EY Tax and Regulatory Alert

April 2024

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 April 2024

- **Notification No 09/2024- Central Tax dated 12.04.2024** was issued to extend the time-limit for monthly taxpayers for furnishing outward supplies in GSTR-1 for the month of March 2024 till the 12 day of April 2024.

- **Instruction No. 01/2023-24 dated 30.03.2024:** was issued in respect to guidelines for CGST field formations in maintaining ease of doing business while engaging in investigation with regular taxpayers.

- The instruction aims to streamline investigations involving regular taxpayers under the Central Goods and Services Tax (CGST) regime.

- Key guidelines stipulated in the instruction has been summarised below:

- The Principal Commissioner shall be responsible for developing and approving intelligence, conducting searches, conducting investigation and taking action. Further, if the Principal Commissioner has any information/ intelligence which pertains to another CGST field formation (i.e. Jurisdiction), then he shall forward the same to concerned CGST field formation or Directorate General of GST Intelligence ("DGGI").

- Each investigation should be initiated only after approval of Principal Commissioner except in certain specified situations where prior written approval of the zonal (Pr.) Chief Commissioner shall be required.

- If DGGI or the State GST authorities are investigating a taxpayer on different subject matter, then Principal Commissioner should communicate with the said authorities for considering possibility that all subject matters be pursued by only one authority. If the said dialogue is not successful, then the reasons for the same shall be noted by the Principal Commissioner.

- If the Principal Commissioner has initiated an investigation with respect to a GSTIN in its jurisdiction and the matter is relevant for other GSTINs under same PAN and also falls within the charter of DGGI, then the Principal Commissioner shall make reference to Principal Chief Commissioner who shall in turn request Principal Director General, DGGI to take up the matter.

- Similarly, if Principal Commissioner has initiated an investigation with respect to a GSTIN in its jurisdiction and the matter is relevant to other taxpayers across CGST jurisdictions, the Principal Commissioner shall within a period of 30 days make a reference to DGGI or other Zonal Principal Commissioners.

- Where the Principal Commissioner has identified non-payment or short payment of tax based on an interpretation of GST laws in a matter where the taxpayer has followed a prevalent industry practice, then Zonal Principal Chief Commissioner shall make a reference to relevant policy wing of the Board i.e. GST policy or TRU before concluding the investigation.

- Before initiating investigation with respect to a listed company, PSU, Corporation or Government Department or Authority established by law, CGST field formation shall first address official letters (instead of issuing summons) to designated officers of such entity and request submissions within the relevant period. Further, the said letter should not call for any information which is available digitally on GST portal.

- Before issuing summons, the relevancy and propriety of what is being sought must

be recorded. Further, the content of the summon shall be approved by an officer not below the rank of Deputy/ Assistant Commissioner.

- An investigation initiated must reach conclusion within 1 year. Show cause should not be delayed after conclusion of investigation.

- **GSTN Advisory: Self Enablement for e-Invoicing:** If a taxpayer's turnover exceeds INR 5 crores in the financial year 2023-2024, they are required to start e-Invoicing from the next financial year, which begins on 1st April 2024.

- The said requirement of e-invoicing would be applicable if the threshold is crossed in any of the proceeding financial years as well.

- For the taxpayers who meet the above notification criteria but have not yet been enabled on the portal, they can self-enable for e-Invoicing by visiting the e-Invoice IRP portal and start reporting through any of the 4 new Invoice Registration Portals (IRPs), ranging from e-Invoice IRP 3 to e-Invoice IRP 6.

- **GSTN Advisory: Reset and Re-filing of GSTR-3B of some taxpayers:** It was noticed that there were discrepancies in the returns of some taxpayers during the filing process between the saved data in the GST system and actually filed data in the fields of ITC availment and payment of tax liabilities.

- The matter was examined and deliberated by the Grievance Redressal Committee of the GST Council and as a facilitation measure the Committee decided that these returns shall be reset, in order to give opportunity to such taxpayers to correct the discrepancy.

- Accordingly, only the affected taxpayers were communicated on their registered email-ids and the affected returns were visible on their respective dashboards for the purpose of refiling with the correct data. The taxpayers who received such communication, were requested to visit their dashboard and re-file their GSTR-3B within 15 days of receipt of such communication.

- **GSTN Advisory: Auto-populate the HSN-wise summary from e-Invoices into Table 12 of GSTR-1:** A new feature has been recently introduced on the GSTN wherein the HSN-wise summary from e-Invoices is auto-populated into Table 12 of GSTR-1.

- This feature allows direct auto-drafting of HSN data into Table 12 based on e-Invoice data. However, it is clarified that the said feature is intended for convenience of the taxpayers and taxpayers must reconcile the data with their records before its final submission.

- Any discrepancies or errors should be manually corrected or added in Table 12 before final submission.

- **GSTN Advisories: Extension of GSTR-1 due date for March 2024 to 12 April 2024:** GSTN had duly noted on 11.04.2024 that the taxpayers were facing difficulties in filing GSTR-1 due to technical issues leading to slow response on the portal. In view of the said difficulties, GSTN had strongly recommended CBIC to extend the due date of filing GSTR 1 returns for monthly tax payers till 12.04.2024.

- Thereby, the due date of GSTR-1 for March'2024 was extended till 12.04.2024 for monthly taxpayers.

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of April 2024

- **Notification No 26/2024 -Customs(NT) dated 28.03.2024** was issued to notify that the authorized sea carrier shall continue to deliver the cargo declaration in Form III of the Import Manifest (Vessels) Regulations, 1971 and Form I of the Export Manifest (Vessels) Regulations, 1976, in the manner as was applicable before the commencement of the Sea Cargo Manifest and Transshipment Regulations, till 30 June 2024.

- **Trade Notice No. 40/2023-24 dated 20.03.2024:** was issued by DGFT in relation to the Interest Equalization Scheme on Pre and Post shipment Rupee Export Credit ('IES Scheme').

- The Reserve Bank of India (RBI) in its Circular No. DOR.STR.REC. 78/04.02.001/2023-24 dated 22nd February 2024 had extended the IES Scheme upto 30 June 2024.

- In this regard, a cap of INR 2.50 Crore per IEC has been imposed till 30 June 2024 for the quarter starting from 1st April 2024.

- **Trade Notice No. 01/2024-25 dated 02.04.2024:** was issued by DGFT to issue directives regarding submission of digitized ANFs, Appendices.

- It is duly specified in the notice that the applications pertaining to ANFs and Appendices must be exclusively submitted online via the DGFT Website (https://dgft.gov.in), eliminating the necessity for physical or soft copies of these documents.

- Further, it is highlighted that the Importer-Exporter Code (IEC) details are available online to DGFT (HQ), Regional Authorities (RAs), Export Promotion Councils (EPCs), and other pertinent entities. Likewise, Registration-cum-Membership Certificates (RCMCs) are electronically accessible through DGFT Online Systems. Moreover, Micro, Small, and Medium Enterprises (MSMEs) status as recorded in the MSME UDYAM Registration Portal (https://udyamregistration.gov.in) is similarly accessible through electronic exchanges integrated into DGFT online systems.

- Moreover, the Government has duly noted that certain ANFs and Appendices necessitate certification by professionals such as Chartered Accountants, etc which may not be entirely digitized presently. However, ongoing endeavors are directed towards digitalization of these forms, enabling said certifying authorities to digitally certify all relevant ANFs and Appendices directly on DGFT Website. Until such digital signature processes are fully implemented, copies of these documents may be uploaded online.

- Furthermore, it is also emphasized that all deficiency letters and correspondences pertaining to online applications must be issued and responded to exclusively online and physical paper responses to such communications should not be entertained.

- **Policy Circular No. 01/2024 -DGFT dated 12.04.2024:** was issued by DGFT to issue clarification on discharge of export obligation of Advance Authorisation (AA) bearing Customs Notification No. 18/2015-Customs as amended and Customs Notification No.21/2015-Customs as amended both dated 01.04.2015 by making physical exports or by making domestic supplies.

- Accordingly, the following clarification is issued:

- Advance Authorisation Holder holding an Advance Authorisation issued on or after 01.04.2015, under Customs Notification No. 18/2015-Customs, dated 01.04.2015 has option to fulfill the export obligation either by physical exports or by making domestic supplies under para 7.02(A) (a) of FTP 2015-2020 i.e. Supply of goods against Advance Authorisation/Advance Authorisation for annual requirement/DFIA.

- Further, Advance Authorisation Holder holding an Advance Authorisation issued on or after 10.01.2019, under Customs Notification No. 18/2015- Customs, dated 01.04.2015 has options as follows:-

  (i) To fulfill the export obligation either by physical exports or by making domestic supplies under Para 7.02 A (a) of FTP 2015-2020 i.e. Supply of goods against Advance Authorisation/Advance Authorisation for annual requirement/DFIA.

  (ii) To make supplies under para 7.02A (b) of FTP 2015-2020 i.e. supply of goods to EOU/STP/EHTP/BTP.

  (iii) To make supplies under para 7.02(A) (c) of FTP 2015-2020 i.e. supply of capital goods against EPCG authorisation provided exemption from payment of applicable Anti-Dumping

- Similarly Advance Authorisation Holder holding an Advance Authorisation for deemed export issued under Customs Notification No. 21/2015-Customs dated 01.04.2015 only for above mentioned supplies with above stipulated conditions has an option to fulfill their export obligation either by way of supplies under para 7.02(A) (a), (b) & sub para (c) of FTP 2015-2020 or by making physical exports.

DIRECT TAX

This section summarizes the regulatory updates under DT for the month of April 2024

1. **Protocol to India-Mauritius DTAA signed to include Principal Purpose Test**

Background

- The extant India-Mauritius DTAA, which entered into force on 1 April 1983 was amended by way of Protocol signed on 10 May 2016 (2016 Protocol), wherein largely the source country taxation rights were enhanced, and Limitation of Benefits (LOB) clause was included apart from the Exchange of Information (EOI) and Assistance in Collection of Taxes related provisions. One of the significant amendments was with regard to provision of taxation rights to source country with respect to capital gains on sale of shares acquired on or after 1 April 2017, while the investments made prior to 1 April 2017 were grandfathered (i.e., only the resident country has exclusive right to tax gains on alienation of shares).

- The 2016 Protocol did not contain the BEPS related changes and to recollect, Mauritius was a part of list of DTAAs, as notified by India, to be amended through multilateral instrument (MLI), while India was not notified by Mauritius under its list of DTAAs for MLI purposes. Accordingly, India-Mauritius DTAA was not subject to amendment in line with MLI pursuant to BEPS framework.

- In a subsequent press release dated 10 July 2017, Mauritius announced that for the DTAAs which are not covered by the MLI, Mauritius will discuss bilaterally with the respective treaty partners, including India, in order to implement the BEPS minimum standards.

Details of the Notification

- **<u>Preamble of the DTAA replaced:</u>**

- The existing preamble to India-Mauritius DTAA has been replaced to expressly provide that the purposes of tax treaties are not limited to the elimination of double taxation, but also to prevent double non-taxation/reduced taxation including the prevention of inappropriate use of DTAA by residents of third country. The phrase “for the encouragement of mutual trade and investment” has been omitted in the revised preamble.

- **<u>Principal Purpose Test introduced:</u>**

- In line with the minimum standard under MLI, the Protocol includes PPT rule, wherein a benefit under the DTAA shall not be granted in respect of an item of income if it is reasonable to conclude that obtaining treaty benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the treaty.

- **<u>Date of entry into effect:</u>**

- The 2024 Protocol requires both India and Mauritius to notify each other about completion of the procedures required by their respective laws to implement the provisions of the Protocol. Once the notification has been issued by both the countries, the 2024 Protocol will enter into force on the date of the later of the two notifications. The 2024 Protocol shall also enter into effect on the same day (viz. the date of the later of the two notifications) without regard to the date on which the taxes are levied or the taxable years to which taxes relate.

2. CBDT grants relief to payers for past transactions where payee has linked PAN with Aadhaar number by the specified date

Background

- Finance Act, 2017 introduced the Aadhaar-PAN linking provision in the ITL, with effect from 1 April 2017, which mandated taxpayers, being individuals (barring certain exceptions) who are holding a valid PAN as on 1 July 2017, to intimate their Aadhaar number to the specified income tax authority on or before a sunset date. This was to weed out multiple PANs in the name of a single person and/or single PAN allotted to different persons and/or to weed out bogus PANs.

- Wherever PAN was not linked with Aadhaar number by 31 March 2022, the PAN would become inoperative from 1 April 2022. However, the consequences prescribed under the ITL operated only w.e.f. 1 July 2023. During the period from 1 April 2022 to 30 June 2023, non-linked PAN remained inoperative, but without any adverse consequences except for payment of fee for belated linking of Aadhaar number with PAN.

- **Consequence of PAN becoming inoperative:** The ITL provides for the following adverse consequences where PAN becomes inoperative on account of default in complying with Aadhaar-PAN linking provision: (i) Non-issuance of refund. (ii) Non-payment of interest on refund for the period where the default subsists. (iii) Withholding or collection of taxes at higher rates. These adverse consequences were effective from 1 July 2023 and continue till PAN becomes operative.

- The CBDT received various grievances from Payers/Collectors that they received notices for short deduction/collection of taxes with respect to such inoperative PANs and were required to deduct/collect taxes as per higher rate as prescribed under the ITL. Consequently, demands were raised against such Payers/ Collectors.

- The CBDT has issued this Circular to redress the grievances of such Payers/Collectors.

Circular

- The Circular clarifies that for transactions that took place till 31 March 2024 and in cases where PAN of the counter party becomes operative on or before 31 May 2024, no liability of higher withholding or collection of taxes shall be imposed on the Payers/Collectors on account of non-linkage of PAN with Aadhaar number.

- Hence, in such cases, general provisions of the ITL regarding withholding or collection of taxes shall apply on the Payer/Collector.

Part B- Case Laws

Goods and Service Tax

1. **M/s KSPG Automotive India Pvt. Ltd. vs. Commissioner of Service Tax-I, Pune [TS-145-CESTAT-2024-ST dated 17th April 2024]**

Subject Matter: Ruling wherein the entire demand of service-tax along with interest and penalty on secondment of employees by Assessee to associated Foreign counterpart was set aside as the same was barred by limitation.

Background and Facts of the case

- M/s KSPG Automotive India Pvt. Ltd. (hereinafter referred to as the "Appellant") is engaged in providing taxable services such as GTA, Manpower, Consulting Engineer, BAS, BSS, IPR, Information Technology Software Service, etc.

- During scrutiny of its financial records by the Auditor of the Central Excise and Service Tax Department Pune Commissionerate, it was noticed that Appellant had shown expenditure in foreign currency under the heading 'Salary'. On being enquired about the same, it informed that some of its employees were deputed to its foreign counterpart viz. M/s. 'Pierburg' GMBH, Germany, who are paid salary from India.

- A show cause notice ('SCN') dated 16.10.2015 for the financial year 2010-11 to 2013-14 alleging suppression of fact of non-payment of Service Tax was raised upon the Appellant holding the above deputation of employees to be manpower supply service on secondment.

- The SCN was adjudicated upon and resulted in confirmation of the demand in the order dated 23.05.2016 (hereinafter referred to as the 'impugned order'), against which the Appellant filed an appeal before the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT'), Mumbai.

Discussions and findings of the case

- The CESTAT heard submissions from both the sides and conceded that in view of Hon'ble Supreme Court ('SC') judgment in the case of Northern Operating Systems Pvt. Ltd., secondment of employees by the Appellant to the overseas entity for the purpose of completion of overseas entity's job, amounts to manpower supply and therefore, service tax was required to be paid.

- However, in view of clear provision contained in Section 73(1) read with 73(6), the normal period for making demand through show-cause notice was 18 months from the relevant date and in case of any fraud, collusion, wilful misstatement, etc. as per proviso to Section 73(1), such period could be extended up to 5 years.

- CESTAT observed that in the present case, SCN was issued on 16.10.2015 for the period up to the end of FY 2013-2014 was not issued in conformity to the law and, therefore, it was required to be quashed before initiation of adjudication proceeding. The SCN cannot be considered to have been sent within 18 months of the end of financial years, up to which demand is made i.e. up to 31 March 2014.

- Further, it was noted that four Audits were conducted and only in the last Audit report from January 2014 to May 2015, the fact of payment made in Foreign Exchange was noted. As per the annexure to the SCN containing detail of payment and calculated Service Tax, the last date of payment was made on 28.05.2013. The return for the said period was filed on 25.10.2013.

- In view of Section 73(6)(i)(a), for the purpose of determination of "relevant date", periodical return filed on the date showing particulars of Service Tax paid during the period to which return relates would be taken for the purpose of calculation of period of limitation of 18 months, which in

the present case would end on 25.01.2015. Therefore, the CESTAT observed that the entire demand is barred by limitation.

Ruling

- In light of the above, Hon'ble CESTAT agreed that the demand is barred by the period of limitation as the entire proceeding is carried out in gross violation of the position of law.

- Thereby, the CESTAT allowed the appeal and set aside the entire demand raised in the impugned order providing relief to the Appellant.

2. **M/s. Reliable Automotive Private Limited vs. Commissioner of CGST & Central Excise [TS-136-CESTAT-2024-ST]**

Subject Matter: Ruling wherein the Hon'ble CESTAT Mumbai has held that no service tax under business promotion/business auxiliary services (BAS) can be imposed on car dealer for the discounts offered by car manufacturers, where the benefit of these discounts are ultimately passed on to the end consumer.

Background and Facts of the case

- M/s Reliable Automotive Private Limited (hereinafter referred to as 'Appellant') is a dealer involved in providing sales and service of commercial vehicles, passenger vehicles manufactured by Tata Motors Ltd. And Hyundai Motors Ltd. Further, the appellant also provides trucks on hire basis to various Goods Transport Agencies ('GTA') for transportation of goods and is engaged in trading of tyres and cement.

- During EA 2000 Audit conducted by the Department in September, 2015 for the financial years ('FY') 2011-12 to 2014-15, it was noticed that the appellant was providing taxable services as well as exempted services and had availed Cenvat credit on common input services. In certain cases, the credit was foregone and the appellant had also reversed certain amount of credit taken on common inputs.

- Accordingly, the audit wing of the Department issued a letter asking for clarity on various observations made by them. The Appellant agreed to some of the observations and the liabilities were discharged accordingly. However, for the rest of the observations, the department issued show cause notices.

- The issues arising in SCN pending adjudication by the Commissioner were as follows:

  a. whether the services in relation to providing vehicles to associates, in course of its business activities falls under the category of 'Business Support Services'.

  b. whether the services in relation to business promotion activities provided/rendered in course of business activities falls under the 'Business Auxiliary Services'.

  c. whether the services involved in 'servicing of vehicles' during the 'free warranty period' provided/rendered during course of its business activities falls under the 'Authorized Service Station' services.

  d. Whether the method adopted by the appellants assessee by foregoing the certain amount of Cenvat Credit in respect of provision of exempted service is correct.

  e. Whether penalty is impossible on appearance under Section 77, 78/76 ibid.

  f. On adjudication of the SCNs, the learned Commissioner dropped

issue (a) above holding that such services cannot be made liable for service tax under the category of 'Business Support Services and issued a demand order (hereinafter referred to as the 'impugned order') dated 13.10.2020 for the remaining issues. Aggrieved by the same, the Appellant filed an appeal before the CESTAT, Mumbai.

- On adjudication of the SCNs, the learned Commissioner dropped issue (a), however, issued a demand order (hereinafter referred to as the 'impugned order') dated 13.10.2020 for the remaining issues. Aggrieved by the same, the Appellant filed an appeal before the CESTAT, Mumbai.

Discussions and findings of the case

- The Appellant contended that they are engaged in the sale of heavy commercial and passenger vehicles for which they have entered into separate agreements with the automobile manufacturers. The agreement clearly that in case of the appellants dealer becomes eligible to various discounts/incentives, then the Net Dealer Price to customers in such case shall be the discounted price of the vehicles.

- Therefore, the Appellant contended that service tax is not applicable in respect of various sales promotion activities involved in sale of vehicles as the manufacturers bring out various schemes and incentive programs for which they have been offered discounts by way of reduction in price. Thus, the Appellant claimed that the discounts/ incentives are nothing but reduction in final purchase price of vehicles which is subjected to applicable VAT and there are no services involved in these sales of vehicles.

- The Appellant further asserts that various expenses for the promotion of sales are incurred jointly by dealers and manufacturers in agreed ratio and certain amount was offered as interest subvention by reimbursement from manufacturers to the appellants, to the benefit of ultimate customers while availing loan on purchase of vehicles by customers. The free warranty services provided as part of the standard sales arrangement are ultimately for the benefit of the ultimate consumers and the value of such services are embedded in the selling price of vehicles. Thus, these transactions are not in the nature of service but is a sale which is subject to State VAT.

- As regards reversal of CENVAT Credit, the Appellant stated that they do not render any services in the premises dealing with the sale of vehicles and hence there is no common inputs or inputs services requiring reversal of Cenvat Credit. However, in certain premises where the service of motor vehicles and sale of spare parts is carried on, they had reversed the Cenvat credit attributable to input services on non-taxable activity.

- For 'other income' during the adjudication stage, the appellant had explained that the same are not covered under the taxable category with supporting documents which were not dealt properly in the impugned order.

- The Appellant also relied upon the various decisions of the Tribunal and the judgement of the Hon'ble Supreme Court ('SC') in the past including **Commissioner of Central Excise, Pune-IVs. Sai Service Station Ltd [2017 (5) TMI 1144 – CESTAT Mumbai]** and **Union of India and others Vs. Bombay Tyres International Pvt. Ltd. [1984 (17) ELT 329 (SC).**

- On the contrary, the Department relied upon the decisions of the Tribunal in the case of **Tata Motors Ltd. in Excise Appeal No.1362 to 1365 of 2012** and **HDFC Bank in ST Appeal No.85741 of 2014** and reiterated that appeal filed by the appellants is liable to be dismissed as

the nature of the services offered by them is Business Auxiliary Service, Business Support Service.

- Post hearing both the sides, the following observations were made by the Hon'ble CESTAT:

  - Various schemes, discount/incentives received by the appellants from the manufacturer of motor vehicles and the discount given to the ultimate consumer is borne by both the manufacturer and the appellants dealer. Hence, the effective 'Net Dealer price' have taken into account the various benefits/incentives, i.e., benefits passed on to the ultimate customer.

  - The rulings of Tata motors Ltd. And HDFC Bank Ltd. relied on by the Department was clearly distinguishable from the present set of facts and therefore the same cannot be applied in the present case.

  - Various Tribunal judgements were referred such as **Commissioner of Service Tax, Mumbai Vs. Sai Service Station Ltd. (supra), My Car Pvt. Ltd. Vs. Commissioner of Central Excise, Kanpur (supra)** wherein it was held that incentives on account of achievement of sales target cannot be treated as Business Auxiliary Service.

  - The appellants had maintained CENVAT registers as per Service Tax registrations obtained for various premises and had not availed Cenvat credit on inputs services which have been utilized only for exempted services.

  - The impugned order did not provide any basis or evidential documents, upon which the incorrect availment of Cenvat credit could be determined in terms of Cenvat Credit Rules, 2004.

Ruling

- Basis the above observations, the Hon'ble CESTAT allowed the appeal in the favour of appellant by setting aside the demand of service tax and penalties confirmed in the impugned order dated 13.10.2020 holding the same legally unsustainable.

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