EY Tax and Regulatory Alert

January 2023

Prepared for ACMA

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1.	**HP India Sales Pvt. Ltd. v. Commissioner of Customs (Import), Nhava Sheva (2023 (1) TMI 700 – Supreme Court)**	The Hon'ble Supreme Court held that, the word 'portable' to be defined in reference to the class of goods instead of relying on dictionary meaning which contains all kinds of hues of associated meanings. Further, held that the weight cannot be the sole factor to determine the factum of portability, rather other factors such as ability to be carried around easily which includes all aspects such as weight and their dimensions, also to be considered.
2.	**M/s. Wipro India Limited v. Assistant Commissioner, Central Tax (2023 (1) TMI 499 – Karnataka High Court)**	High Court held that though the *Circular No. 183/15/2022-GST dated 27 December 2022,* refers only to the years 2017-18 and 2018-19, however, since there are identical errors committed by the petitioner not only in respect of the assessment years 2017-18 and 2018-19 but also in relation to the assessment year 2019-20 also. Therefore, adopting a justice-oriented approach, the petitioner would be entitled to the benefit of the Circular for the year 2019-20 also.
	Direct Tax	
1.	**Karnataka HC holds that no TDS liability on year-end provisions reversed.**	Ruling wherein Karnataka HC deletes the addition under Section 40(a)(ia) for non-deduction of tax at source under Section 194J and sets aside ITAT order holding assessee liable for TDS on provision of legal and professional fee.

INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax

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

- **Notification No. 26/2022 – Central Tax dated: 26.12.2022** was issued by the CBIC the key amendments of which are summarized below:

- New rule (Rule 37A) inserted wherein recipients shall be required to reverse ITC in cases where supplier has not filed relevant GSTR-3B even though he has reported the invoice in GSTR-1 (i.e., ITC will need to be reversed even if the invoice is appearing in GSTR-2B if supplier has not filed GSTR-3B for the tax period pertaining to such invoice).

- The ITC so reversed can be re-availed once the relevant GSTR-3B is filed by the supplier. The following is the mechanism prescribed for reversal of ITC and re-availment thereof-

- ITC availed on the invoices or debit notes (uploaded by supplier in GSTR-1 for a particular tax period) is required to be reversed by the recipient on or before 30th November of the subsequent financial year (FY) in cases where relevant GSTR-3B pertaining to such invoices/debit notes has not been filed by the supplier till 30th September of the subsequent FY.

- Failure to reverse ITC within timelines shall also attract applicable interest in the hands of the recipient. Recipient may re-avail the ITC reversed by it as and when vendor files the relevant GSTR-3B tax subsequently.

- In case of non-payment to vendors within prescribed period of 180 days, the rules have been amended to prescribe that proportionate payment or reversal of ITC is required to be made to the extent consideration is not paid to the supplier *(This amendment is retrospectively effective from October 01,2022 to correct position specified vide Notification No. 19/2022–Central Tax dated 28.09.2022 which prescribed that entire ITC was required to be reversed even if part payment was made).*

- Rule 88C and Form DRC-01B inserted for intimating the difference between liability reported in GSTR-1 exceeds GSTR-3B by specified amount/percentage. Filing of GSTR-1 for the subsequent tax periods will be restricted if amount specified in the intimation is unpaid or such intimation is not replied.

- PAN-linked mobile number and e-mail address (i.e., mobile number and email appearing in the PAN database) to be used for validation of one time passwords (OTP) while applying for new GST registrations (*Earlier the new registrants were even allowed to use email and mobile number different from the PAN linked database*).

- "Invoice-cum-bill of supply" (for making supply of both taxable and exempted goods/services to an unregistered person) shall contain the particulars rule 46 (tax invoice) or rule 54 (tax invoice in special cases), as the case may be and Rule 49 (bill of supply).

- Few changes done in Form GSTR-1 (such as omission of requirement to disclose aggregate turnover of the preceding FY, changes in table to report amendments to taxable outward supply details furnished in earlier tax periods etc.)

- **Notification No. 27/2022 – Central Tax dated: 26.12.2022** was issued by the Central Government on the recommendation of the council, herby specifying that that the provisions of sub-rule (4A) of rule 8 of the said rules shall not apply in all the States and Union territories except the State of Gujarat.

- **Circular No. 183/15/2022-GST dated 27.12.2022** was issued by the CBIC Clarifying the procedure for verification of ITC by authorities for ongoing proceedings in scrutiny/audit/investigation, etc. for FY 2017-18 and FY 2018-19 wherein inward invoices do not appear in GSTR-2A. As per the circular, where ITC not appearing in GSTR-2A in respect of a particular supplier exceed INR 5 lacs, a certificate from the Chartered Accountant or the Cost Accountant would be required to be submitted. Where value do not exceed INR 5 lacs,

a certificate from supplier would be needed to be submitted.

- **<u>Circular No. 184/15/2022-GST dated 27.12.2022</u>** was issued by the CBIC that As per Section 12(8) of the IGST Act 2017, place of supply of services by way of transportation of goods, including by mail or courier, is the location of recipient where recipient is registered.

- However, proviso to section 12(8) of the IGST Act, 2017, provides that where destination of delivery of goods is outside India, place of supply would be such foreign destination. The instant circular clarifies that in such a scenario, place of supply will be the concerned foreign destination and IGST would be leviable on the transaction as location of supplier and place of supply are not in same State. It has further been clarified that subject to the conditions prescribed under Section 16 and 17 of the CGST Act, 2017, recipient would be eligible to claim credit of IGST so charged.

- **<u>Circular No. 185/15/2022-GST dated 27.12.2022:</u>** The Circular seeks to clarify various procedural issues wherein it has been concluded by higher authorities that show cause notice (SCN) issued under Section 74(1) of the CGST Act, 2017 is not sustainable and tax payable is to be determined deeming as if the notice was issued under section 73(1). Clarifications provided are as under:

- Where while concluding that SCN issued under Section 74(1) is unsustainable, it has been directed by higher authorities that tax is to be re-determined in accordance with Section 73(1). In such case, time limit to re-determine tax, interest and penalty payable shall be done within the time limit as specified under section 75(3) of the CGST Act, 2017 i.e. within two years from the date of communication of the direction by higher authority

- Where proper office is required to re-determine amount of tax, interest and penalty payable in under Section 73(1) in terms of Section 75(2) of the CGST Act, 2017, the amount of tax payable can be re-determined only where SCN under section 74(1) was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year or from the date of erroneous refund.

- In case SCN was issued beyond 2 years and 9 months, the entire proceeding shall have to be dropped, being hit by the limitation

- In case SCN was issued for multiple financial years, the amount payable shall be re-determined only in respect of that financial year for which SCN was issued before the expiry of the time period.

- **<u>Circular No. 186/15/2022-GST dated 27.12.2022</u>** was issue by CBIC providing clarifications as under:

- As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s).

- In such a scenario it has been clarified that there is no supply provided by insured to insurance company and No Claim Bonus provide by insurance company is not a consideration for any supply of service. Hence, no GST would be leviable on No Claim Bonus.

- It has further been clarified that No Claim Bonus duly disclosed in policy document and invoices fulfils the criteria prescribed Section 15(3)(a) of the CGST Act, 2017.

- Accordingly, where the deduction on account of No Claim Bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.

- It has been clarified that exemption from issuance of e-invoices provided to certain entities/ sectors vide notification no. 13/2020 – Central Tax dated 21 March 2020 is applicable to entity as whole irrespective of the nature of supply being made.

- For instance, a banking company providing banking services may also be supplying goods. The said banking company is exempted from issuance of e-invoice for all supplies of goods and services.

- **Circular No. 187/15/2022-GST dated 27.12.2022** was issued by the CBIC wherein Attention is invited to Circular No. 134/04/2020-GST dated 23rd March, 2020, wherein it was clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

- Section 84 of CGST Act reads as follows: "*Section 84 – Continuation and validation of certain recovery proceedings.-*

  Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then-

- where such Government dues are reduced in such appeal, revision or in other proceedings-

  i. it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

  ii.The Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

  iii. Any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal."

- As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

- The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in Section 84 of CGST Act.

- Rule 161 of Central Goods and Services Tax Rules, 2017 prescribes FORM GST DRC-25 for issuing intimation for such reduction of demand specified under section 84 of CGST Act. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

- **Circular No. 188/15/2022-GST dated 27.12.2022** was issued by the CBIC prescribing the procedure for filing of the refund application by unregistered persons in certain cases wherein some long term contracts, like building agreement or long term insurance policy, are cancelled and time limit for issuance of credit note has lapsed.

- It provides that a new functionality has been made available wherein unregistered persons may take

a temporary registration and apply for refund under the category 'Refund for Unregistered person'.

- In such case, the relevant date in terms of clause (g) of Explanation (2) under Section 54 of the CGST Act will be date of issuance of letter of cancellation of the contract/agreement for supply by the supplier.

- **Circular No. 189/15/2022-GST dated 27.12.2022** was issued by the CBIC wherein it is clarified that Compensation Cess at the rate of 22% is applicable on Motor vehicles, falling under heading 8703, which satisfy all four specifications, namely: – these are popularly known as SUVs; the engine capacity exceeds 1,500 cc; the length exceeds 4,000 mm; and the ground clearance is 170 mm and above.

- This clarification is confined to and is applicable only to Sports Utility Vehicles (SUVs).

Customs and Foreign Trade Policy (FTP)

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

- **Notification No.62/2022-Customs Dated: 26.12.2022** was issued by the CBIC to give effect to first tranche of tariff concessions under India Australia ECTA.

- This notification shall come into force with effect from the 29th day of December, 2022.

- **Notification No.64/2022-Customs Dated: 29.12.2022** was issued by the CBIC to give effect to second tranche of tariff concessions under India Australia ECTA.

- This notification shall come into force with effect from the 1st day of January, 2023.

- **Notification No.01/2023-Customs Dated: 13.01.2023** was issued by the CBIC to exempt COVID-19 vaccines from basic Custom duty till 31st March, 2023.

- **Circular No. 01/2023-Customs Dated 11.01.2023** was issued by the CBIC recently introducing the Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 ('Rules'). The Rules provide for procedures to be followed by the Board for determining value of certain goods, as may be identified by it, in cases where it has reasons to doubt such valuation (hereinafter referred to as "Identified Goods").

- Some of the key aspects laid down in this regard have been highlighted below for your reference:

- The Rules shall come into force w.e.f. 11 February 2023.

- The Rules do not apply to the cases as specified in Rule 13 such as imports made by license holders under FTP, project imports, cases where SVB investigation has already been contemplated or finalised etc.

- While declaring the class of goods as "Identified Goods", the Board shall rely on written references in prescribed form by any person who has doubt in valuation of such goods.

- In this regard, the CBIC shall formulate a Screening Committee (SC) and an Evaluation Committee (EC). The procedure to be followed by the CBIC, SC and EC for determining valuation of such class of goods is summarised as below:

- SC shall conduct a preliminary investigation of such written references and record reasons in writing if the case is fit for detailed examination;

- EC shall conduct detailed examination for determining value based on prescribed parameters and record reasons in writing the results of such detailed examination in a report in the manner prescribed

- EC shall forward the report to SC for final confirmation and within 15 days, SC is required to recommend the same to CBIC

- The CBIC shall pass an order specifying the details as prescribed and formally identify the class of goods as "Identified Goods". The said order shall be valid for 1-2 years.

- An importer of Identified Goods is required to declare in the Bill of Entry additional information such as value basis the Unique Quantity Code (UQC) specified in the order issued by CBIC and other information as may be required by the proper officer.

- In case where requisite information sought by the proper officer is not provided in a time bound manner or provided not to his satisfaction, the further proceedings shall be taken in accordance with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

- The importer may also request the proper officer to assess goods provisionally.

- The SC shall, on the expiry of half of the validity period of the order issued by CBIC, initiate a mid-term review to assess whether the identified goods may be de-specified or the validity period needs to be extended. The results of such mid-term review shall be communicated to CBIC for appropriate action.

- **Circular No.02/2023-Customs Dated: 11.01.2023** was issued by the CBIC where reference is invited to Board's Circular no. 16/2022-Customs dated 29.08.2022 relating to phases in the Phase 1 implementation of the Standard Examination Orders (SEO) for goods covered under Assessment Group 4.

- The Phase 1 refers to cases of risk-based selection for examination after assessment (second check examination). Subsequently, vide the Circular No. 23/2022-Customs dated 03.11.2022, SEO was extended to goods covered under Assessment Group 5.

- Considering the on track implementation and feedback from the National Customs Targeting Centre (NCTC) in above assessment groups, the Board has decided to implement SEOs through the Risk Management System across other assessment groups, National Assessment Centre (NAC) wise, as per the following schedule.

NAC	Assmt.Group	chapters	Implemented from date
Automobiles and instruments	5V,5S,5F,5I	86 to 92	24.02.2023

- **Notification No.53/2015-20 DGFT Dated 09.01.2023** was issued by the DGFT that the revised Appendix 4R, after incorporating changes recommended by the RoDTEP Committee in relation to apparent errors and anomalies in 432 HS Codes in the earlier notified RoDTEP rates/caps, is being notified and will be applicable for exports made from 16.01.2023 to 30.09.2023.

- **Trade Notice No.24/2022-23 DGFT Dated 12.01.2023** was issued by the DGFT that Attention of all Regional Authorities of DGFT, Export Promotion Councils and Advance/ EPCG authorization holders is invited towards Trade Notice No- 1/2018-19 dated 4.4.2018 wherein a system was designed for monitoring the progress of EODC applications of Advance/EPCG authorizations, which is accessed at http://eodc.online. All RAs were expected to input the data related to applications submitted by exporters.

- In this regard, it may be noted that after the implementation of the revamped DGFT IT systems, the redemption/EODC details in respect of Advance/ EPCG authorizations including IEC details, status of licence, redemption applied or approved, details of data transmission etc. are accessible on DGFT website (https://dgft.gov.in) —> Services —> Info for Customs Authorities.

- Additionally, it is noticed that in few cases of AA/EPCG, the EODC/closure is issued manually during earlier periods is incorrectly reflected in the online system. Therefore, the exporters are provided with an alternative wherein they can confirm the status of past authorisations on DGFT website.

- In case the authorisation is closed/redeemed, and the status is incorrectly reflected, the exporters are required to upload the copy of the closure/redemption letter against the said Authorization (https://dgft.gov.in) —>Services —> AA/DFIA/EPCG —> 'Manual EODC Update'.

- RA may verify the submitted requests and update the status of the said cases after verification from its records.

- Therefore, the instructions in respect to the usage of http://eodc.online are withdrawn with immediate effect.

- **Public Notice No.51/2015-20 DGFT Dated 17.01.2023** was issued by the DGFT that in exercise of the powers conferred under Paragraph 1.03 of the Foreign Trade Policy, 2015-20, the Director General of Foreign Trade, hereby makes amendments to Paragraph 2.79A (Stock and Sale) of the Handbook of Procedures (HBP) of the Foreign Trade Policy (FTP) 201520, with immediate effect.

- The paragraph 2.79A of the Handbook of Procedures (HBP) of the Foreign Trade Policy (FTP) 2015-20 is substituted to read as under: "2.79A Issue of export authorization for "Stock and Sale" of SCOMET items.

- Application for grant of authorization for bulk export of SCOMET items (excluding Category 0, Category 3A4001, Category 6 and transfer of technology under any category) from an Indian exporter to an entity abroad (hereinafter referred to as 'stockist') for subsequent transfer to the ultimate end users shall be considered by IMWG, on the following conditions:

- **Applicability and scope of Policy:**

  a. 'Stockist' refers to the entity abroad to whom the SCOMET items are originally exported by Indian principal/wholly owned subsidiary. The Stockist entity should be a subsidiary/principal company abroad of the Indian exporter:

  b. Export shall be permitted from the Indian parent company (applicant exporter) to its foreign subsidiary company or from the Indian subsidiary of foreign company (applicant exporter) to its foreign parent/another subsidiary of foreign parent company and; on the basis of an End Use declaration from the stockist, through the specified End User Certificate (EUC)for 'stock & sale' purpose.

- **Application for export to stockist abroad and transfer to end users in specific countries**: The exporter shall submit application in prescribed proforma (ANF-20) along with following documents from the stockist:

  i. Documentary proof regarding corporate relationship between the Indian exporter and stockist;

  ii. End-use/End-user Certificate from stockist entity abroad in Appendix-2S

  iii. List of countries (in the EUC) to which the items imported from India would be exported by the stockist;

  iv. Purchase Order(s)/Invoice(s) or a document in lieu thereof;

  v. Technical specifications of the product(s);

  vi. Copy of Internal Compliance Program (if applicant exporter/ stockist entity has one).

- **In-principle approval for export to the stockist, and, for sale by stockist within the country of the stockist, and, for re-export by stockist to end user in other countries:**

  d. The application would be assessed for grant of authorization for export to the stockist, and, for grant of in-principle approval for re-export to specified countries of ultimate end use approved by the IMWG;

  e. No authorization would be required for transfer from the stockist to the ultimate end user(s) within the country of the stockist and for re-export to end users in such approved countries;

  f. Re-export to such approved countries would be subject to the export control regulations of the country of the stockist;

  g. Country would denote an independent sovereign entity which is a distinct national entity in political geography. Hence, transfers within an economic union or a customs union would not qualify as "same country transfers";

- **Post-reporting for same country transfer and re-export to pre-approved countries by the stockiest:** h. In case of sale/transfer by the stockist within the same country and for re-

export/re-transfer to the end users in countries, for which, in-principle approval has been granted, the Indian exporter/licensee shall submit details of all such transfers to SCOMET Division of DGFT (Hqrs) in ANF-2 0(a), including EUCs[Appendix-2S (i) /2S(ii), as applicable] from all ultimate end users and Bill of Entry into the ultimate destination countries(for export outside the country of stockist). within 3 months of every such transfer;

- **Application for re-export to other countries (other than pre-approved)**:

i. In respect of re-export/re-transfer of items from the stockist entity to the end users outside the country of the stockist, for which, in-principle approval has not been granted at the initial stage, the Indian exporter (stock and sale authorization holder) shall submit application for re-export/re-transfer to SCOMET Division in DGFT (Hqrs), in ANF 20(a), through email (scomet-dgft@nic.in), after obtaining following documents from the stockist entity:

(i) End-use/End-user Certificate from each link in the supply chain as per Appendix-2S (i) /2S(ii), as applicable;

(ii) Purchase Order(s)/Invoice(s) or a document in lieu thereof

(iii)Technical specifications of the product to be transferred (only if there is any value addition in the product by the stockist)

j. IMWG shall consider export authorizations for allowing such re-export/re-transfer based on end use/end user verification:

- **Repeat Order cases**: k. Applications for export of same SCOMET items to same stockist entity, and re-export/re-transfer of same SCOMET items from the stockist entity to the end-users (within the country of stockist entity and only the countries of ultimate end use where in-principle approval has been granted), i.e. repeat orders, shall be considered by Chairman IMWG, without any consultation with 1MWG members;

- **Annual reporting on inventory of the stockist and transfers/re-exports:**

l. The Indian exporter (Stock & Sale Authorization holder) shall submit a statement of exports made from India to the stockist, transfers made by the stockist to the final end-users and inventory with the stockist, as on 31st December of each calendar year, by 31′ January of the following year. A failure to do so may entail imposition of penalty and /or cancellation of authorization under the stock and sale policy;

m. The items exported to the stockist entity under the stock and sale authorization should be transferred to the final end-user(s) within the validity period of the authorization as in paragraph 2.16 of HBP;

n. The authorization may be revalidated as per the procedure mentioned in paragraph 2.80 of HBP;

- **Effect of this Public Notice**: The existing “Stock and Sale” policy under Paragraph 2.79A of the Handbook of Procedures (HBP) of the Foreign Trade Policy (FTP) 2015-20 has been amended to revise the applicability of the policy for export from the Indian subsidiary of foreign company (applicant exporter) to its foreign parent/another subsidiary of foreign parent company and allow repeat order authorization under the Stock and Sale policy.

- **<u>Public Notice No.52/2015-20 DGFT Dated 18.01.2023</u>** was issued by the DGFT to amend the para 4.42 of Handbook of Procedures (HBP) 2015-2020 and simplify the process of levying the Composition in case of extension of Export Obligation Period (EOP) under Advance Authorization Scheme.

- **<u>Public Notice No.53/2015-20 DGFT Dated 20.01.2023</u>** was issue by DGFT providing a One-time relaxation from maintaining Average Export Obligation and option to avail extension in Export Obligation Period for specified EPCG authorizations is provided on account of COVID-19 pandemic, subject to fulfillment of conditions. This is in addition to EO extensions facility (upon payment of the composition fees) already provided in FTP/HBP.

- The following sub-paras are added after para 5.17(f) of Handbook of Procedures: -

- ***5.17 (h)*** *:*

i) For EPCG authorisations, issued for other than Hotel, Healthcare and Educational sectors, Export Obligation (EO) period may be extended from the, date of expiry, for the number of days the existing EO period of an authorisation falls within 01.02.2020 and 31.07.2021. Such EO extension may be granted without payment of composition fees. However, this extension is subject to 5% additional export obligation in value terms (in free Foreign Exchange) on the balance Export obligation as on 31.03.2022.

ii) The option to avail EO extension with payment of composition fees under the para 5.17(c) would remain available for these authorizations as per eligibility.

iii) In case where EPCG authorisation holder has already obtained 1E0 extension on payment of composition fees, the refund of the composition fees will not be permitted.. In addition, any penalties, duties and taxes already paid would also not be refunded.

5.17 (i) : The benefit under (h) shall not be applicable in cases where extension of Export Obligation period has been obtained in terms of Public Notice No. 67 dated 31.03.2020 and Notification No. 28 dated 23.09.2021.

5.17 : The benefit under pants (g) and (h) shall not be applicable in case where extension of Export Obligation period has been obtained through policy relaxation in terms of the para 2.58 of Foreign Trade Policy.

Foreign Exchange Management Act

This section summarizes the regulatory updates for the month of January 2023

- Reserve Bank of India ('RBI') amends reporting for foreign investment in Single Master Form (SMF) on FIRMS

- RBI has provided changes that have been implemented with respect to reporting of foreign investment in SMF on FIRMS portal.

  The salient features of the changes made in the system are summarized as below:

- The forms submitted with the requisite documents will be auto-acknowledged on the FIRMS portal with a time stamp and an auto-generated e-mail will be sent to the applicant.

- The forms submitted will be verified by the AD bank within five working days based on the uploaded documents.

- In case of delayed reporting, the AD banks shall either advise the Late Submission Fee (LSF) to the applicants or advise for compounding of contravention. LSF is applicable in cases where the forms are submitted with a delay of less than or equal to three years. In case where delay is of more than three years, compounding would be applicable.

- Once the LSF amount is realized, the concerned Regional Office (RO) of RBI will update the status in the FIRMS portal and it will be communicated to the applicant through a system generated e-mail.

- In case of any rejection of the form, the remarks will be communicated to the applicant through a system generated e-mail and the same can also be viewed in the FIRMS portal.

Part B- Case Laws

Goods and Service Tax

1. **HP India Sales Pvt. Ltd. v. Commissioner of Customs (Import), Nhava Sheva (2023 (1) TMI 700 – Supreme Court)**

Subject Matter: The Hon'ble Supreme Court held that, the word 'portable' to be defined in reference to the class of goods instead of relying on dictionary meaning which contains all kinds of hues of associated meanings. Further, held that the weight cannot be the sole factor to determine the factum of portability, rather other factors such as ability to be carried around easily which includes all aspects such as weight and their dimensions, also to be considered.

Background and Facts of the case

- M/s HP India Sales Pvt. Ltd., formerly Hewlett Packard India Sales Pvt. Ltd. (hereinafter referred to as the Appellant) has imported goods/items namely, Automatic Data Processing Machines (ADP) popularly known as All-in-One Integrated Desktop Computer
- Further, it is to be noted that, the rate of duty is same under both the tariff Items, but the method of computation is different. Therefore, classification under tariff Item 8471 50 00 would have effectively reduced the overall liability to pay the requisite duty. This difference in liability is the precise reason behind the present dispute regarding classification under the correct tariff item
- The key findings, from the impugned orders passed by the adjudicating authorities including CESTAT, being identical in nature are enumerated as below:
- The Concerned Goods weighed less than 10 kilogram and were easily carried from one place to another. In this respect the CESTAT relied on dictionary meaning of the word 'portable' to hold that the goods were rightly classified under tariff item 8471 30 10;
- The absence of inbuilt power source does not render the Concerned Goods as nonportable;
- The dimensions of the Concerned Goods as well as the fact that it was not foldable did not impact the element of portability;
- the concerned goods had a display unit, a touch screen which could function as a keyboard and thus it fulfilled the description mentioned under tariff Item 8471 30 10
- Both sides have not disputed the findings of the adjudicating authorities except in respect of the aspect of portability of concerned Goods. Therefore, the only limited question that falls for consideration in the proceedings is whether the concerned Goods are 'portable' or not under tariff item 8471 30 10.

Discussions and findings of the case

- The Appellant has made four key contentions. First, it was contended that classification under tariff item 8471 30 10 involves an element of functionality which is not applicable in the present case as concerned Goods are not capable of functioning without an external source of power.

- Second, mere weight cannot be the sole consideration for deciding whether any good is 'portable' or not, additional aspects such as functionality and ease of transportability should also be considered.

- Third, CESTAT erroneously relied on the general definition of 'portable' given in dictionaries and instead the same should have been defined in relation to the class of goods.

- Fourth, concerned Goods are not considered as 'portable' by the European Commission's classification and are also not covered by the 'tariff item 8471 30 10' as per the World Customs Organization's Harmonized System Explanatory Notes

- The Respondent contended that, since the word 'portable' is nowhere defined in the statute, it should be interpreted on the principle of general parlance. Reliance was placed on *Mathuram Agrawal v State of MP (1999) 8 SCC 667, para 12*, to urge that legislature's intention was crystal clear in qualifying the term 'portable' by providing the condition in the description that any ADP less than 10Kgs would automatically become portable

- The Apex Court has observed that, '**portable**' **should have been defined in reference to the class of goods instead of relying on dictionary meaning** which contains all kinds of hues of associated meanings. Further, reliance was placed on *CCE v Krishna Carbon Paper Co. (1989) 1 SCC 150,* para 6, where it was held that *"10. The trade meaning is one which is prevalent in that particular trade where the goods is known or traded. If special type of goods is subject-matter of a fiscal entry then that entry must be understood in the context of that particular trade, bearing in mind that particular word. Where, however, there is no evidence either way then the definition given and the meaning following (sic flowing) from particular statute at particular time would be the decisive test." ibid, para 10*

Judgement

- In light of the above, the Hon'ble Supreme Court held that, valuation of the concerned Goods for levy of the duty be determined under the initially declared tariff item 8471 50 00. The weight cannot be the sole factor to determine the factum of portability, rather other factors such as ability to be carried around easily which includes all aspects such as weight and their dimensions, also to be considered in determining whether ADPs are portable or not.

2. M/s. Wipro India Limited v. Assistant Commissioner, Central Tax (2023 (1) TMI 499 – Karnataka High Court)

Subject Matter: High Court held that though the *Circular No. 183/15/2022-GST dated 27 December 2022,* refers only to the years 2017-18 and 2018-19, however, since there are identical errors committed by the petitioner not only in respect of the assessment years 2017-18 and 2018-19 but also in relation to the assessment year 2019-20 also. Therefore, adopting a justice-oriented approach, the petitioner would be entitled to the benefit of the Circular for the year 2019-20 also.

Background and Facts of the case

- M/s. Wipro Limited (hereinafter referred to as the Petitioner) has made supplies to M/s. ABB Global Industries and Services Private Limited (M/s. ABB Global), however the GSTIN Number mentioned in the invoices has been incorrectly shown as that of ABB India Limited, which is a completely different and independent juristic entity from M/s. ABB Global

Discussions and findings of the case

- Reference was made to *Circular No. 183/15/2022-GST dated 27 December 2022* issued by Central Board of Indirect Taxes and Customs, GST Policy Wing, to clarify the issues in case of difference in input tax credit (ITC) availed in Form GSTR-3B vis-à-vis appearing in Form GSTR-2A for financial year 2017-18 and 2018-19
- The Hon'ble High Court observed that language employed in the Circular, contemplates rectification of the bonafide and inadvertent mistakes committed by the persons at the time of filing of Forms and submitting Returns.
- Therefore, in the peculiar and special facts and circumstances of the instant case, the error committee by the petitioner in showing the wrong GSTIN number in the invoices which was carried forward in the relevant forms as that of ABB India Limited instead of M/s. ABB Global, is clearly a bonafide error, which has occurred due to bonafide reasons, unavoidable circumstances, sufficient cause and consequently, the aforesaid Circular would be directly and squarely applicable to the facts of the instant case.

Judgement

- In light of the above, the Hon'ble High Court held that though the Circular refers only to the years 2017-18 and 2018-19, however, since there are identical errors committed by the petitioner not only in respect of the assessment years 2017-18 and 2018-19 but also in relation to the assessment year 2019-20 also. Therefore, adopting a justice-oriented approach, the petitioner would be entitled to the benefit of the Circular for the year 2019-20 also.

Direct Tax

Karnataka HC holds that no TDS liability on year-end provisions, reversed next year, as payees not identified

- **Subject Matter**: Ruling wherein Karnataka HC deletes the addition under Section 40(a)(ia) for non-deduction of tax at source under Section 194J and sets aside ITAT order holding assessee liable for TDS on provision of legal and professional fee.

Background

- Assessee-Company, engaged in the business of providing software services and development of various products for telecommunication industry.
- The assessee filed return of income for AY 2009-10 declaring income at NIL and claimed deduction of Rs.8.37 Cr under Section 10A.
- Revenue noted that the assessee made the provision for legal and professional charges, whereon no tax was deducted and made addition under Section 40(a)(ia), which was deleted by DRP.
- On Revenue's appeal, ITAT held that the assessee was liable to deduct tax on the provision made for legal and professional charges in the books of accounts on accrual basis when credited even if not paid.

Revenue's contentions

- Aggrieved assessee preferred the present appeal; Before HC, assessee submits that it was not liable to deduct tax on the professional charges as the identity of payee was not certain at the stage when the provision was made.

- Takes note that the provisions made at the end of the accounting year were reversed in the beginning of the next year and no payees were identified nor the exact amount payable.

- Relies on the co-ordinate bench ruling in Volvo India Pvt. Ltd. and Karnataka Power Transmission Corporation, wherein it was held that if no income is attributable to the payee there is no liability to deduct tax at source.

- Observes that the co-ordinate bench further 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 assessee claiming deduction.

- Notes that the assessee had duly deducted tax at source in the subsequent year in accordance with the provisions of Chapter XVII-B and remitted the same within the due date, which was not refuted by the Revenue.

- Rejects Revenue's reliance on SC ruling in Palam Gas Service, observing that the payees therein were identified which is in contradiction with the present case, where payees were not identified.

- Thus, answers the substantial question of law in favour of the assessee.

Conclusion

- Karnataka HC allows assessee's appeal, deletes the addition under Section 40(a)(ia) for non-deduction of tax at source under Section 194J and sets aside ITAT order holding assessee liable for TDS on provision of legal and professional fees.

- Holds that the assessee was not liable for TDS on the said provision which were reversed at the beginning of the next year since the payees were not identified when such provision was made, relies on co-ordinate bench ruling in Volvo India and Karnataka Power Transmission.

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