

# **EY Tax and Regulatory Alert**

February 2023

Prepared for ACMA

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# INDIRECT TAX

## Part A - Key Indirect Tax updates

### Goods and Services Tax

This section summarizes the regulatory updates under GST for the month of February 2023

**Budget Update 2023 Indirect Tax Key highlights: -**

#### ▶ Input Tax Credit:

▶ Proposed amendments to Section 17(5) of the CGST Act, provides to disallowance of ITC on goods & services used for CSR activities under Section 135 of the Companies Act 135.

▶ An amendment have been proposed to Value of exempt supply to include supply of warehoused goods to any person before clearance for home consumption. ITC relating to such transaction shall also be restricted.

▶ An amendment have been proposed in Section 16 to clarify that recipient shall be required to pay ITC along with interest under Section 50 if payment to supplier is not made within 180 days of date of invoice.

#### ▶ GST returns:

▶ GSTR-1/ 3B/ 8/ 9 cannot be furnished after the expiry of 3 years from the due date of return. Further, Government can issue a notification creating an exception for a class of taxpayer to permit them to file returns even after 3 years.

#### ▶ GST Refund

▶ Manner, conditions & restrictions for computation of interest in case of delay in

sanctioning of refund (after 60 days from application date) shall be prescribed.

#### ▶ Retrospective amendments (effective from July 1, 2017):

▶ Following entries inserted in Schedule III on 01 February 2019 have been proposed to be given a retrospective application from 01 July 2017:

- Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
- Supply of warehoused goods to any person before clearance for home consumption; and
- Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

▶ No refund shall be allowed for past period in case tax has been paid on these transactions.

#### ▶ Registration

▶ Requirement to obtain registration under the GST laws are governed Section 22 (threshold-based registration) and Section 24 (mandatory registration in specified cases). Vide the amendments proposed in Section 23 of the CGST Act, it has been provided that the following categories of persons are not required to obtain registration even if they are covered under Section 22 or Section 24 above:

- Persons engaged exclusively in the business of supplies not liable to tax;
- Persons engaged exclusively in the business of supplies exempt from tax;

- An agriculturist, to the extent of supply of produce out of cultivation of land; and
  - Persons, as may be notified by the Government (such as persons exclusively engaged in providing outward supplies)
- ▶ This above change is applicable from the retrospective effect from July 1, 2017.

▶ **Place of supply:**

- ▶ Proviso to Section 12 (8) of the IGST Act, 2017 is omitted so as to specify the place of supply of transportation of goods, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.

▶ **Penal provisions:**

- ▶ Penalty of Rs 10,000 or 100% of tax amount may be imposed on an e-commerce operator in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers

- ▶ Decriminalization – Following offences have been decriminalized under GST:

- i. Obstruction or preventing any officer in discharge of his duties
- ii. Deliberate tampering of material evidence
- iii. Failure to supply information

- ▶ Prosecution – Threshold for launching prosecution under GST and the amount of compounding of offences is proposed to be amended as per below table:

Particulars	Old Threshold	New Threshold
Initiation of prosecution under GST (except for issuance of invoice without supply of goods & services)	1 Cr	2 Cr
Amount of compounding of offences	50% - 150%	25% - 100%

▶ **49<sup>th</sup> GST Council Meeting Updates:-**

▶ **GST Appellate Tribunal**

- ▶ The Council has adopted the report of Group of Ministers with certain modifications. The final draft amendments to the GST laws shall be circulated to Members for their comments. The Chairperson has been authorized to finalize the same

▶ **Relaxation in revocation for cancellation of registration**

- ▶ Currently, the due date for application of revocation of cancellation of registration is 30 days from the date of cancellation. This time period could be extended upto 90 days upon due approval of the higher ranked officer i.e. Joint Commissioner/Commissioner.

- ▶ It is proposed to extend the time limit from 30 days to 90 days without any additional approval of the higher ranked officer.

- ▶ The said time can be extended upto a further period of 180 days where registration is on account of non-filing of returns upon approval of the Commissioner or the officer authorized by him.

- ▶ For the past cases, an amnesty scheme would also be provided for application which could not be filed within the time limit by allowing them to file application subject to certain restrictions. This would be quite helpful to assessees who are left with no recourse if their registration stands cancelled and their time limit stands lapsed

▶ **Extension of time period of best judgement assessment upon non-filing of returns**

▶ If a person does not file return after 15 days from the date of issuance of reminder notice in Form GSTR-3A, then the officer has the power to perform best judgement assessment under Section 62 of the CGST Act 2017.

▶ If the return is filed within 30 days of the best judgment assessment order in Form ASMT-13, then the order stands withdrawn. This time limit has been extended from 30 days to 60 days, extendable by another 60 days, subject to certain conditions.

▶ For the past period, an amnesty scheme would be provided where the concerned return could not be filed within 30 days of the assessment order but has been filed along with due interest and late fee upto a specified date, irrespective of whether an appeal has been filed or not against the assessment order, or whether the said appeal has been decided or not

▶ **Reduction of late fees for filing of annual returns**

▶ Presently, late fee of Rs 200 per day (Rs 100 CGST + Rs 100 SGST), subject to a maximum of 0.5% of the turnover in the State or UT (0.25% CGST + 0.25% SGST), is payable in case of delayed filing of annual return in FORM GSTR-9.

▶ The Council has recommended to rationalize this late fee for delayed filing of annual return in FORM GSTR-9 for FY 2022-23 onwards, for registered persons having aggregate turnover in a financial year upto Rs 20 crore, as below:

Registered persons having an aggregate turnover of up to Rs. 5 crores in the said FY:	Rs 50 per day (Rs 25 CGST + Rs 25 SGST), subject to a maximum of 0.04 per cent. of his turnover in the State or Union territory (0.02% CGST + 0.02% SGST).
Registered persons having an aggregate turnover of more than Rs. 5 crores and up to Rs. 20 crores in the said FY	Rs 100 per day (Rs 50 CGST + Rs 50 SGST), subject to a maximum of 0.04 per cent. of his turnover in the State or Union territory (0.02% CGST + 0.02% SGST)

▶ **Amnesty scheme for filing pending GSTR-4 / 9 / 10**

▶ A number of taxpayers have not been able to file their following pending returns on account of the high late fees involved in it:

- GSTR 4 - composition dealers
- GSTR-9 – annual returns
- GSTR-10 – final returns after cancellation of registration
- Amnesty scheme is proposed to be announced for such taxpayers for filing of pending returns with reduced late fees

▶ **POS in case of transportation of goods where either supplier or recipient is outside India**

▶ Presently, in case of transportation of goods (other than by mail or courier), the place of supply in terms of Section 13(9) of IGST Act shall be the destination of goods

▶ With the proposed amendment, the place of supply shall be the location of recipients of service.

## Customs and Foreign Trade Policy (FTP)

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

### ► Budget Update 2023 Customs Key Highlights: -

#### ► Changes in Auto Sector

S.No.	Heading, sub-heading tariff item	Description	BCD Rate (Current Rate)	BCD (New Rate)	Corresponding SWS exemption	Remarks
1	8703	Vehicle (including electric vehicles) in Semi-Knocked Down (SKD) form	30%	35%	Motor cars and other motor vehicles (excluding electrically operated vehicles) principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars, new, which have not been registered anywhere prior to importation, if imported,-	Notification no. 02/2023-Customs dated 01 February 2023 read with Notification No. 04/2023 dated 01 February 2023
2	8703	Vehicle in Completely Built Unit (CBU) form, other than with CIF more than USD 40,000 or with engine capacity more than 3000 cc for petrolrun vehicle and more than 2500 cc for diesel-run vehicles, or with both	60%	70%	(1) As a Completely Knocked Down (CKD) kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, with engine or gearbox or transmission mechanism in pre-assembled form but not mounted on a chassis or a body assembly  (2) in any other form other than with CIF value more than US \$ 40,000 or with engine capacity more than 3000 cc for petrol-run vehicles and more than 2500 cc for diesel-run vehicles, or with both	

#### ► Changes in EV Sector

#### ► Changes in Customs duty Rate for Capital Goods

► Customs duty exemption has been provided on import of specified capital goods and machinery (of Chapter 84 and 85) required for manufacture of lithium-ion cells for batteries used in electric vehicles. Changes through Notification 06/2023 dated 01

February 2023 via amendment in notification 25/2002-Customs dated 01 March 2002.

#### ► Changes in BCD rates and SWS exemption for EV

S.No.	Heading, sub-heading tariff item	Description	BCD Rate (Current Rate)	BCD (New Rate)	Corresponding SWS exemption	Remarks
1	8703	Electrically operated Vehicle in Completely Built Unit (CBU) form, other than with CIF value more than USD 40,000	60%	70%	Electrically operated vehicles, if imported,-  (1) incomplete or unfinished, as a knocked down kit containing necessary components, parts or sub-assemblies for assembling a complete vehicle, including battery pack, motor, motor controller, charger, power control unit, energy monitor, contactor, brake system, electric compressor, whether or not individually pre-assembled, with, (b) any of the above components, parts or sub-assemblies interconnected with each other but not mounted on a chassis -  (2) in a form other than (1) above, and other than with a CIF value more than US \$40,000	Notification no. 02/2023-Customs dated 01 February 2023 read with Notification No. 04/2023 dated 01 February 2023

#### ► Exemption Benefit to Testing Agencies:

► Exemption from BCD is provided to vehicles, specified automobile, parts/components, sub-systems and tyres, when imported by notified testing agencies (like ARAI, ICAT, GARC, NATRAX etc.) for the purpose of testing and/ or certification, subject to specified conditions (Change done vide Notification no. 02/2023-Customs dated 01 February 2023 by introduction of s.no.532A in Exemption Notification 50/2017-cus dated 30 June 2017).

► **Exemption to Auto-component manufacturing:**

Changes via Not. No. 2/2023-Cus dated 1 Feb 2023 (corresponding S.No in notification no. 50/2017-Customs)	Heading, sub-heading, tariff item	Description	BCD Rate (Current Rate)	Remarks
527B	8507 60 00	Lithium-ion cell for use in the manufacture of battery or battery pack of electrically operated vehicle (EVs) or hybrid motor vehicle	5%	Benefit extended by one year, i.e. upto 31 <sup>st</sup> March 2024
495	8507	Batteries for electrically operated vehicles, including two and three wheeled electric motor vehicles	5%	Benefit extended by one year, i.e. upto 31 <sup>st</sup> March 2024

**Change for Tyre Manufacturer**

- Duty rates on import of compounded rubber has been changed from 10% to lower of 25% or INR 30 per Kg.

► **Other Key Changes**

S.No.	Heading, sub-heading, tariff item	Description	BCD Rate (Current Rate)	BCD (New Rate)	Remarks
1	8712 00 10	Bicycles [Bicycles and other cycles (including delivery tricycle), not motorised]	30%	35%	Amendment through Finance bill 2023. Further, vide N/N 04/2023 dated 01 February 2023, SWS exemption has been exempted on bicycles.

► **Notification No: 55/2015-2020-DGFT Dated: 7.02.2023**

In exercise of the powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with Para 1.02 of the Foreign Trade Policy 2015-20, the Central Government hereby, on the recommendation of the RoDTEP Committee, notifies alignment of RoDTEP Schedule under Appendix 4R for chapter 28, 29, 30 & 73 with First Schedule of the Customs Tariff Act, 1975. This revised Appendix 4R shall be effective from 15.02.2023.

- The revised Appendix 4R will be applicable for exports made from 15.02.2023 to 30.09.2023. However, to adhere to the Scheme budgetary framework, necessary changes and revisions as per Para 4.54 of FTP 2015-20 may be made whenever required.
- The revised RoDTEP Appendix 4R containing the eligible RoDTEP export

items, rates and per unit value caps, is available at the DGFT portal [www.dgft.gov.in](http://www.dgft.gov.in) under the link 'Regulatory Updates >RoDTEP'.

► **Trade Notice No. 26/2022-23 dated 08.02.2023:**

It is informed that there is an existing permanent platform wherein daily video conference facility for interaction between DGFT Regional Authorities officials and members of trade & industry in lieu of physical interactions at DGFT Regional Authorities is convened.

- Every RA's permanent VC link, operational on every working day between 10:30 AM to 11:30 AM, attended by an Officer not less than a Deputy DGFT is accessible on DGFT website (<https://dgft.gov.in>) -4 About DGFT 4 VC Facility for Trade Facilitation w.e.f 2nd October 2022.

- Members of trade can also seek assistance/guidance with regard to the filing of application of Advance Authorisation cases for fixation/finalization of Standard Input Output Norms (SION) through this facility to ensure completeness of application for faster fixation of SION.

## **Direct Tax**

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

### **Background**

- ▶ The CBDT, vide the Notifications, has amended Rule 12, as also notified the ITR forms, for all categories of taxpayers for tax year 2022-23 [assessment year (AY) 2023-24]. However, the instructions for filing the ITR forms are awaited.
- ▶ This Tax Alert summarizes the key changes in the ITR forms as compared to the immediately preceding tax year 2021-22.

### **Key changes in ITR Form**

Common amendment made in different ITR forms:

- ▶ Additional reporting requirement for taxpayers engaged in business or profession and choosing for alternate regime of taxation [ITR 3, 4]: The provisions of ITR provide for an option to the individual and HUF taxpayers to opt for an alternate regime of taxation. Under the regime, the taxpayer, an individual or HUF engaged in business or profession, is required to exercise option to fall under alternate regime. The option once exercised is irrevocable until business/profession ceases. The option can be withdrawn only once in subsequent years and if opted out in any year, such individual cannot again opt in till business/profession ceases. The tax return forms notified for tax year 2022-23 prescribe that the taxpayers are required to provide the detail as under:

- ▶ Whether the taxpayer has opted for paying tax under the alternate regime in earlier tax year. If the taxpayer has exercised the option, then date of filing form for exercising the option and acknowledgement number are required to be furnished.
- ▶ Whether the taxpayer has opted out of alternate tax regime in any tax year. If the taxpayer has opted out, then date of filing form for exercising the option and acknowledgement number are required to be furnished.
- ▶ The form also requires taxpayer to furnish the option for alternate tax regime wherein it has options like “Opting in now”, “Not opting”, “Continue to opt” and “Opt out”. In current tax year, additional option has been inserted wherein taxpayer can choose “Not eligible to opt in”. The form requires taxpayer to choose “Opting in now”, if it is opting for alternate tax regime for the first time in the current year. Additionally, taxpayer is required to furnish date of filing of form exercising the option to opt-in or opt-out and the acknowledgement number.
- ▶ **Requirement to report income from virtual digital asset (VDA) under specific schedule and corresponding changes in computation of business income and capital gains [ITR 2, 3, 5, 6,7]:**
  - ▶ The provisions for taxing income arising from transfer of VDA were introduced by FA 2022. It provides for taxing income arising from transfer of VDA at 30% wherein income is computed by reducing only cost of acquisition. It prohibits set-off of any loss arising under any other provisions of the ITR against income from VDA as well as prohibits set-off and carry forward of loss arising from transfer of VDA against any other income.
  - ▶ A new schedule has been introduced requiring the taxpayer to report, date of



acquisition, date of transfer, head of income (i.e., business or capital gains) under which income is classified, cost of acquisition (in case of gift or otherwise) and consideration earned for computing the income from transfer of VDA.

▶ Corresponding changes are made under schedules relating to business income, capital gains and income with special rates of taxes in order to incorporate and report income from transfer of VDA under respective schedule. Under capital gains schedule, income from transfer of VDA should be reported quarterly.

▶ **Requirement to report income on which relief of deferral of tax was claimed on income from overseas retirement benefit account [ITR 2, 3]:**

▶ The provisions of ITL provide for taxation of income from overseas retirement fund basis Income-tax rules. The tax deferral provisions are applicable only to a resident individual taxpayer and not to non-resident taxpayers. The tax return forms for tax year provide for reporting of income earned in the retirement benefit account maintained in a notified country/other than a notified country as well as reporting of quarterly break-up of income earned in such retirement benefit account. Additionally, the tax return forms also provide for reporting of taxation relief claimed in respect of such income.

▶ The new tax return forms now include a specific row item under “Salary” and “Income from other sources” schedules for disclosing such income from overseas retirement benefit account in respect of which relief is claimed in past years.

▶ It appears that the amendment is pursuant to claw-back provisions of ITL which provide that income from overseas retirement benefit account on which tax relief is claimed in the past tax years shall become

taxable in the year in which individual becomes non-resident.

▶ **Modification of schedule on tax collected at source (TCS) to enable taxpayer to claim taxes collected in name of other persons [ITR 2,3,5,6,7]:**

▶ The new tax return form has modified the schedule which enable taxpayer to claim credit for tax collected at source. The schedule has been modified to furnish, TCS credit related to other person, Permanent Account Number (PAN) of other person whose TCS is being claimed and TCS of other person pertaining to current tax year and claimed in current year.

▶ **Additional reporting requirement to disclose turnover and income from Intra-day trading [ITR 3,5]:**

▶ The new tax return form contains additional requirement to report turnover from intra-day trading and income from intra-day trading which is transferred to Profit or Loss account under Trading account for the year 2022-23. Such income from intra-day trading is included in computation of speculative business income. It appears that such modification is made in order to align ITR 3 and 5 with ITR 6 which has similar requirement.

▶ **Requirement to disclose status as Foreign Institutional Investor (FII) or Foreign Portfolio Investor (FPI) [ITR 2, 3]:**

▶ The new tax return form requires taxpayer to disclose whether it is registered as FII or FPI with Securities Exchange Board of India and its registration number.

▶ **Filing of return for reporting under specific provisions of ITL in case of third-party search assessment [ITR 1, 2, 3, 4, 5, 6, 7]:**

▶ Prior to Finance Act 2021 (FA 2021), filing of income tax return by a person on whom search action is initiated or by a person (i.e., third party) whose information or evidences about income escaped tax is found in search proceedings on another person was governed by special provisions under ITL.

▶ Post FA 2021, the provisions of ITL provide for a revamped procedure for reassessment and search assessment taking place post 1 April 2021. Consequently, special provisions governing search related matters were made confined to search initiated up to 31 Mar 2021. In case of search initiated post 1 April 2021 assessment shall be carried out only under revamped reassessment provisions of ITL. Consequently, the tax return forms notified for tax year 2021-22 obliterated the reference of filing return of income under erstwhile search assessment scheme.

▶ In case of search affected third party, it was possible that search was initiated on the original taxpayer prior to 31 March 2021 but search proceedings in case of third party is initiated on or after 1 April 2021. The omission in ITR form of the reference to file tax return under search assessment scheme for tax years 2021-22 leads to issue in case of such search affected third party.

▶ Addressing the issue, the new tax return forms have re-introduced the reference to filing return of income by third party in case of search affected third party.

▶ **Changes in ITR-1 (Sahaj) [For resident Individuals having total income up to INR 5m, having income from salaries, one**

**house property, other sources, and agricultural income up to INR5,000]**

▶ The provisions of ITL require a person including individuals to file return of income even when the income of the person is not taxable as it is below the threshold limit if the person has deposited an amount or aggregate of the amounts exceeding INR 100Mn in current account maintained with any banking company or co-operative bank.

▶ A current account is generally maintained for person engaged in business or profession. ITR-1 form is applicable to taxpayers who do not have any income from business or profession. Hence, the reference of deposit of amount exceeding INR 100Mn in current account is omitted in ITR-1 as it was redundant. ITR-1 Form cannot be filed by an individual who does not have any taxable income but is filing the income tax return form because of depositing more than INR 100Mn in one or more current accounts.

▶ **Changes in ITR-5 [For taxpayers other than individual, HUF, company as well as person furnishing ITR-7]:**

▶ The new tax return forms also provide for additional reporting of PAN of incoming and outgoing member in case of change in constitution of partners/ members of firm, Association of Persons (AOP), Body of Individuals (BOI). It also requires reporting of remuneration paid or payable to retiring partner in case of firm which hitherto was not captured in ITR form. The Schedule Part A-GEN in ITR captured only details of remuneration paid to partners/members as on 31 March 2023 or date of dissolution.

▶ **Changes in ITR-6 [For company taxpayers, other than companies**

**claiming exemption of any income from property held for charitable or religious purposes]:**

- ▶ FA 2022 introduced a provision which enabled successor company to file modified return of income pursuant to order passed by an High Court or Tribunal or adjudicating authority approving business re-organization. The modified return is required to be filed within six months from the end of the month in which order is issued. On 19 September 2022, the CBDT issued a notification specifying the manner and details for filing modified return. Consequentially, the new tax return form is modified to enable the successors to file revised return after giving effect to order of the High Court or Tribunal or adjudicating authority.
  
- ▶ **Changes in ITR-7 [For taxpayers being charitable trusts and other institutions, political parties, etc.]:**
  
- ▶ There have been several amendments in the provisions applicable to charitable institutions by FA 2022. The modifications made to ITR-7 are pursuant to such amendments

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## Part B- Case Laws

### Goods and Service Tax

#### 1. LM Wind Power Blades (India) Pvt. Ltd. v. Commissioner of Central Tax (2023 (2) TMI 536 - Karnataka High Court)

**Subject Matter:** The Hon'ble Karnataka High Court applied the principles of restitution and held that the petitioner would be entitled to interest by way of compensation for the loss caused to the petitioner on account of illegal and wrongful deprivation of amount by the Revenue. Also, the interest at the rate of 6% p.a. shall be paid for the period when the bank guarantees were illegally encashed by the Revenue up to the date when such amount was refunded back to the Petitioner.

#### Background and Facts of the case

- ▶ M/s LM Wind Power Blades (India) Pvt. Ltd (hereinafter referred to as the Petitioner) had furnished Bank Guarantees during the year 2018, by way of security for release of goods and deposited various amounts with the respondents along with pre-deposit wile filing appeals. Thereafter, the GST authorities illegally encashed the bank guarantees of the Petitioner.
- ▶ Subsequently, the Petitioner filed a writ petition before the Bombay High Court. The Hon'ble Bombay High Court directed the GST authorities to refund the amount covered by the 8 encashed bank guarantees together with applicable statutory interest
- ▶ Further, the Bombay High Court dismissed the review petition, filed by the Revenue, holding that the encashment of the bank guarantees by the GST authorities was illegal and directing refund of the same along with interest

- ▶ Thereafter, the GST authorities issued a letter to file a refund application under Section 54 of the CGST Act, 2017, in response to contempt proceedings initiated by the Petitioner
- ▶ The Petitioner submitted a reply to the said letter and enclosed the refund application. However, the petitioner specifically stated that the refund applications had been filed only at the instance/insistence of the authorities and were without prejudice to its rights to seek interest on the amount covered under the Bank guarantees
- ▶ The Revenue granted the refund to the petitioner in terms of the Bombay High Court judgment but rejected the interest claim. The Revenue issued a show cause notice to the Petitioner, in response to the refund application filed for interest claim. Subsequently, the Revenue passed the order, denying the refund of interest despite submission of all the relevant documents by the Petitioner

#### Discussions and findings of the case

- ▶ The Petitioner contended that the GST authorities illegally encashed the aforesaid bank guarantees. That the order passed by the Bombay HC directing refund to the Petitioner along with interest attained finality and became conclusive and binding upon the Revenue
- ▶ The Hon'ble Karnataka High Court observed that the Hon'ble Bombay High Court not only directed refund of the amount covered by the bank guarantee but also directed refund of applicable statutory interest by the respondents in favour of the petitioner. Also, the reasoning of the Revenue that, in the impugned order that the petitioner was not entitled to interest in terms of the judgment of the Bombay High Court is clearly erroneous and the same deserves to be set aside.

## Judgement

- ▶ In light of the above, the Hon'ble Karnataka High Court applied the principles of restitution and held that the petitioner would be entitled to interest by way of compensation for the loss caused to the petitioner on account of illegal and wrongful deprivation of amount by the Revenue. Also, the interest at the rate of 6% p.a. shall be paid for the period when the bank guarantees were illegally encashed by the Revenue up to the date when such amount was refunded back to the Petitioner.

## Customs and Foreign Trade Policy (FTP)

### 1. Sick India Pvt. Ltd. [Customs AAR Maharashtra vide Ruling No. CAAR/Mum/ARC/47/2022]

**Subject Matter:** The Customs Authority for Advance Ruling, Mumbai has held that, the valuation methodology that is proposed to be adopted under the transfer pricing system and steering (TPuS) method is consistent with Section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('CVR')

#### Background and Facts of the case

- ▶ Sick India Pvt. Ltd. (hereinafter referred to as the applicant) is engaged in the import, marketing and selling of sensors, lasers and parts (classifiable under Chapters 84, 85 and 90 of the first schedule to the Customs Tariff Act, 1975) in India that are manufactured by their overseas related company (ORC). Most of the goods imported by the applicant are customised as per the customers' need, and the goods enjoy the brand value associated with the applicant.

- ▶ In respect of valuation, the applicant's current practice of charging the price is based on a gross price list (according to the ORC's sale proceeds) minus the discount (depending on the sale territory). SVB, New Delhi, had accepted this valuation methodology in 2013, stating that the existing price is not influenced by the relationship between the applicant and ORC.

- ▶ In 2017, the Directorate of Revenue Intelligence, Mumbai Zonal Unit, investigated the applicant's imports. They alleged that there was undervaluation of imported goods and thus demanded differential duty and interest along with penalty. Consequently, the applicant filed an appeal, and the matter is pending before the Mumbai bench of the Customs Excise and Service Tax Appellate Tribunal.

- ▶ To standardise and harmonise its transfer pricing globally, the ORC has decided to shift the pricing methodology to the resale minus or resale price method, this method is also known as Transfer Pricing System and Steering Concept ('TPuS'). Consequently, the applicant wished to change its process for arriving at the valuation of its future imports from its current practice (gross price list minus discount) to TPuS at the transactional and individual levels.

- ▶ The question of law put before the authority was , *"whether the value arrived by using the new valuation methodology (i.e. TPuS) is acceptable as 'Transaction Value' in terms of Section 14 of the Customs Act, 1962 read with the CVR?"*

## **Ruling**

- ▶ The proposed TV is the sum of the manufacturing cost, administrative expenses, other expenses and profit of the manufacturer-exporter. The TPuS method shows that the price determined as TV adequately ensures the recovery of all costs and profits. Therefore, it can be said that the price has not been influenced by the relationship between the parties

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

## Chennai

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

## Delhi NCR

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

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

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

## Hyderabad

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

## Jamshedpur

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

## Kochi

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

## Kolkata

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

## Mumbai

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

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

## Pune

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

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