of the physically filed AEO-LO applications for timely intervention and expedience.

- A step-wise guide for filing of AEO-LO application by the applicant is available on the CBIC website under the "Indian AEO Programme" section at the following URL:

  1.https//www.cbic.gov.in/
  2.htdocs-cbec/home links/
  3.india-aeo-prgm.

- The guide is also available at aeoindia.gov.in under the "Download" section which can be used as a ready reckoner for help with V 3.0 of the web application and its functionalities.

- To ensure smooth roil-out, it has been decided that till 30.04.2023, the AEO-LO applicants would be allowed to physically file AEO application without registering on the AEO portal as a transitional measure.

- From 01.05.2023, it will be mandatory for AEO-LO applicants to register on the portal for AEO certification.

- The AEO-LO application filed at the office of the jurisdictional Principal Chief Commissioner/ Chief Commissioner before 11.04.2023 are not required to be filed online and may continue to be processed manually, except where migration on web-application is requested by the existing AEO-LO applicants, while ensuring that the AEO certification process is not delayed.

- **Notification No. 1/2023-DGFT Dated: 31.03.2023** was issued wherein The Central Government notifies Foreign Trade Policy, 2023.

- This Foreign Trade Policy shall come into force with effect from 1st April, 2023.

- **Circular No. 1/2023-24-DGFT Dated 17.04.2023:** was issued by the DGFT wherein the procedure for filing applications for Amnesty scheme for one-time settlement of default in export obligation by Advance and EPCG authorization holders is specified as follows:

- Application for AA/EPCG discharge/closure shall be filed online by logging onto the DGFT Website and navigating to Services –> Advance Authorisation/DFIA –> Closure of Advance Authorisation. For EPCG please navigate to Services –> EPCG –> Closure of EPCG.

- The applicant shall select the checkbox for 'Amnesty scheme for one-time settlement of default in export obligation' and proceed to file application for closure against the concerned EPCG or AA authorisation. as per the online proforma.

- The applicant, as per their calculations, shall indicate the duty and interest values to be paid under the 'Redemption Matrix' tab and submit their application online

- On receipt of online application, the RA concerned shall examine and confirm the shortfall through an online letter.

- The applicant shall make the required payment of duty and interest to the Jurisdictional Customs Authority and provide the proof of payment in response to the said letter online.

- Based on the evidence of payments and other relevant documents prescribed, concerned RA may examine and consider granting Export Obligation Discharge Certificate (EODC) online.

- In need of further guidance, please refer to the Help Manual on DGFT Website –> Learn –> Application Help & FAQs –> Advance Authorisation Closure Help document or EPCG Help Document.

- For additional assistance, one may either approach the concerned RA or utilize any of the following Helpdesk channels.

  1.Raise a service request ticket through the DGFT Helpdesk service.

  2.Send an email to DGFT Helpdesk at dgftedi@nic.in

  3.Call the Toll-free DGFT Helpdesk numbers.

- **Public Notice No. 1/2023-DGFT dated:** 01.04.2023 was issued by the DGFT notifying the Handbook of Procedures, 2023 which shall come into force with effect from 1st April, 2023.

- **Public Notice No. 2/2023-DGFT dated 01.04. 2023 read along with Public Notice No.7/2023 dated 18.04.2023** was issued by the DGFT wherein the Government has announced a special one-time Amnesty Scheme to address non-compliance in Export Obligations by Advance Authorization and EPCG authorization holders. Following are the key highlights of the scheme:

- Under this scheme, all pending cases of default in Export Obligation can be regularized by the authorization holder on payment of all customs duties exempted in proportion to unfulfilled Export Obligation.

- The maximum interest is capped at 100% of such duties exempted.

- As a relief for the exporters, Government has announced that no interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty.

- The Amnesty scheme will be available for a limited period, up to 30.09.2023.

- Cases under investigation for fraud and diversion are not eligible for this scheme.

- The scheme is in line with the "Vivaad se Vishwaas" initiative, which sought to settle tax disputes amicably. The Amnesty scheme for non-compliance in Export Obligations is a step in this direction and will help in reducing the burden of pending cases of default in Export Obligation.

- **Public Notice No. 5/2023-DGFT dated: 11.04.2023** was issued wherein the Director General of Foreign Trade hereby extends the validity of ANFs and Appendices notified under Foreign Trade Policy (2015-20) till 31st May, 2023 or up to the date on which new ANFs and Appendices are notified under Foreign Trade Policy 2023, whichever is earlier, as they are not inconsistent with the provisions of FTP 2023 and HBP 2023.

- **Trade Notice 01/2023-24 dated: 06.04.2023** was issued wherein reference is drawn to earlier Trade Notice no. 24/2022-23 dated 12th January 2023 regarding the online functionality to AA / EPCG authorisation holders to update closure / redemption status on the DGFT Website (https://dgft.gov.in) of manually issued

EODC in case incorrectly reflected on the DGFT portal.

- In continuation to the said instructions, it is informed that –

- Online application for redemption/closure of licence may be submitted by navigating to DGFT website –> Services –> AA / EPCG –> Closure of Advance Authorisation / Closure of EPCG.

- AA closure application may be submitted with or without data validations-

  a. With Validation Route– Given that the complete dataset such as shipping bills / Bills of Entry / eBRC / GST invoices / Bills of Exports / Tax Receipts etc. is available in online system.

  b. Without Validation Route– Application may be submitted even with data (such as shipping bills / Bills of Entry / eBRC etc.) exceptions.

- EPCG closure applications may also be submitted online without validation.

- For cases wherein physical files are submitted for redemption to the RA, the Authorisation holders may submit EODC status update applications to RA for processing. Following steps may please be taken note of-

  i. RA may suo-moto update the licence status by navigating to License Room, select relevant License number –> Click on "EODC Status Update" button and generate the EODC letter online.

  ii. Authorisation Holder may submit EODC status update application by navigating to DGFT website –> Services –> AA / EPCG –> EODC Status update.

- If certain documents require physical submission, the Authorization holder would still apply for redemption on DGFT portal (without validation). Regional Authorities will examine the case accordingly and correspondence with the applicant shall be undertaken online using the DGFT portal.

- It may be noted that any such EODC issued online is electronically transmitted to Customs ICEGATE System in near real-time, to facilitate discharge of Customs bond and other related activities at the Customs port.

- The above-mentioned online options cover online applications with validation as well as online application without validation involving physical submission. It is accordingly directed that no Export Obligation Discharge Certificates (EODC) are to be issued manually or through any legacy IT system (LEMIS System) with immediate effect.

- All MIS reports are to be generated by the RA based on the data updated online.

Other Regulatory Updates

This section summarizes the other regulatory updates for the month of April 2023

- **W-18/36/2020-IPHW-Addendum to Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors (SPECS) dated 05.04.2023:** was issued by the Ministry of Electronic and Information Technology that in reference to the SPECS Gazette Notification dated 01.04.2020 the application window under the SPECS scheme and Scheme duration is extended for a period of one year i.e. 31.03.2024 and 31.03.2029 respectively.

Direct Tax

This section summarizes the regulatory updates under DT for the month of April 2023

1. CBDT permits employers to consider new concessional tax regime for salary withholding

Earlier CTR regime

- The Finance Act 2020 introduced CTR for individuals and Hindu Undivided Families (HUF) from tax year 2020-21 onwards. The CTR provided for lower tax rates provided the taxpayers forgo certain specified deductions and exemptions. For salaried taxpayers, the exemptions/deductions that were required to be foregone included most popular items like house rent allowance (HRA), leave travel allowance/concession (LTA/LTC), standard deduction from salary, interest on housing loan for self-occupied property, Chapter VIA deductions like life insurance premium, employee's contribution to provident fund, mediclaim premium, etc.

- The taxpayer not carrying on business or profession (like salaried taxpayers) had to opt for CTR on year-on-year basis while filing return of income (ROI). Taxpayers carrying on business or profession had to furnish Form 10IE by due date of furnishing ROI to opt for CTR and once having opted for CTR, the choice was irrevocable such that if taxpayer withdraws the option for any tax year, then he/she could not opt in again until he/she ceases to have business or professional income. For salaried taxpayers, the old regime was default tax regime unless CTR was opted in ROI.

- The CTR regime raised ambiguity whether the employer can consider CTR regime for salary withholding tax purposes since the employer would not know whether employee will choose CTR or old regime in ROI. To address genuine hardships for employers in such cases, the CBDT issued a Circular No. C1 of 2020 dated 13 April 2020 clarifying as follows:

- An employee not having business or professional income and intending to opt for CTR had to intimate his/her intent to employer and in such case, the employer had to apply CTR for salary withholding tax purposes.

- If no intimation was made by employee, the employer had to apply old regime for salary withholding tax purposes

  - The intimation to employer was only for salary withholding tax purposes for the particular tax year and could not be modified during that tax year. However, the employee was free to opt for either regime in ROI i.e., even if employee had intimated to opt for CTR for salary withholding tax purposes, he/she could avail old regime in ROI.

  - The above clarification also applied for employees having business or professional income with the modification that intimation to employer for subsequent tax years must not deviate from the option for CTR once exercised in a particular tax year.

New CTR regime

- The Finance Act, 2023 (FA 2023) has amended the CTR regime to make it more attractive for non-corporate taxpayers by providing for, inter alia, following benefits (new CTR regime):

  - Expansion of scope of eligible taxpayers to other non-corporate taxpayers like association of persons (other than co-operative societies), body of individuals and artificial juridical persons.

- Higher threshold of maximum amount not chargeable to tax
- Recalibration of slab rates to provide more lower tax rates
- Standard deduction can be claimed from salary or family pension income
- Higher threshold for rebate from tax with marginal relief
- Capping of higher surcharge to 25% instead of 37% for total income exceeding INR 50M

- Importantly, the new CTR regime will now be the default regime and taxpayers desiring old regime are required to opt out of the new CTR regime. The option has to be exercised in every tax year where the taxpayer does not have business or professional income. Such taxpayers need to exercise the option in ROI to be filed on or before the due date provided under the provisions of Income-tax Act,1961 (ITL).

- In other cases, i.e., taxpayer carrying on business or profession, the option for old regime has to be exercised by furnishing prescribed form on or before ROI filing due date and once exercised it is irrevocable until business/profession ceases. However, having opted for old regime, the taxpayer can opt out and move into CTR once in any tax year. But, having moved into CTR, such taxpayer cannot opt in again to old regime till the business/profession ceases.

- The new CTR regime is applicable from tax year 2023-24 onwards.

- While FA 2023 made the new CTR regime as default regime and enabled the taxpayers to pay advance tax as per CTR regime, there was ambiguity whether the employer can consider CTR regime for salary withholding purposes given that the employee can opt out of the CTR regime. Furthermore, although new CTR regime is default regime, on a literal reading of the provisions of ITL and FA 2023, the salary withholding provisions require the employer to deduct salary withholding tax as per old regime tax rates. This raised ambiguity for employers on the approach to be adopted for salary withholding tax in the light of change in CTR regime.

CBDT Circular No. 4 of 2023 dated 5 April 2023:

- In the wake of representations from various stakeholders, the CBDT noted that since the employees (not earning any income from business or profession) can exercise the option along with ROI, the employer, at the beginning or during the tax year is not aware whether the employees would opt for new CTR regime or old regime.

- In order to avoid genuine hardships in such cases, by exercising its powers under the ITL to give directions, the CBDT has directed the employers to adopt the following approach for withholding taxes under salary withholding provisions for tax year 2023-24 and onwards:

Where the employee furnishes intimation on remaining within CTR or opting for old regime:

- The employer shall seek information from each employee in each tax year regarding their intended tax regime.
- The employee should furnish an intimation to his/her employer of his/her intention of new CTR or old regime. Such intimation shall be furnished for each year.
- On receipt of the intimation, the employer shall withhold tax as per new CTR or old regime as per option exercised by the employee.

Part B- Case Laws

Goods and Service Tax

1. M/s AP Power Development Co. Ltd (2023 (4) TMI 205 – Authority For Advance Ruling Andhra Pradesh)

Subject Matter: The department held that liquidated damages collected by AP Power Development Co Ltd (APPDCL) for non-performing an act constitutes a 'supply' as per section 7 of CGST Act.

Background and Facts of the case

- APPDCL has entered an agreement with Chettinad Logistics Private Limited ('CLPL') for supply of certain services which includes liasoning with third parties for coordination and supervision of coal loading, arranging rakes, transportation of raw coal etc.
- In the event of failure in performance of job assigned to the CLPL, the above agreement entrusts APPDCL to collect liquidated damages which would be determined basis increase in moisture of raw coal over the loading end, increase in ash percentage, penalties for late transportation and short supply of coal.
- In this regard, APPDCL sought advance ruling on the following:
  - Whether liquidated damages collected by the APPDCL from CLPL for non-performing of an act constitute as supply as per Section 7 of GST act?
  - What is the classification under GST for such liquidated damages?
  - What is the Applicable rate of tax if the answer to the question number 1 is affirmative?
- According to Section 73 of the Contract Act, 1972, when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. Therefore, the compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of that contract.
- These liquidated damages arise on mutual acceptance of both parties on account of an 'unintentional occurrence' which both parties actually intend to avoid. Hence liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract.
- Circular 178/10/2022-GST dated 03 August 2022 provides that the damages collected by APPDCL are not taxable.

Discussions and findings of the case

- The Circular relied upon by the APPDCL is not universal and absolute. Rather, the circular is only meant to clarify the position of law and shall be applied reasonably having regard to the facts of the case.
- The above circular has provided that the payment towards damages as received in the instant case are incidental to the main supply and if the main supply is taxable, the incidental supply shall also be taxable.
- Therefore, the liquidity damages in the instant case are exigible to tax under SAC 9997, at the rate of 18%.

Ruling

- In light of the above liquidity damages in the instant case are exigible to tax under SAC 9997, at the rate of 18%.

- The Circular relied upon by the Applicant is not universal and absolute. Rather, the circular is only meant to clarify the position of law and shall be applied reasonably having regard to the facts of the case.

2. M/s OHMI Industries Asia Private Limited v. Assistant Commissioner, Central Tax W.P.(C) 6838/2022 – Delhi High Court)

Subject Matter: High Court allowed the refund of integrated tax along with interest and held that the market research services rendered to its affiliated entities not to be construed as intermediary services.

Background

- M/s OHMI Industries Asia Private Limited (Petitioner) provides business support services and market Research Services ('MRS') to its affiliated entity namely OHMI Industries Ltd., Japan (OHMI, Japan) under separate agreements.

- As per the Petitioner, the above services to OHMI, Japan qualified as 'Zero Rated Supply ' under GST in respect of which refund of GST paid thereon is admissible. Consequently, the petitioner had applied for refund which was rejected for reason that the Petitioner had provided business support services directly to the customers of OHMI, Japan and such services would qualify as 'intermediary services' on which refund is not admissible.

- The Petitioner did not contest the rejection of refund to the extent of Business Support Services provided to OHMI, Japan; however challenged the rejection of refund relating to MRS, before the Appellate Authority (AA). The AA rejected the appeal without deciding on the eligibility of refund in case of MRS.

- Therefore, the Petitioner filed a writ petition before the HC against the order of the AA.

Discussions and findings of the case

- The HC observed that intermediary is the one who arranges or facilitates the supply of goods or services and in current case, the Petitioner has rendered market research services on his own account. Reliance was placed on Circular No.159/15/2021-GST dated 20 September, 2021 in this regard.

- It was concluded that the issue is squarely covered by its decision in Ernst And Young Ltd. [W.P.(C) No.8600/2022] and therefore, the HC gave directions to process the refund of integrated tax along with interest pertaining to MRS.

Judgement

- In light of the above, the Hon'ble High Court held that allowed the refund of integrated tax along with interest and held that the market research services rendered to its affiliated entities not to be construed as intermediary services.

Customs

3. M/S. Sony India Pvt. Ltd v. Union of India & ANR (Special Leave Petition (Civil) Diary No. 2319/2023)

Subject Matter: Supreme Court had dismissed Revenue's appeal against the judgment of Hon'ble Telangana High Court (HC) allowing Sony India to seek amendment of its Bill of Entries (BoE) under Section 149 of the Customs Act, 1962 ('Customs Act') and upheld the decision of Telangana High Court.

Background and Facts of the case

- Sony India Pvt. Limited ('Petitioner') had imported mobile phones for the purpose of trading. Such mobile phones were chargeable to concessional rate of 1% subject to the condition that no credit should have been availed on the inputs or capital goods used in the manufacture of mobile phones. However, at the time of importation, the Petitioner was forced to pay CVD at the full rate of 6% since the assessing authority disputed the eligibility of such exemption and also, the EDI system did not facilitate claim of exemption.

- At this juncture, the Supreme Court in the case of ITC Ltd. vs. Commissioner of Central Excise [(2019) 17 SCC 46] held that refund under Sec.27 would only be permissible when the BoE has been amended or modified under Section 128 of the Customs Act (which allows an aggrieved person to file appeal) or under other relevant provisions of the Customs Act.

- Therefore, the Petitioner requested amendment to 136 BoEs under Section 149 of the Customs Act to reassess the BoEs at concessional rate by applying the exemption and grant subsequent refund. However, such request was rejected. Aggrieved by the said order Petitioner approached the HC.

- The HC took a note of Hon'ble Supreme Court decision in the matter of ITC Ltd. (supra) observed that even the SC clearly indicated that the modification of the assessment order can be either under Section 128 or under other relevant provisions of the Act i.e. Section 149.

Discussions and findings of the case

- The High Court observed that the Assessing Authority had failed to consider the fact that Section 149 of the Act does not prescribe any time limit for amending the Bill of Entry filed and assessed. The instant matter related to incorrect determination of duty by the assessing authority initially and therefore, the Petitioner is compelled to seek amendment of BoE under Section 149.

- The petitioner cannot be penalized for what the authority ought to have done correctly by himself.

- The High Court dismissed the order issued by Revenue and directed to amend the BOEs so that the Petitioner can claim refund of excess CVD paid under Section 27 of the Customs Act.

Direct Tax

1. Supreme Court upholds non-levy of penalty for delayed remittance of withholding tax since it is liable for prosecution

Background

- Under the Indian Tax Laws (ITL), a taxpayer is statutorily required to deduct withholding tax from several specified payments and pay it to the government within the specified time limit.

- One of the consequences of withholding tax default is levy of interest. Up to 30 June 2010, there was a uniform rate of interest of 1% per month (or part of the month) specified for default of both non-deduction of withholding tax and failure to pay withholding tax on time after deduction. From 1 July 2010 onwards, a higher rate of interest of 1.5% per month (or part of the month) was provided for failure to pay withholding tax on time after deduction. However, the present case pertains to tax year 2002-03 when there was a uniform rate of interest for both defaults.

- Prior to amendment by the Direct Tax Laws (Amendment) Act, 1987 (DTLA), with effect from 1 April 1989, the prosecution provision for withholding tax default (S.276B) covered default of both failure to withhold tax and failure to pay withholding tax on time to the government. Post amendment by the DTLA and prior to subsequent amendments, it merely covered default of failure to pay withholding tax on time to the government.

- The DTLA inserted S.271C in the ITA, with effect from 1 April 1989, to provide for levy of penalty for failure to deduct whole or any part of withholding tax as required by or under the withholding tax provisions of the ITL.

- In 1997, both S.271C and S.276B were amended to expand the scope to the following defaults: (a,) Failure to pay dividend distribution tax (DDT). (b.) Failure to pay withholding tax on lottery winnings in kind.

- Recently, the Finance Act, 2023 further expanded the scope of both S.271C and S.276B, with effect from 1 April 2023, to cover failure to pay or ensure payment of withholding tax on payments in kind under several other withholding tax provisions, in addition to lottery winnings.

Facts

- The Taxpayer, a company engaged in software development, made certain salary and other contractual payments to its employees for tax year 2002-03. The Taxpayer withheld tax aggregating to INR11m on such payments, but deposited the tax with the government with a delay ranging from five days to ten months.

- The tax authority conducted a survey operation at the Taxpayer's premises which uncovered the delay, pursuant to which, the tax authority imposed a penalty under S.271C on the Taxpayer of an amount equivalent to the amount of withholding tax paid belatedly.

- The Taxpayer unsuccessfully challenged the levy of penalty up to the HC. Being aggrieved, the Taxpayer preferred further appeal before the SC.

Taxpayer's contentions

- The penalty under S.271C can be levied only in case of failure to deduct withholding tax and not in a case of belated or delayed remittance of withholding tax.

- The language of S.271C itself makes a distinction between two types of default: (a.) Failure to deduct whole or any part of withholding tax as required by or under the withholding tax provisions of the ITL. (b.) Failure to pay DDT or withholding tax on lottery winnings in kind. Thus, it does not cover default of failure to pay withholding tax on time.

- In terms of the principles of interpretation of statutes, penal provisions are to be interpreted strictly and literally. If penalty is levied for belated remittance of withholding tax, it would amount to extending the scope of the penal provision to what is not included therein.

- While the HC, in the Taxpayer's case, ruled against the Taxpayer, the full bench of the HC had, subsequently, overruled it in the case of Lakshadweep Development Corporation Ltd v. Addl CIT.

Tax authority's contentions

- The object and purpose of S.271C is to levy penalty on failure to deduct withholding tax. Prior to amendment by the DTLA, such default attracted prosecution under S.276B. S.271C was inserted to provide for levy of penalty for failure to deduct withholding tax.

- Therefore, if a taxpayer deducts withholding tax but does not remit it to the government or remits it after a delay, such taxpayer is liable to pay penalty under S.271C. Any other view will frustrate the object and purpose of insertion of S.271C.

- Reliance was placed on a circular issued by the Central Board of Direct Taxes (CBDT), which explained the rationale for insertion of S.271C to contend that post amendment by the DTLA, in addition to prosecution, the person who had deducted withholding tax but not remitted it to the government, shall also be liable to pay penalty under S.271C.

SC's ruling

- The SC ruled in the Taxpayer's favour and held that no penalty can be levied for default of delayed remittance of withholding tax for the following reasons:

- The present case concerns default of belated remittance of withholding tax and not a case of failure to deduct withholding tax. It falls under the first part of S.271C which provides for levy of penalty for failure to deduct whole or any part of withholding tax, as required by or under the withholding tax provisions of the ITL. The first part of S.271C is very clear and covers case of "fails to deduct" alone. It does not speak about belated remittance of withholding tax.

- In terms of the settled position in law, the penal provisions are required to be construed strictly and literally. They are required to be read as they are. Nothing is to be added or taken out from the penal provisions.

- On a plain reading of S.271C, it is categoric and unambiguous that its first part does not apply to the default of belated remittance of withholding tax. It is only the second part of S.271C which applies to "fails to pay", but it is restricted to DDT and withholding tax on lottery winnings in kind. The court cannot read something more into the provision contrary to the intent and legislative wisdom.

- Where the legislature intended for separate consequences for non-payment or belated remittance of withholding tax, it has provided for levy of interest and prosecution.

- The tax authority's reliance on the CBDT circular (supra) is misplaced. On the contrary, the said circular supports the Taxpayer. The circular explains that prior to amendment by the DTLA, both types of default viz., failure to deduct withholding tax and failure to pay to the government after deducting, were liable to prosecution. Post amendment, the former (i.e., failure to deduct withholding tax) is made liable to penalty under S.271C, whereas the latter (i.e., failure to pay to the government after deducting), being a more serious offence, will continue to attract prosecution.

- Even otherwise, the words "fails to deduct" occurring in the first part of S.271C cannot be read into "failure to deposit/pay the tax deducted". Therefore, on true interpretation of S.271C, there shall not be any penalty leviable under S.271C on mere delay in remittance of withholding tax after deducting by the taxpayer. Such default will attract interest and prosecution.

2. Karnataka High Court rules no withholding on year-end provisions reversed in subsequent year where payees were not identifiable

Background and Facts

- In Subex Ltd. (Taxpayer), the issue before Karnataka High Court was whether the Taxpayer had withholding obligation on year-end provision made in the books toward liability for legal and professional charges which was reversed in the subsequent year. The Taxpayer was engaged in the business of providing software services and development of various products for telecommunication industry. The Taxpayer made year-end provision in its books toward legal and professional charges on an estimated basis where payees were not identifiable.

- Such year-end provision was subsequently reversed, and tax was withheld in the subsequent year as and when invoices were received from the payees and the liability to pay was crystalized. The relevant withholding provisions require withholding on "credit" or payment, whichever is earlier, and it is specifically provided that "credit" includes credit to any account, whether called "suspense account" or by any other name.

- The tax authority asserted that the Taxpayer was in default of withholding obligation on credit made toward year-end provision even though the actual liability to pay arose subsequently.

High Court's Ruling

- The Karnataka HC ruled in favor of the Taxpayer and held that the Taxpayer was not in default of withholding obligation since it was reversed in the subsequent year and no payees were identifiable. It followed the ratio of its earlier rulings in the cases of Karnataka Power Transmission Corporation Ltd. vs. DCIT and Volvo India Pvt Ltd. vs. ITO. In the earlier rulings, it was held that the existence or absence of entries in the books of accounts is not decisive or conclusive factor in deciding the right of the taxpayer in claiming deduction and if no income is attributable to payee, liability to deduct tax does not arise. The HC further noted that the Taxpayer had duly withheld tax in the subsequent year in accordance with law and remitted within the due date.

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