Automotive Component Manufacturers Association of India

Pre-Budget Memorandum for 2022-23

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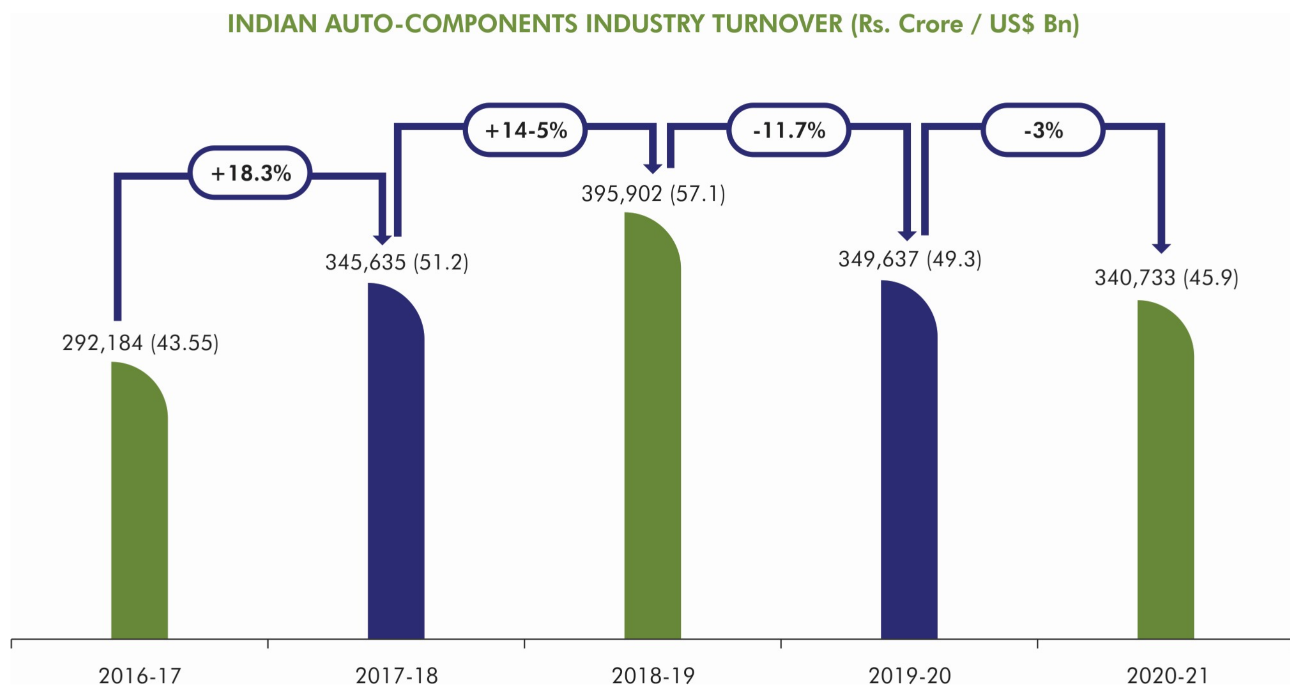
The Indian automotive components sector- A brief overview

The Indian auto component industry, with a well evolved manufacturing ecosystem, produces a wide variety of products including engine parts, drive transmission and steering parts, body and chassis, suspension and braking parts, equipment and electrical parts, besides others to service the dynamic automobile industry. The sector has also come under tremendous pressure due to lacklustre performance of the vehicle industry.

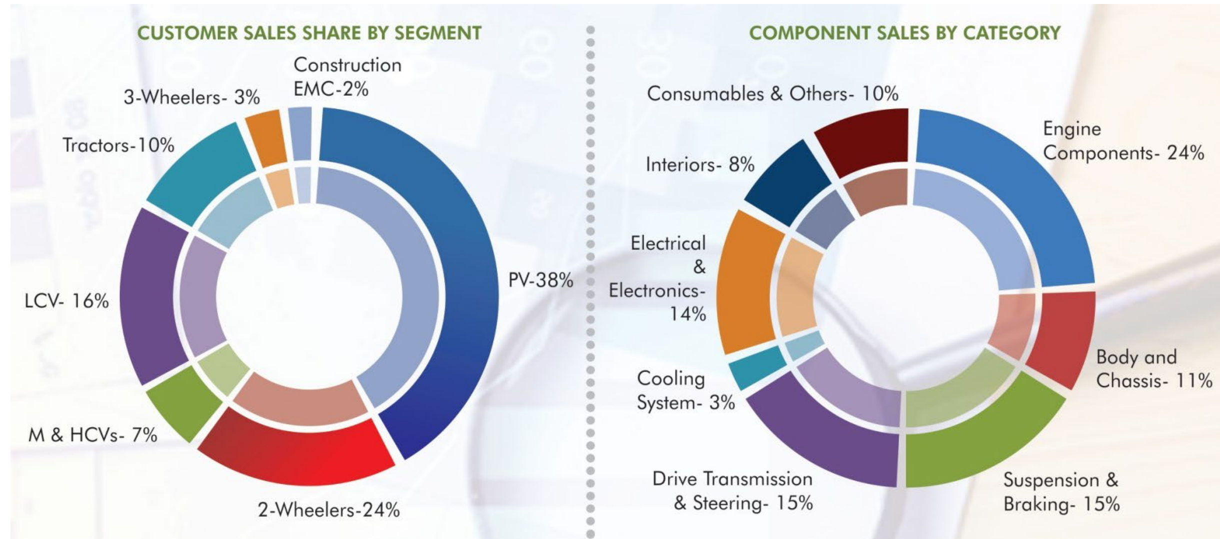
According to the National Skill Development Corporation (NSDC), the auto component industry provides direct employment for employs over 50 lakh people. The automotive component industry that contributes 2.3 per cent to India's GDP, 20-25 per cent to its manufacturing GDP.

Production and Sales: The auto-component industry contracted by (-) 3% to US$ 45.9 billion (Rs.340,733 crore) in 2020-21. This includes supplies to domestic OEMs, aftermarket and exports.



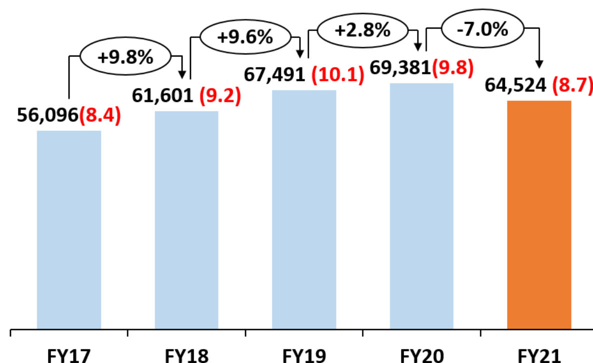
Domestic OEM Sales: In terms of supplies to OEMs - Sales to OEMs declined (-) 3% from Rs.2.87 lakh crore (US$ 40.5 bn) in 2019-20 to Rs.2.29 lakh crore (US$37.7 bn) in 2020-2 l. In terms of share in sales, passenger vehicles is the largest segment with 38% share, followed by 2 wheelers with 24%, M&HCVs 7%, LCVs 16%, tractors 10%, 3 wheelers 3% and construction equipment is 2%.

In terms of category of parts supplied to OEMs engine component is the largest segment with 24% share, followed by suspension and brakes with 15%, drive & transmission at 15%, electrical and electronics at 14%, body and chassis at 11 %, consumables at 10% interiors at 8%, and cooling systems at 3%.



Domestic Aftermarket Sales: With the lockdowns and lower utilisation of goods vehicles, after-market sales were under pressure after several years of steady demand. After-market sales, in rupee terms reduced by (-) 7% to Rs. 64,524 crore in 2020-21 compared to 2019-20.

Aftermarket | INR Cr (USD Bn)

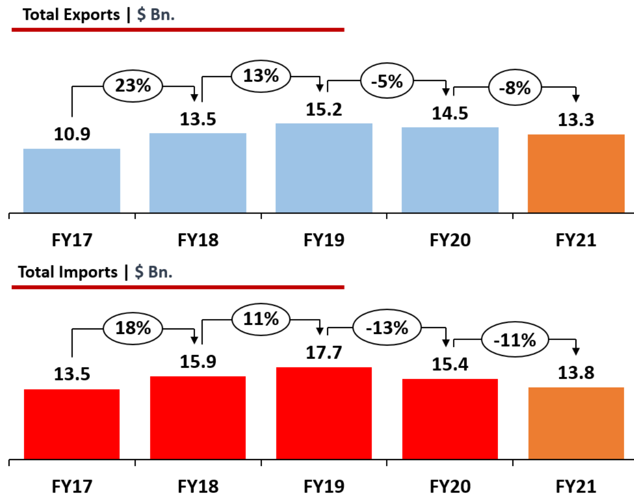


FY21 - Aftermarket

- With **increased government spending** on infrastructure and **reopening of institutions,** a spike in mobility of CVs, trucks and buses likely to have a positive impact
- **Key factors moving forward expected to have a positive impact:** Growing used car market & vehicle parc, increasing vehicle ownership in semi-urban and rural markets, and growing safety norms and regulations

FY 2021: Exports & Imports - Balance of Trade

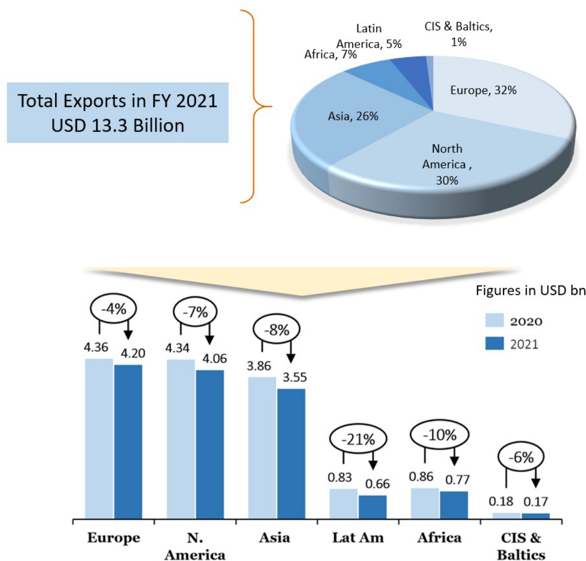
India’s trade deficit for auto components reduced to ~ $0.5B in FY21



FY21 - EXIM performance

- Exports fell **~8%** on account of lockdowns in major global markets (United States, Germany, Mexico). Expected to grow ~10% CAGR from FY21-FY26 (CRISIL)
- **~11%** decline in imports Y-o-Y; reduced demand in the domestic market, supply chain deficiencies globally
- Government’s PLI and other policies focused on export compositeness & increasing localization to further reduce trade gap

Region Wise Exports: Europe accounting for 32 per cent of exports, saw a decline of 4 percent, while North America and Asia, accounting for 30 per cent and 26 per cent declined 7 percent and 8 percent respectively.

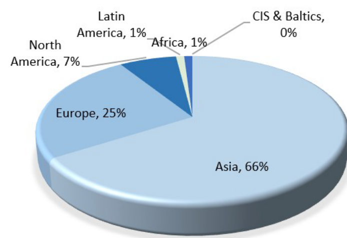


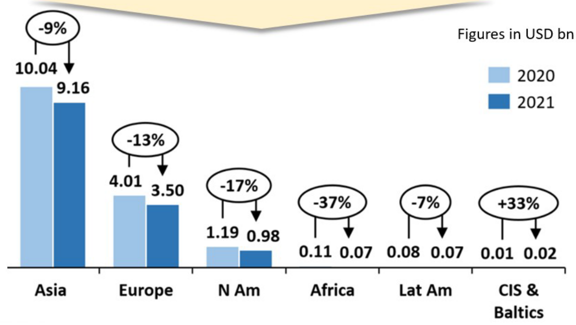
FY21 – Export performance

- The trade deficit decreased to **~$0.5B** for auto components. Exports grew strongly in H2 FY21 (~**2.5x** of H1)
- **Latin America** saw the biggest drop in export among all regions due to Covid-19 restrictions; **Europe and North America** remain the biggest export regions accounting for 64% of exports.
- **‘Drive Transmission & Steering’**, alongside **‘Engine’**, remain the 2 dominant segments, accounting for 52% of exports.

Region Wise Imports: Asia accounted for 66 per cent of imports followed by Europe and North America at 25 per cent and 7 per cent respectively. Imports from Asia declined by 9 per cent, while those from Europe by 13 per cent and from North America by 17 per cent

Total Imports in FY 2021
USD 13.8 Billion





FY21 – Import performance

- Imports declined **~11%** owing to decreased domestic production
- **Imports** from **China** declined **~1%** , however the proportion went up to 29% from 26% in FY20
- The **Asian** market constitutes **66%** of auto component imports; imports from **China** and **Thailand** cater to aftermarket due to cost advantage.

Indirect Tax

Issues & Recommendations

A. Customs:

1. Duty Drawback should be changed to FOB value basis from weight basis and Increase in All Industry Rate (AIR) of Duty Drawback

The bases for computation for Duty draw back rate on few items as per the recent notification no 07/2020-Customs (NT) dated 28th January, 2020 duty drawback is calculated basis the weight of the products instead of FOB value of the same.

This aspect needs to be reconsidered for high technology items, since the focus is on manufacturing light weight and fuel efficient products. For ex: - for engineering and specialised products, the weight can't be right denominator to claim Duty Drawback. Therefore, companies not able to take DBK benefits as the product weight is low.

Further, GOI have raised Customs duty for many of the products, but have not raised corresponding all Industry duty drawback rates, this with accumulation of cases due GST re-organisation, have caused enormous amount of pain on the exporter in working capital management and put the business in stress.

Recommendation

The weight proviso may therefore be removed from engineering products, which entail research & development. Corresponding amendment should be made.

It is also recommended to re-evaluate All Industry Rates with an upward revision as with the increase in customs duty rates leading to higher costs, increase in All Industry duty drawback rates will help to partially offset the cost impact for exporters.

2. Availment of credit of CVD and SAD paid under GST regime, on non-fulfilment of Export obligation under EPCG and Advance Authorization

As per the provisions contained in FTP read with HBP, an importer is allowed to import Capital goods on concessional rate of duty after obtaining an EPCG authorization. Basis the authorization, the importer is required to fulfil the Export obligation within subsequent 6 or 8 years as the case may be.

Further, under the Advance Authorization Scheme the importer is allowed the import of inputs to be made duty-free if they are physically incorporated in a product which is going to be exported. An export obligation is usually set as a condition for issuing Advance Authorization.

Provisions envisaged under HBP provides that in a case where the assessee has an EPCG authorization or Advance Authorization and due to his inability to fulfil the export obligation during the time period allowed, in such a case, the assessee is required to pay Customs duty saved at the time of import, along with applicable interest.

In a scenario where the EPCG authorizations/ Advance Authorizations were issued in the erstwhile regime are still valid in the GST regime (time limit is expiring in the GST regime) and the exporters are unable to fulfil the Export obligation within the prescribed time limit, in such a case, the exporters are facing an issue with respect to the availment of credit of the CVD and SAD paid on such non-fulfilment of Export obligation. Currently, there are no provision under the GST law which provides for availment of credit of such CVD and SAD paid in GST regime on suo-moto basis. Also, there are no provisions in the Customs Act, 1962 and the Foreign Trade Policy to allow credit of CVD and SAD pertaining to the erstwhile regime which is paid in GST regime. Section 142(8)(a) of the CGST Act, 2017 expressly states "*where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law,* ***be recovered as an arrear of tax under this Act*** *and the* ***amount so recovered shall not be admissible as input tax credit under this Act."***

Further, it is pertinent to highlight that there have been judgments wherein it has been ordered that if there is a bonafide default in fulfilling the export obligation against the advance authorization licenses issued and the appellant has accordingly paid the custom duty comprising of CVD and SAD, the refund application filed by the appellant in pursuance of the said custom duty has been admitted and refund has been granted.

Recommendation

Had the assessee paid such CVD and SAD at the time of importation of the subject capital goods without availment of the benefit under EPCG Scheme and availed cenvat credit thereof, the assessee could have carried forward such cenvat credit in its electronic ledger under GST regime by virtue of Section 140 of the CGST Act.

Such restriction is contrary to the overall scheme of allowing the transition of Cenvat credit relating to the existing laws and is causing undue commercial hardship for the tax compliant corporate citizens.

Therefore, it is recommended that either:

- An amendment is to be made in Section 142(8)(a) of the CGST Act, so as to allow the availment of IGST credit under the GST regime, of the CVD and SAD paid by the importer for non-fulfilling of export obligation; or

- Refund of the Customs duties being CVD and SAD payable by the importer for non-fulfilling of export obligation should be allowed to such importer

3. Constitute Customs Advance Ruling

Chapter VB of the Customs Act, 1962 was amended by Finance Act, 2018 to provide the formation of new '**Customs Authority of Advance Rulings**' for the faster decision making and to reduce the overall time period within which the Advance Ruling can be obtained by the applicant.

As a result, CBIC had appointed Commissioner (Customs Authority for Advance Ruling), Delhi and Commissioner (Customs Authority for Advance Ruling), Mumbai to function as **Customs Authority for Advance Ruling for Delhi and Mumbai** respectively with effect from 4th January,2021. However, it is pertinent to note that the Authority for Advance Ruling has solely been appointed in the states of Mumbai and Delhi.

Recommendation

As a trade facilitation measure, whereby the applicant can obtain advance ruling within shorter time frame, the separate 'Customs Authority of Advance Rulings' needs to be constituted and made operational for remaining states without any further delay.

4. Elevate the rates notified under the RoDTEP scheme and extend the benefit of the scheme to the exporters operating under Advance Authorization, EOU, SEZ, etc.

The RoDTEP Scheme was primarily introduced to replace the MEIS Scheme and was effective from 1st January,2021. The scheme has enabled the trade to be more compatible with WTO and is a stepping-stone towards an Atmanirbhar Bharat. It aims to refund the currently unrefunded duties, levies and taxes, hence, it aims to boost the exports and competitiveness of the Indian companies in the global market.

However, the rates fixed for remission along with the weight cap (Rs/kg) under the RoDTEP scheme are on the lower side as compared to the comprehensive data provided by the industry players. Hence, the rates of duty remission currently notified under the RoDTEP scheme are insufficient as opposed to the inflation rate.

Moreover, the rates notified for auto components sector under the RoDTEP scheme are much lower as compared to the rates notified under the MEIS Scheme. The rates

notified are inadequate to cover the incidence of unrefunded taxes and duties borne on the export products and this would have an adverse effect on the pricing of the products, hence, deterring the competitiveness of the Indian companies globally.

In addition to the above, the implementation mechanism of RoDTEP makes it clear that the benefit of the scheme would not be available to those operating under Advance Authorization, EOU, Jobbing etc. and SEZ units. However, these units also procure domestic inputs and bear the taxes and duties covered under RoDTEP such as electricity duty, State VAT on fuel used in generation of captive power, embedded SGST/CGST in purchase from unregistered dealers, duties on transportation of goods, both at the time of making imports and exports i.e., for transportation of goods from custom ports to the factory and vice versa etc. Hence, not covering such units under the RoDTEP scheme, would adversely affect the cost and thereafter the prices set by these units.

As a consequence of non-availment of the RoDTEP benefits to the exporters operating under Advance Authorization, EOU etc, the exporters would be required to make a choice between these schemes and between the RoDTEP scheme. This is causing distress amongst all the industry players.

Recommendation

Considering the above issues faced by industry, it is recommended that:

1. Suitable instructions are issued for elevating the rates of duty remission notified under the RoDTEP scheme and to make it equivalent to the rates notified under the MEIS scheme.
2. Issue suitable clarification for removing weight cap for engine and other vehicle parts as it is causing huge loss to the industry. Removal of weight cap will certainly minimize some amount of loss incurred by these companies due to lower RoDTEP rates.
3. The exporters operating under Advance authorisation, EOU, jobbing, etc schemes and SEZ should not be deprived of the benefit of RoDTEP. Accordingly, separate RoDTEP rate or certain percentage of the RoDTEP rate applicable to domestic units exporting such products, may be extended to them as well.
4. RoDTEP rates should also be notified for Chapters 72 and 73 relating to auto components made of Iron and steel items thereof which are currently excluded from the existing notification. These are crucial tariff lines related to auto component industry. There are following 18 auto components tariff lines that should be considered for RoDTEP rates:

Sr. No.	HS Code	Product Description	Product Category
1	72125090	Other: bars and rods of iron or non-alloy steel, plated or coated with zinc, plated or coated with other base metals	Interiors (non-electronic)
2	73072100	Other, of stainless steel : Flanges, tube or pipe fittings and other body parts	Body / Chassis / BiW
3	73151100	Articulated link chain and parts thereof : Roller chain	Body / Chassis / BiW
4	73181500	Threaded articles : Other screws and bolts, whether or not with their nuts or washers, etc	Consumables & Misc.
5	73181900	Threaded articles : Other, screws, bolts, nuts, coach-screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel	Consumables & Misc.
6	73182200	Non-threaded articles : Other washers, screws, bolts, nuts, coach-screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel	Consumables & Misc.
7	73182300	Rivets	Consumables & Misc.
8	73182400	Cotters and cotter-pins	Suspension & Braking
9	73182910	Circlips	Consumables & Misc.
10	73182990	Other, screws, bolts, nuts, coach-screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel	Consumables & Misc.
11	73201011	Leaf-springs : For motor vehicles	Suspension & Braking
12	73201020	Leaf-springs : Leaves for springs	Suspension & Braking
13	73202000	Helical springs	Suspension & Braking
14	73209020	Spring pins	Suspension & Braking
15	73209090	Other, springs and leaves for springs, of iron or steel	Suspension & Braking
16	73261910	For automobiles and earth moving equipments	Suspension & Braking
17	73261990	Other: Articles of iron or steel for body parts	Body / Chassis / BiW
18	73269099	All Other Articles Of Iron/Steel Nes Forged or stamped but not further worked	Body / Chassis / BiW

5. Time of filing of the Bill of Entry to be relaxed to at least 2 days after arrival of the air/sea shipments

The Finance Act 2021 proposed changes under Section 46 of Customs Act,1962 whereby the amended section 46 would require the importer to file Bill of Entry('BoE') before the end of the day (including holidays) preceding the date of arrival of the vessel/aircraft/ vehicle carrying imported goods at a Customs port/station at which such goods are being cleared for home consumption or warehousing.

To slight respite to the import industry, Notification No 34-35/2021- Customs dated 29 March 2021 relaxed the timelines for filing Bill of Entry to 'EOD of arrival of vessel/ aircraft/ vehicle' in case of goods consigned from specified countries arriving at sea port and for all goods arriving at a customs airport or land customs station.

However, in spite of the minor relief given by the government, the industry is still facing issues as the advance/ same day filing of Bill of Entry is not possible for a shorter duration transit such as, a cargo dispatched from Singapore, Malaysia etc.

Moreover, to avail the FTA benefit, a copy of Certificate of Origin is required to be submitted at the time of filing the bill of entry. However, the copy of Certificate of Origin is received from the supplier in minimum 2 to 3 days after dispatch of the goods as the flight details need to be incorporated in the same. Further, there would be an additional cost of customs brokerage if the Custom House Agent files the Bill of Entry on holidays.

Recommendation

In light of the above-mentioned issues, it is recommended that:

1. Time limit for filing Bill of Entry to be further relaxed to provide a time period of 2 days (excluding holidays) after the arrival for the air/ sea shipments;
2. Late filing charges should be fixed with an upper limit of INR10,000 per shipment or should be restricted to total duty amount;
3. The requirement of filing of the Bill of Entry prior to the date of arrival, wherever applicable, to be waived off for the AEO status holders;
4. Refunding the late filing charges erroneously levied at the ICEGATE portal due to system slowdown/shutdown without the need of obtaining waiver from the concern customs officer to avoid further delay in customs clearance and demurrages;

5. A refund mechanism to claim the demurrages paid during ICEGATE slowdown/shutdown period.

6. Benefit under Rule 96(10) of CGST Rules, 2017 i.e., refund of integrated tax paid on export of goods to be extended to the exporters who have bonafide availed the benefit of exemption of BCD and IGST under Notification 52/2003- Customs dated 31st March 2003

The Notification No 52/2003-customs exempts the goods or services imported by an Export Oriented Unit from the whole of the duty of Customs leviable under First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty, if any, leviable thereon under section 3 of the said Customs Tariff Act, subject to certain conditions. Hence, the Notification 52/2003 exempts the Basic Customs Duty, Integrated Goods & Services Tax (IGST) and Compensation Cess under Section 3 on the goods and services imported by the Export Oriented Unit.

The CBIC had introduced certain changes in Rule 96(10) of CGST Rules, 2017, whereby the option to claim refund of integrated tax paid on goods exported out of India would not be available to the Export Oriented Units who have availed the benefit of exemption of Basis Customs Duty, IGST and compensation cess under Notification no 52/2003-Customs

However, a slight relief to the Rule 96(10) was provided by issuing Notification No 16/2020- CGST which stated that the restriction under Rule 96(10) would not apply to those exporters who have claimed exemption of only the Basics Customs Duty and have paid the Integrated Goods & Services Tax and Compensation Cess on the goods imported. Hence, the restriction will still apply to those exporters who have imported goods without payment of IGST and Basic Customs Duty.

Due to this restriction, the industry is facing varied issues as the manual procedure to claim refund of the Input Tax credit for the goods exported is a long-drawn process and this would strain the business procedures of the exporters in EOU who are bonafide claiming the exemption as furnished by Notification 52/2003. Moreover, this will also stifle the cash-flows of the exporters since the refund under the manual refund procedure takes a great deal of time.

The impregnable restriction would lead to a great distress for the exporters of an Export Oriented Unit. The Export Oriented Units are established to promote exports. Considering this, a variety of benefits are extended to these units under Foreign Trade Policies as well.

Recommendation

Considering this issue, we recommend that the benefit of Rule 96(10) must be extended to the exporters who have bonafide availed the benefit under Notification 52/2003 and imported goods without payment of IGST, Compensation Cess and Basics Customs Duty.

7. Enhance the scope of Section 28BB of Customs Act, 1962 in relation to time bound closure of the inquiries and investigations initiated under Customs

The proposed Section 28BB was introduced to facilitate time bound closure of the inquiry/ investigation initiated under the Customs Act. However, the said section restricts its application only on cases of inquiry/investigation covered by sub-section (1) and (4) of section 28.

There is no provision in law to facilitate the time bound closure of inquiry/ investigation initiated under the other sections of the Act.

Recommendation

It is suggested to include and put similar provisions for time bound closer of the inquiry/ investigation culminating into the issuance of notice under other sections dealing with confiscation, seizure etc.

8. Amnesty Scheme for resolution of legacy disputes under the Customs laws to be introduced

There are multiple disputes pending under Customs at adjudication level as well as different judicial forums

Given the uncertainties involved in most of these disputes, including the financial impact of interest and penalty with duty, businesses are keen on settling most long drawn matters

The Government has in order to reduce the number of litigations introduced settlement schemes such as “Sabka Vishwas - (Legacy Dispute Resolution) Scheme,

2019” for resolution and settlement of legacy cases of Central Excise and Service Tax. One of the benefits under the scheme, is a complete waiver of interest and penalty.

The Finance ministry under the aforesaid scheme collected around Rs 38000 crores as taxes

With the huge success of the scheme, it was replicated to resolve the direct tax disputes as well, by the introduction of the 'Vivad se Vishwas– a direct tax dispute settlement scheme

States have also introduced settlement schemes under the respective State VAT laws.

Recommendation

No such scheme has been introduced to settle down the disputes under Customs laws, accordingly, it is suggested that a one-time dispute resolution/ settlement scheme be introduced under the Customs laws to settle and resolve the pending disputes.

This would release the revenue stuck in various litigations/ disputes to the Government exchequer and increase ease of doing business in India.

9. Simplifying the CAROTAR procedures

Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (the CAROTAR, 2020) has been made applicable with effect from 21 September 2020.

Subsequently, a brochure containing the background information and guidance for compliance of the said provisions was also issued on 8th October,2020. It was stated in the brochure that the importer is required to possess sufficient information about the origin of goods, where preferential tariff treatment is claimed. They are required to possess Form- I for each part imported. Thus, the onus is entirely on the importer to determine whether the parts imported satisfy the originating conditions.

The Form-I focusses on the process through which a good has attained origin i.e. if goods are produced entirely from inputs from that country or includes inputs from third country and other detailed information on the costing statement of the exporter, the detailed production process, etc. This is causing unnecessary burden on the importer since due to confidentiality issues no such information is typically being divulged by the exporters. Due to this, the importers are unable to claim the benefit under CAROTAR under no fault on their part.

Recommendation

We recognize the fact that to prevent misuse of FTA's the Government of India has introduced CAROTAR, 2020.

However, we suggest that the CAROTAR requirements must be simplified for the importers. A single certificate must be obtained from the vendors in lieu of detailed production information in order to satisfy the compliance conditions.

B. GST related issues:

1. 18% GST for Chapter 84, 85 and Chapter 87 auto components

In the 31st GST council meeting, held on 22nd December 2018, slashed tax rates on auto components which has brought great relief to the industry. Besides, certain auto parts yet have to be reconsidered by the council, as the component industry produces large variety of auto components that fall in various HSN chapters that attracts higher tax rates.

Under GST the Auto Components attract two different rates - 18% and 28%. Majority of auto components are at 18% GST. However, **36% of automotive components under chapters 84, 85 & 87 are still subject to 28% GST.**

Rationale and Justification:

- While the tax paid is cenvatable in the manufacturing supply chain **our concern pertains largely to sales of auto components in the aftermarket.**
- **With respect to B2B,** revenue to the Government will be neutral. 18% GST on auto components will also help in reducing the working capital for component suppliers. **The reduced working capital limit will help in getting higher term loans resulting in higher investments and better growth prospects.**
- The component industry has a very significant aftermarket – INR 67,491 crore (USD 10.1 billion). An estimated 35% of the manufacturers supplying aftermarket products are unorganized/indulge in grey operations.
- The rate of GST applicable on automotive components in India is higher to the tune of up to 2x - 3x the GST rates in these economies.

	India	Malaysia	Indonesia	Japan	Singapore	Canada
Rate of GST applicable for automotive components	18% - 28%	6%	10%	8%	7%	5-15% Incl. Provincial taxes

- Currently, the consumer is paying 18% GST for repair services and up to 28% for replacement parts and consumables. The difference in rates between services and parts has put pressure on the unorganized service sector in tracking and compliance aspects.

- While comparing the tax rates between services and components in the countries cited above, it is found that the rate for services and components is the same – and that having a one common tax rate is beneficial for the stakeholders.

GST for parts & Services (India vs. Others)

	India		**Malaysia**		**Indonesia**		**Singapore**		**Canada**	
GST Rates	GST		GST		GST		GST		GST+ Provincial tax	
	Parts	Services	Parts	Services	Parts	Services	Parts	Services	Parts	Services
	28%	**18%**	6%	6%	10%	10%	7%	7%	5-15%	5-15%

- Over 70% of the players in the aftermarket are MSMEs. Counterfeit products and spurious parts adversely affect these players**.** A higher GST rate compels smaller component manufacturers to gravitate towards non-compliance and survive by means of under-invoicing and producing sub-standard/spurious components. **Many of the safety-critical parts are in the higher bracket of 28% and are compromised, thus putting to risk the lives of drivers, passengers and pedestrians.**

- **A reduction in tax rate would incentivize the unorganized sector to undertake GST compliance** and it will also reduce the gap in the price between the standard vis-à-vis the sub-standards.

- Normalization of GST rate can potentially act as an incentive for vehicle owners - especially for the commercial vehicle owners & operators to avoid missing the OEM-prescribed maintenance schedules of their vehicles. **Higher frequency and timely maintenance of the commercial vehicles will help improve their average running condition – thereby having a positive impact on average pollution and vehicular safety on Indian roads.**

<u>Rationalization of GST rate will help Government to generate revenue:</u>

- **Sales to OEMs** – INR 3,46,052 crore / USD 49.5 billion- Input tax credit provision is under GST regime – **Impact will be Neutral**
- **Domestic Aftermarket-** INR 67,491 crore/ USD 10.1 billion- **GST rate of 28% puts higher tax burden on end consumers.**
- As per the AMP, it estimated aftermarket may touch USD 30-32 billion by 2026.
- Based on the assumptions, it is estimated that the Government may not face much revenue loss.
- 35% of Domestic Aftermarket is unorganized/grey market. It is estimated that 90% companies/units do not pay GST in unorganized sector; this translates to revenue loss to the tune of INR 5,000-6,000 crore to the Government.
- **A moderate rate of 18% will help enhance better compliance and expand the tax base which will further increase revenue collection.**
- Rationalizing the GST rate to 18% shall **increase the demand in the aftermarket** by an additional 12 % -15% annually. The current CAGR of the aftermarket is 14%.
- With such growing aftermarket, Government's revenue collection will increase and neutralize any immediate revenue loss.

Recommendation

The entire component industry should be bracketed under 18 per cent (GST) rate or lower, as a large aftermarket services almost all categories of products. The aftermarket is dominated by smaller players that is adversely affected by counterfeit products and spurious parts. With a higher GST rate it will compel spurious component manufacturers to gravitate towards non-compliance and survive by means of under-invoicing.

Annexure-II: List of Auto Components (Proposing reduction of Goods and Services Tax rate from 28% to 18% on auto-components used by Original Equipment Manufacturer and aftermarket)

2. Availment of Input Tax Credit in relation to the invoices which have been not been reported by the supplier in GSTR-1

As per Rule 36(4) of the CGST Rules 2017 read with Section 16(1) of the CGST Act, the maximum ITC a taxpayer can claim in relation to the invoices not appearing in its GSTR-2A is 5% of the eligible credit in respect of the invoices appearing in GSTR-2A.

For a supplier having turnover upto INR 5 crore is eligible for filing quarterly returns. Therefore, in cases where the quarterly taxpayer does not opt to furnish invoice details on monthly basis under Invoice Furnishing Facility (IFF) scheme, there may arise a time difference in actual return filing by vendor and ITC eligibility evaluation by recipient. Thus, adversely impacting the availability of ITC.

Further, Budget 2021 proposed an amendment to Section 16 of CGST Act, 2017 which provides that ITC can be availed by the recipient only if the invoices/ debit notes are furnished by the supplier in his GSTR-1 and such details have been communicated to the recipient.

To give effect to the above amendment, the GST Council in its 45th meeting held on 17th September,2021 recommended to amend Rule 36(4) of CGST Rules, 2017 once the proposed clause (aa) of section 16(2) of CGST Act, 2017 is notified.

The aforementioned provisions are onerous to the recipient without casting any impact on the supplier, which is contrary to the scheme of Indirect Taxes. The Indirect Tax though borne by the recipient, the onus of depositing the same lies on the supplier. Further, by virtue of such payment, the recipient is entitled to avail the set-off of the said taxes to ensure that the credit doesn't become cost in the value chain.

In the instant case, while the recipient pays the amount of tax to the supplier, however due to non-compliance by the supplier, the recipient is unable to avail the credit of the same, thereby defeating the very intent of the GST law.

Recommendation

Input tax credit is a substantial right of the recipient, and it cannot be denied when recipient enabled fulfilment of the prescribed conditions of the law, while the supplier didn't comply with the responsibilities entrusted upon him under the GST law. Accordingly, it is recommended that the bonafide recipient should not be denied the input tax credit due to the default of the supplier in furnishing its outward return subject to satisfaction of other conditions for availing the credit.

Development of proper infrastructure by which the recipient is given the opportunity to upload the supply invoices which have been missed to be reported by the supplier and thus, increase the supplier's liability to pay tax thereon, similar to the concept of GSTR-1A.

3. Deliberation on GST rate structure to boost the Electric Vehicle sector

While the Government has introduced various schemes and is providing various indirect incentives through FAME II (Faster Adoption and Manufacturing of Electric

Vehicles in India) scheme, PLI scheme for Advanced Chemistry Cell (ACC) batteries and Automotive sector and various other lucrative state fiscal incentives to boost the demand of Electric Vehicle (EV) in India, however, there is an adverse impact on the industry due to inherent inverted duty structure under GST as the GST rate on inputs including EV auto parts, raw materials and other overheads are on average of 18 % wherein the output tax payable on Electric Vehicles is pegged at 5%.

Since the parts and materials of Electric Vehicles are taxed at a higher rate in India, reduction in such rates is necessitated to boost localization levels across the value chains in a bid to curb imports and promote indigenous manufacturing.

Recommendation

It is recommended to deliberate the GST rate structure prevalent in the Electric Vehicles sector, thereby, reducing the GST rates applicable for components of Electric Vehicles. This would reduce the overall cost of production of such vehicles and provide impetus to OEM’s to procure inputs locally from India.

This can be one of the solutions for the challenge of liquidity crunch in the business and would also facilitate ease of doing business. It also seeks to boost Make in India, with benefits provided to manufacturing sector by way of reducing duties on certain inputs and raw materials.

4. Harmonize the rate of interest in case of delay/ disputes

In case of any disputes, the assessee is liable to pay interest under Section 50 and penalty @ 15% of applicable tax. However, where any claim of refund arises from an order passed by the adjudicating authority or appellate authority or court which has attained finality and the same is not refunded within 60 days from the date of receipt of application filed consequent to such order then, the assessee is eligible to receive interest on delayed refunds not exceeding 9%.

Recommendation

It is recommended that the interest rate payable by the assessee in case of any dispute should be same as that of interest rate payable by the Authorities in case of delayed refunds. There should be parity in the interest rate paid by the assessee and that payable by the authorities.

5. Anomalies in the provisions of levy of interest under GST

Section 50 of the CGST Act 2017 provides that interest on delayed payment of tax would be charged only on the net cash liability i.e., the output tax discharged by debiting the cash available under Electronic Cash Ledger.

However, the proviso to Section 50(1) was introduced by Finance Act (No. 2), 2019 and was made effective from 1 September 2020 vide Notification No. 63/2020 Central Tax dated 25 August 2020 provides that "*Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.*"

Basis the above, there seems to be an anomaly in the interest provisions envisaged under Section 50 of the CGST Act as it can be inferred that relief of discharging interest on net cash liability is available only in a scenario where the taxpayer has made the belated payment of tax i.e. the GSTR 3B is filed belatedly after the due date. Hence, the benefit of the proviso (i.e. applicability of interest only on the liability paid through electronic cash ledger) may not be applicable in cases where there is an increase in tax liability on account of supplies which have already been made earlier but missed to be reported in the return filed for that tax period.

Nevertheless, there are judgements wherein it has been held that the interest is compensatory in nature and if sufficient amount is available in the electronic credit ledger, then interest shall not be liable to be paid on the tax demand utilizing the credit balance.

Additionally, the proviso to Section 16 of the CGST Act provides that "*where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed*".

Basis the above provision, it is clear that where a recipient does not make the payment to the supplier within 180 days of the date of invoice, he is required to reverse the input tax credit availed by him on such supplies along with interest on the total amount of input tax credit reversed.

Recommendation

In view of the above anomalies in the GST act regarding payment of interest, it is recommended that:

- the anomaly between Section 50(1) and its proviso in relation to the interest on delayed payment of tax to be paid on net cash liability should be appropriately addressed and clarified.

- If a tax payer has an accumulated balance of input tax credit, then interest should not be levied on the amount of input tax credit reversed by debiting the Electronic Credit Ledger and interest should only be paid on the amount of input tax credit reversed in cash.

6. Refund of GST paid on capital goods to be available to the exporters

As per section 16 of the IGST Act, the exporters have an option not to pay any IGST on the exports and claim refund of the GST paid on procurement of inputs and input services.

However, no refund is available for GST paid on the capital goods per Section 54(8)(a) of the CGST Act. Since in case of exporters, there is no output GST liability, this results in blockage of credit of GST paid on capital goods, impacting the financial health of the exporters.

Recommendation

The provisions to grant refund of accumulated credits to the exporters should be amended to grant refund of GST paid on procurement of capital goods as well. There is no intention to make a distinction between capital goods and inputs in this regard.

7. Double Taxation of IGST paid by the importers in case of Ocean Freight

As per Notification No.8/2017 – Integrated Tax (Rate) dated 28th June 2017 and Entry 10 of the Notification No.10/2017 – Integrated Tax (Rate) dated 28th June 2017, the importers are required to discharge IGST under reverse charge on ocean freight @ 5% GST.

The Notification No. 8/2017-Integrated tax (Rate) dated 28.06.2017 vide F. No. 334/1/2017-TRU dated 30.06.2017 whereby the following has been inserted:

"Where the value of taxable service provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India is not available with the person liable for paying integrated tax, the same shall be deemed to be 10 % of the CIF value (sum of cost, insurance and freight) of imported goods."

Further, at the time of importing on CIF basis, the value of freight is included in the assessable value of imports on which IGST is discharged by the importer. Subsequently, as per the abovementioned notification, importer is again required to pay IGST under reverse charge mechanism on the freight component charged by foreign transporter from the foreign supplier. Hence, there is double taxation on the value of freight in case of CIF contracts.

The Gujarat High Court in the case of **Mohit Minerals Pvt. Ltd vs Union of India** with respect to levy of IGST under reverse charge on Ocean Freight in case of purchases made on CIF basis, pronounced that the impugned Notification No.8/2017 – Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No.10/2017 – Integrated Tax (Rate) dated 28th June 2017 are declared as ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency.

The above view is further substantiated by the judgement of Rajasthan High Court in the case of **M/s Shree Mahesh Oil Products** wherein it was held that the assessee will be entitled for refund of IGST paid on Ocean Freight in terms of the Mohit Minerals judgement.

The effect of this judgement is that no IGST should be levied on ocean freight on reverse charge basis, if the imports are made under CIF contract, as the overseas supplier of goods is the receiver of the transportation service.

Recommendation

Though there are various High Court rulings in the favor of assessee in relation to the matter of double taxation in case of ocean freight, however, it is suggested that GST Council, in order to avoid double taxation on the ocean freight, should carry out appropriate amendments and specifically provide in law to remove GST applicability

on the Ocean freight under reverse charge basis. This would avoid any confusion and unwanted litigations on this matter.

8. Relaxation in provisions in relation to Input tax credit (ITC) restrictions contained in Section 17(5) of CGST Act, 2017

Section 17(5) of the CGST Act 2017 prescribes certain inward supply of goods and services in respect of which input tax credit is not available to the assessee. In view of the same, we have recommended various supplies in respect of which input tax credit should be allowed to the recipient:

S.No.	Nature of inward supply	Justification	Recommendation
1.	Input credit in respect of supply of Goods and Services received for Corporate Social Responsibility activity (CSR)	The CSR activity has been obligated under Companies Act and expenses made against above activity is from the profit made in the course of business. GST Law is not clear whether input credit is available in respect of expenses made on CSR activity obligated under Companies Act	We recommend that GST credit should be allowed on the same
2.	Input credit on GST paid on services such as repair & maintenance, etc. relating to motor vehicles	The CGST (Amendment) Act, 2018 dated 29 August 2018 made amendments in Section 17 of CGST Act, 2017 and provided that credit shall not be available on services of general insurance, servicing, repair and maintenance services in relation to motor vehicles, vessels or aircraft. It is pertinent to note that Motor vehicles are purchased by the Company and given to employees which are used for Company business purpose. Hence, disallowing credit of GST paid on repair & maintenance services related to motor	Necessary amendments be made to allow GST credit on repair & maintenance services, general Insurance etc. relating to Motor vehicles used in the course of business

S.No.	Nature of inward supply	Justification	Recommendation
		vehicles is not in line with the spirit of GST Law.	
3.	Input credit on GST paid on Canteen and other employee related services	Section 17(5)(b)(i) of CGST Act, 2017 provides that credit shall not be available for food and beverages, outdoor catering, renting or hiring of motor vehicle except when inward supply is used for making an outward taxable supply of the same category or as an element of taxable composite or mixed supply. However, employee facilities such as transportation and canteen services provided to the employees are for the welfare of the employees and hence, are required for the furtherance of business.	GST credit of the services and benefits which are mandatory to be provided to the employees in pursuance of any law for the time being in force, should be allowed to the recipient since they are construed in the course of business.
4.	Input credit in respect of works contract services	The Construction/ extension of factory building involves huge capital investments and disallowance of credit on Works Contract service is leading to cascading of taxes and becomes cost to the Company. Section 17(5)(d) of CGST Act, 2017 reads that *goods or services or both received by*	The restriction of ITC in respect of all works contracts resulting in Immovable property at large should be removed as in large number of contracts qualifying as Works Contracts, the end

S.No.	Nature of inward supply	Justification	Recommendation
		a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business The GST paid on investments undertaken is not eligible for input credit in present GST Law. Ultimately, the GST paid amount becomes cost to the Company leading to cascading of tax which is not the spirit of GST Law as to provide seamless credit.	result would be immovable property.
5.	Input tax credit of GST paid on Rent-a-cab services received	Rent-a-cab today has become a significant mode of transport of employees for business purpose. It is being used for taking part in business meetings, etc. Hence, it is business expenditure.	It is suggested that restriction of availing credit on Rent-a-cab services be dispensed with and credit be allowed for a Rent-a-cab used in course of business.
6.	Non-reversal of credit in case of goods lost, destroyed or stolen	Section 17(5)(h) of CGST Act, 2017 provides that credit shall not be available in case the goods are lost, stolen, destroyed, or written off or disposed of by way of gift or free samples. It is pertinent to note that while storing of goods before their supply, losses are bound to happen due to natural reasons such as evaporation. Further, free samples are required to be given to customers for getting orders and are used for furtherance of business. In such	The provisions should be amended to exclude: a. loss of goods because of natural reasons within a permissible limit expressed based on nature of goods. b. goods sold as free samples.

S.No.	Nature of inward supply	Justification	Recommendation
		cases the law provides that ITC availed on such goods is required to be reversed.	
7.	Input Tax Credit of GST paid on Insurance services	Section 17(5)(b)(i) of CGST Act, 2017 provides that credit shall not be available for life insurance and health insurance except when inward supply is used for making an outward taxable supply of the same category or as an element of taxable composite or mixed supply. However, employee insurance facilities provided to the employees are for the welfare and wellbeing of the employees during such pandemic times and hence, are necessary for sustenance and furtherance of the business.	GST credit of all types of insurance services which are necessary to be provided to the employees during such unprecedent pandemic times, should be allowed to the recipient since they are construed necessary and in the course of business.

9. Notification of utilization of unutilized balance of Education Cess, Secondary Education Cess Service tax, Krishi Kalyan Cess in the books of Accounts

Pursuant to the Union Budget 2015-16, ‘Education Cess’ and ‘Secondary and Higher Education Cess’ were abolished. Section 140 of CGST Act, 2017 specifies that eligible duties for the purposes of GST did not include Education Cess and Secondary Higher Education Cess. In view of the same, the Closing balance of Education Cess and Secondary Higher Education Cess prior to 1st Mar 2015 cannot be carried forward in GST. There are several judicial precedents wherein the accumulated credit of Krishi Kalyan Cess is not admissible as a part of Input tax credit under GST some of which are as below:-

i. Authority for Advance Ruling (‘AAR’) vide Order No. GST-ARA-18/2017-18/B-25 (Maharashtra State) dated 5 April 2018 in M/s Cellular Operators Association of India v. Union of India Writ Petition (Civil) No. 7837/2016 dated 15 February 2018.

ii. Delhi High Court in Cellular Operators Association of India

Further, the government vide Notification No. 02/2019 – Central Tax has notified Section 28 of the CGST Amendment Act, 2018 which disallows the transitional credit of cess (including Education Cess and Secondary Higher Education Cess) retrospectively w.e.f. July 1, 2017.

The Jharkhand High Court in Timken India Limited vs. UOI and Anr. [W.P. (T) No. 1541 of 2019] has issued notice to the Revenue in respect of the writ challenging vires of Section 28 of CGST Amendment Act, 2018.

Contrary to the above, the CESTAT Bangalore in the recent ruling of **Kirloskar Toyota Textile Machinery Pvt. Ltd. vs Commissioner of Central Tax, Bengaluru South GST Commissionerate** had held allowed the appeal for refund of accumulated balance of unutilized credit of Education Cess (EC) and Secondary and Higher Education Cess (SHEC) available in the books. It was allowed under Section 11B of Central Excise Act. The Hon'ble Tribunal had drawn reference to the decisions of the Division Bench of Delhi Tribunal in Bharat Heavy Electricals Ltd and jurisdictional High Court in Slovak India Trading Co. Pvt. Ltd for passing its decision.

Recommendation

It is recommended that changes in statutes should not result into foregoing eligible benefits. Hence, a circular should be issued clarifying that the dealers should be allowed to utilize the unutilised portion of Education Cess, Secondary Higher Education Cess and Krishi Kalyan Cess, under GST to eliminate the impact to the P&L due to write off of the unutilized Cess balances of the prior years This would also help the businesses to sustain during such unprecedent pandemic times.

10. Penalty on non-updation of part B of E-Way bills

The E-way Bill System under the Goods and Services Tax (GST) regime replaces manual or paper-based Way Bills (commonly known as road permits) that were required for movement of goods in most states under the erstwhile VAT regime.

Part A of the E-way bill contains the details of the goods transported, the nature of supply, location of consignor/ consignee, the applicable tax thereon, the distance and validity of e-way bill and such other details as are required. Part B of the e-way bill contains the details of the transporter and of the vehicle vide which the goods are transported. Explanation 2 to Rule 138(2)(3) provides that the e-way bill shall not be

valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished.

A practical difficulty is being faced by the industry, wherein, during movement of goods where all relevant details are filled in the e-way bill but to due to an apparent clerical error, the vehicle details are not mentioned in Part-B of such E-way bill, due to which the goods are detained by GST Mobile Squad Authorities.

Section 122(1)(xiv) of CGST Act, 2017 provides that penalty shall be applicable where any taxable person transports any taxable goods without proper document. The quantum of penalty specified under Section 122(1) of CGST Act, 2017 provides that a taxable person shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

Further, Section 126 of CGST Act, 2017 states the general disciplines related to penalty and provides that no officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Accordingly, since the Part A of e-way bill and the supporting invoice contains the tax particulars and the value of invoice, non-updation of Part B of e-way bill can be considered only as a minor procedural lapse.

Recommendation

Consideration of this point is requested with an expectation to revisit the GST penalty on such clerical errors apparent on the face of record.

Therefore, such detention of goods without considering relevant facts is inappropriate and resistance in ease of doing business. Our suggestion in this regard is that where it is prima facie evident that the mistake is a clerical error, a nominal penalty upto Rs. 5,000/- may be levied and goods shall be released.

Such move would help industry to be aligned with growth part of India leading to successful implementation of GST and making significant contribution to “Make in India” project of Hon’ble Prime minster of India.

11. Issuance of notice for Detention, Seizure and Release of Goods in Transit to be issued in English in addition to the vernacular language

Where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure.

The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty. With the introduction of E-way bill mechanism for supply of goods across the country, the proper officer of various state jurisdictions might use their local/ vernacular language to correspond/ issue notices to the assessee.

In such a scenario, the assessee located in a particular state may face difficulty in understanding the notice issued by the proper officer in the vernacular language of the other state and accordingly face issues in make any further correspondences.

Recommendation

Therefore, it is recommended that necessary amendment be made in the Act itself, to provide that notices and orders should be issued in English in addition to the vernacular language and hence, the authorities to uniformly correspond in English language with the assessee while issuing Notices and Orders.

12. Time of Supply of services under reverse charge mechanism specified under Section 13(3) of the Central Goods and Services Tax Act, 2017

As per Section 13 (3) of the CGST Act, in relation to the time of supply of services in respect of supplies for which tax is paid or liable to be paid on reverse charge basis, the time of supply is earlier of the following dates, namely:

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the **date immediately following sixty days** from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier

However, various organized, large and process driven corporates experience that RCM Invoices may not get processed within 60 days, which is resulting into additional interest burden. Invoices may not get processed within 60 days as it has to pass

through various clearance process. RCM is not a straight transaction and it requires additional accounting entries to be posted to create GST payable in the books of accounts.

Recommendation

Therefore, it is recommended that the time limit of 60 days should be enhanced to at least 6 months.

13. Non reversal of Input Tax Credit (ITC) in case of non-payment by the recipient within 180 days from the date of issuance of invoice in respect of Capital goods

As per Section 16 of the CGST Act, where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a **period of one hundred and eighty days from the date of issue of invoice by the supplier**, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.

However, in case of purchase of capital goods, normally certain portion of money is retained to ensure the performance in real time of the capital assets. Sometimes, it may exceed 1 year to settle the final settlement.

Recommendation

Since the supplier is paid the full invoice amount only upon completion of the service/ delivery terms as per contract, input tax credit should be fully allowed irrespective of the time of payment.

Therefore, it is recommended that the said provision of reversal of credit upon defaulting in making payment to the supplier with 180 days from the issue of invoice should be removed in case of capital goods.

14. Refund of Input Tax Credit (ITC) balance in case of closure of business

As per Section 54(3) of the CGST Act, a registered person can claim the refund of unutilized ITC only in the following cases:

1. zero rated supplies made without payment of tax;

2. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies)

   However, where the business of a registered person is getting closed, there is no provision regarding refunding the ITC balance available in the Electronic Credit Ledger (ECL) of the assessee on the date of closure of business and hence, such amount becomes a cost to the assessee.

Recommendation

Therefore, it is recommended that the accumulated input tax credit balance available with the assessee on the date of closure of its business should be allowed as refund to the assessee.

15. Requirement of claiming of ITC in relation to suppliers under Corporate Insolvency Resolution Process

As per Insolvency and Bankruptcy Code("IBC"), once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (hereafter referred to as "CIRP") gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (hereafter referred to as "IRP") or resolution professional (hereafter referred to as "RP"). It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (hereinafter referred to as the "NCLT").

The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP and is required to file the GST returns. However, due to mechanics of GST, an RP cannot file the subsequent GST returns if the prior returns are not filed.

Due to technical difficulties faced by the RP in filing the GST returns and discharging tax electronically owing to non-filing of prior returns and deposit of GST dues by the exiting management during pre-CIRP period, the RP filed an application bearing C.A.No.70/2018 before the Hon'ble NCLT seeking appropriate directions in respect of compliance to be undertaken GST. After granting due hearing to the counsels for RP and the GST Department, the Hon'ble NCLT vide order dated 02.08.2018 directed the GST department to accept physical filing of the GST returns and payment of tax in respect of period post commencement of CIRP.

The said order was issued for the GST returns to be filed from the period January 2018 onwards but there is no specific instruction in relation to the returns to be filed for the period July’17 and December’17.

Resultantly, the customers of such companies (who are under CIRP) for the supplies made during July’17 to December’17, would have borne the incidence of tax but the ITC for such invoices would be denied as the same would not be appearing in GSTR-2A. This is unjust to the bonafide customers who due to absence of clear mandate to CIRP in the GST law to file returns for the period July-December’17 are being denied credit.

Recommendation

The requirement of claiming ITC in relation to the invoices for the period July-December’17 basis their reconciliation with GSTR 2A should be done away with in case of suppliers under Corporate Insolvency Resolution Process.

16. Clarification to be issued for classification of Automobile components

The scheme of classification of goods under the Indian Customs and Goods and Services Tax (‘GST’) Act, provides for goods to be classified under different specified 8-digit numeric codes in First schedule to the Customs Tariff Act and different rates of customs duties are prescribed for products under different headings. Further, the General Rules for the Interpretation of Import Tariff provides the rules for classification of the goods which enables the correct classification of product and consequently correct assessment of the Customs Duty.

Many a times dispute has been raised with respect to classification of parts of motor vehicles i.e. their classification under the chapter where they are specifically covered viz-a-viz a classification as parts of motor vehicles, resultantly, the industry developed a mechanism to resolve the classification dispute.

However, citing the recent ruling in case of Westinghouse Saxby Farmer Limited1, rapid notices and summons are being issued by the DRI/ Customs Department disputing the classification of parts of motor vehicles (presently classified under specific HSN) and demanding differential tax by proposing the classification relevant for parts of motor vehicles (i.e. 8708) wherein higher tax is applicable.

It is relevant to note that there are certain goods like motor vehicle engine, which is specifically mentioned in chapter heading 8408 and is also part of motor vehicle. In such cases, the entry 8408 would be rendered redundant by application of ratio laid down in case of Westinghouse Saxby Farmer Limited cited supra. Nonetheless, in case the rationale followed in the case of Westinghouse Saxby is followed for classification of Parts and Components of automobiles, the following challenges will be faced by the industry as well as the department:

1. Mismatch of HSN in case of international trade
2. Challenges in claiming the FTA benefits
3. License requirements for restricted products
4. Collection of Statistical Data by Department
5. Litigation without significant revenue implication
6. Same product being subject to different HSN depending end use
7. Manufacture's inability to control the supply chain, especially in case of B2C supplies

In-fact, there have also been instances, where the consignments for Customs clearance are being withheld; and consignments are released only upon payment of differential Customs Duty based on revised classification. This situation is causing great hardships to the industry at large, especially in such testing times.

Recommendation

1. In light of the above, it is recommended that: An instruction to be issued to the Commissioner to file a review petition highlighting the HSN Explanatory Notes to confirm the understanding that Note 2 and Note 3 ought to be read together and cumulatively satisfied for an article to be classified under Section XVII i.e., an article should not feature in Note 2's list of exclusions and satisfy the "sole or principal" use test in Note 3, and/or

2. Note 3 of Section XVII to be amended to specifically clarify that Note 3 is subject to the exclusions given in Note 2 to incorporate an Explanation in line with HSN Explanatory Notes, and/or

3. A notification to be issued under Section 28A of the Customs Act to protect the interests of the industry at large and/or

4. A communication to be issued to field formations/investigating authorities to wait for CBIC/ MOF guidance before starting a high pitch & aggressive investigation seeking past period data and documents, etc., through summons for physical presence etc.

17. The provisional attachment of any property including bank account under Section 83(1) of the CGST Act,2017

Section 83(1) of the CGST Act is amended in order to widen the scope of authorities to provisionally attach property including bank account in case of assessment, inspection, search, seizure, arrest and demands and recovery proceedings

Earlier, the said power was restricted in certain specific scenarios. Therefore, powers of authorities have been expanded.

The proposed amendment would expand the scope of provisional attachment of property henceforth, not been kept restricted to few scenarios, rather the said power has been extended to any and all type of assessments / proceedings under the CGST Act (except audits).

The proposed amendment extending the power to provisionally attach the property has now been extended even in the case of recipient who

a) wrongly avails input tax credit either on account of incorrect or false invoice,
b) avails input tax without receipt of supply of goods or services
c) takes or distributes input tax credit in contravention of section 20

This materially increases the uncertainty and there is a necessity of defining the cases where there is fraud so as to trigger the provisional attachment and not otherwise. The said provision when applied without any fetters by attaching the property even in the case of recipient of goods or in case of self-assessment would create huge amount of uncertainty. Further, even the legitimate transactions shall come under the ambit of this amendment which shall result in increase in litigation.

Recommendation

Considering above, the proposed amendment should not be implemented, since the same would be more often likely to be misused. Resultantly, this may lead to rise in harassment of the honest taxpayers and would create disruption of business operations. This change appears to be too onerous.

18. Time bound closure of inquiry or investigation under GST Act, culminating in the issuance of a Show Cause Notice("SCN") akin to Section 28BB of The Customs Act, 1962 proposed to be introduced under Customs Act

A new section is proposed to be introduced to prescribe a two-year time limit, (further extendable by one year by the Commissioner), for completion of any proceedings under the Customs Act which would culminate in issuance of a notice under Section 28 ibid (i.e. Notice to recover duties not levied or short-levied or erroneously refunded)

This amendment will provide much needed certainty to the tax/duty payers in respect of closure of issues in time bound manner. However, similar provision is not present under GST law

Recommendation

It is suggested to bring similar amendment under the GST Law to avoid long drawn litigations.

19. State level Trial Balance

The taxpayers were centrally registered at one location for PAN India operations under Service tax regime. However, GST regime necessitates state level registration and compliances.

Centralized registration under the erstwhile regime meant that assessments and audits were also centralized and accordingly the assessess had to liaison with only one set of tax authorities.

State wise assessment/audit under GST implies facing multiple sets of tax authorities leading to increased burden of compliance by manifolds.

The law requires submission of trial balance or equivalent at registration level, however, for assesses having pan Indian business presence, trial balances are not maintained at state level

Recommendation

In light of the above, it will be helpful if some SOPs be farmed as guiding tool to assessing officer during audits / assessments to mitigate issues around the same.

Also, such a requirement to be only made mandatory based on a risk-based compliance rating of taxpayers i.e. only high-risk taxpayers are assessed for such requirement.

20. Facility of transfer of ITC balance in Electronic credit ledger within distinct person

OEMs having operations in multiple States are required to obtain separate GST registration in each State and are treated as distinct person. Each such distinct person is inter-alia required to maintain separate Electronic credit ledger which can be utilized for payment of GST liability pertaining to that particular GSTIN only.

However, in case of Automobile Industries, while manufacturing activities takes place at its manufacturing units located in few States but due to supply chain spread across India, OEMs needs to maintain Regional Sales office (in short 'RSO') in most of the States (mainly in CV business) from where such vehicles are sold to dealers/customers. Also many Dealerships have presence / operations in more than one States.

Due to current economic situation, there is no visibility of liquidation of GST blocked in respective States. In addition to GST blocked on inventory, the accumulation is also happening at RSO locations due to availment of local administrative expenses / services, like rent, security etc. plus ITC of GST paid on cross charge of common expenses from Head Quarters.

Since, Automobile Industry is struggling with liquidity crunch and in the absence of any mechanism to utilize such ITC balance in other State(s), ITC balance is getting locked up in such States(s) with no visibility of utilizing such balance in near future.

Recommendation:

It is requested that, for distinct persons Government may consider to allow facility of transfer of ITC balance from one GSTIN to another GSTIN which will help large organizations having operation in multiple State(s) to liquidate such ITC balance and optimize its cash flow in this global crisis.

Similar facility was available in erstwhile excise regime for Large Taxpayer Units, wherein Rule 12A (4) of the Cenvat Credit Rules, 2004 provided for facility of transfer of Cenvat credit available with one of the registered manufacturing premises to his another registered premises.

In case Government, do not want to allow this facility to SGST credit being State specific, they may atleast consider to allow this facility with respect to CGST & IGST credit to large taxpayers having more than 10 GST registrations.

21. Inter head adjustment of taxes

As per section 77(1) of the CGST Act and 19(1) of the IGST Act, a registered person who has paid Central and State tax on transaction considered to be intra state supply but which is subsequently held to be inter-state supply or vice versa, shall be granted refund of the amount of tax erroneously so paid in such manner and subject to such conditions as may be prescribed.

In relation to same, authorities are directing the tax payers to pay taxes under correct head on immediate basis and taking considerable time in issuing refund order and releasing refund for taxes erroneously paid and thus affecting business and working capital cycle of the industry.

However, recently, Kerala High Court in case **1. Saji S., Proprietor, Adithya and Ambadi Traders and 2. Ranjith R., Proprietor, Ranjith Roadlines [2018-VIL-508-KER]**, has pronounced the judgement that, the Government shall abide by the provisions of Section 77 of CGST Act, 2017 read with Section 54(8)(d) of CGST Act,2017, Rule 92(1A) and Rule 92(4) of CGST Rules, 2017 and even if the tax payments under different heads are to be treated as a mistake on the part of the assessees, the statue empowers the authorities to transfer the deposit from one head to another.

Recommendation:

It is suggested that, necessary clarification shall be issued or amendments shall be made in the Acts to allow the tax authorities to adjust taxes paid in one head against taxes payable in other head instead of paying the taxes and issuing refund for taxes paid erroneously.

Direct Tax

Issues & Recommendations

A. Proposals requiring Amendments & Relaxations

1. Relief for business loss incurred during spread of COVID-19 pandemic in the Financial Year 2020-21 & 2021-22

It is pertinent to mention that COVID-19 pandemic has not only affected the previous fiscal year (FY 2020-21), however, its impact is also seen in the current fiscal year. Although, there has been some growth in the automotive industry post first wave of COVID-19, however the second wave of COVID-19 had again stalled the growth plans of the industry due to decline in demand of automobiles in India resulting into shrinking of profits/ increase in loss in Quarter 1 of FY 2021-22

Further, disruptions in supply chain due to COVID-19 pandemic has resulted into acute shortage of semi-conductor chips which has directly impacted the automobiles industry.

Recommendation

- Incentivize the industry by either **(a) cash refund of tax loss** i.e. equivalent to the applicable tax rate on the entity (e.g. 25.17%) of the business losses computed under Income Tax Act, 1961 (“the Act”) or **(b)** by treating the same amount as **payment of advance tax** for FY 2022-23

- It will be beneficial to the industry as immediate cash support will be available and industry can be more aggressive while planning their capital expenditure. More liquidity in hand will boost the demand in the economy, generate revenue to exchequer and resultantly GDP of the country will increase. This will also result in generation of employment.

- Alternatively, keeping in view the burden of current year profitability and liquidity as well as unforeseen impact of COVID-19 pandemic in the upcoming years, Government should extend the said time period from 8 years to 12 years to carry forward & set off the business loss under section 72 of the Act. This will provide 8 clean years to the industry after neutralizing the impact of COVID-19 in next three or four years. It is worthwhile to mention that even the developed countries have extended the period of set off the business losses to 12 to 15 years.

2. Extending lower tax rate benefit to existing manufacturers and to individuals/ partnerships/LLPs. Allowance of MAT credit as a transitional credit where beneficial tax rate regime is opted.

The automotive component industry is facing tough time due to recessionary slowdown in the sector. The new taxation regime introduced in 2019 has reduced the effective tax rate on companies to 22% (plus surcharge & cess) & 15% (plus surcharge & cess) for newly set-up companies engaged in manufacturing.

Although the tax rates have been slashed substantially however, it has resulted only marginal relief for small manufacturers as their tax rates reduced from 26% (25% + 4% Cess) to 25.17% (effective tax rate). Further, the preferential tax rates are only available for the corporates and not to individuals and partnerships/LLPs which constitute major strata in the industry.

To help the government fight against the COVID-19 pandemic many auto players had made a huge donation in PM Cares Fund/ PM's National Relief Fund and funds set up by state governments to provide medical relief to the poor. However, section 115BAA and 115BAB does not provide any deduction under Chapter VI-A including section 80G of the Act.

The companies opting for beneficial tax regime, the MAT credit available to them is to be foregone as MAT provisions are not applicable for assesses opting Sec. 115BAA/ 115BAB for availing lower tax rate benefits. Unlike other deductions/ exemptions, MAT credit is not an additional benefit which can be foregone. It represents the amount directly paid by Company to department. Hence it needs to be carried forward for set-off in the future years.

Recommendation

- Government should consider extending the benefit of Section 115BAB (i.e. 17.16% tax rate) to existing automotive component manufacturers major expansion projects so as to provide a level playing field and to reduce tax burden.

- Further, the beneficial tax regime should be extended to individuals and partnership firms/ LLPs also so as to encourage them to manufacture automotive components.

- Section 115BAB of the Act provides benefit only to companies who are engaged in 100% manufacturing only. However, many auto players also provide ancillary

services in the form of repair services etc. for their products which are incidental to such manufacturing. Such auto players providing services and undertaking trading activities are devoid of lower tax rate. Hence, it is suggested that the benefit of section 115BAB of the Act should be available to the entities whose portion of revenue are derived from such trading/ service activities.

- It is also recommended that the MAT credit already available to the companies before opting the beneficial tax rate regime should be allowed as a transitional credit for adjustment against tax outflow at least for a certain time period like 5/10 years from the year of opting of section115BAA/ 115BAB

- It is suggested that for companies opting for new tax regime (either section 115BAA or 115BAB), at least deduction of "Donation" made under section 80G should be allowed.

3. Define consequences of breach of conditions prescribed for availing lower tax regime for manufacturing companies

- Section 115BAB of the Act stipulates certain conditions that are to be satisfied by a company exercising the option to avail lower tax rate of 15%. However, there is no clarity on the consequences that may follow in the event of breach of any of the conditions which result in the company falling outside the scope of s. 115BAB. Doubts have arisen whether such a company will be taxed at normal rate of tax or whether it can avail the benefit of section 115BAA of the Act which provides for lower effective tax rate of 25.17%.

- There is no provision under law which lays down the consequence of breach of conditions prescribed in section 115BAB of the Act. Further, it is not clear as to what will be the impact of minor breach of condition by the taxpayer. Say, for instance, in a particular year, the use of second-hand plant and machinery marginally (say, 22%) exceeds the permissible limit of 20% of the total value of the plant and machinery used by the taxpayers. The company was otherwise eligible to claim the benefit of section 115BAB of the Act in all the past and subsequent years.

Recommendation

- In order to provide clarity and certainty to taxpayers, it is recommended that a company which loses shelter of section 115BAB of the Act may, at its option, be allowed to be governed by section 115BAA of the Act.

- It needs to be suitably clarified that the company shall not be eligible to claim the benefit of concessional tax regime only in the year of breach of condition. However, its claim to avail benefit of concessional tax regime in future or past years shall not be impacted if it otherwise fulfils all other conditions in those years.

4. Reinstatement of Investment Allowance (section 32AC)

As per the subsisting provisions, investment allowance under section 32AC is available @ 15% of actual cost of new assets acquired and installed by manufacturing companies, if investment was more than INR 25 crore in new plant and machinery and such assets are installed on or before 31 March 2017.

Recommendations

- This provision (or other similar provision) should be reintroduced to boost the capital sector/ Make in India program so that the manufacturers are motivated to invest in new technologies/ areas specifically Electric Vehicle (EV) and its components/ ancillaries related plant and machinery.

- Further, the minimum amount of investment shall be reduced from INR 25 crores to INR 5 crores to provide benefit to small manufacturers.

  It is suggested that the scope of investment allowance should be enlarged to include the amount invested in the new building as well, since it constitutes a major portion of the total investment.

- This benefit should be given in addition to the lower rate of tax allowed under Section 115BAA and 115BAB of the Act.

5. Phasing out of in-house research and development (R&D) weighted deduction

While the United States and Japan remain leaders in innovation, there is an increasing shift of R&D to the Asian growth markets. Countries such as China, India, Korea, Brazil and Eastern Europe are now able to compete with the leading countries in R&D for development of the most sophisticated and technologically complex new products.

India is increasingly becoming a top global innovation player in fields involving automotive parts and assembly. Also, due to a significant rise in demand of electric and hybrid vehicles, in-house research and development facility have become a necessity for keeping up with the pace of innovation efforts being made by the global counterparts of Indian auto component manufacturers. However, undertaking in-house R&D involves huge cash outlays, therefore government should provide some incentive/ impetus in the form of weighted tax deductions to encourage auto players to undertake such R&D activities.

Presently, weighted deduction benefit has been reduced from 150% to 100% from 1st April 2020 under section 35(2AB) of the Act for in-house research and development facility. However, this deduction is not available for expenditure in the nature of cost of any land and building.

Further, weighted deduction under section 35(2AB) is available only while computing taxable income under the normal provisions of the Act and not book profit under section 115JB of the Act, resulting into accumulation of tax paid on book profit to be carried forward.

Recommendation

- The benefit of weighted deduction of R&D expenses should also be allowed where contribution is given to third party R&D service providing companies to encourage localized designing of products.

- Since in-house research and development is an integral part of auto industry and a huge amount is incurred on building for setting up R&D facilities, such benefit should also be extended on expenditure incurred on building (or part of building) exclusively used for R&D.

- To encourage ‘make in India’ and boost spending on R&D activities by domestic automotive players (small or big), deduction of such expense should be increased rate to 150% u/s 35(1) as against current deduction of 100%.

- Similarly, deduction under section 35(2AB) should be increased to 200% to motivate spending on inhouse R&D facilities.

6. Rationalization of Patent Box Regime for royalty income

In 2016, Patent Box regime under section 115BBF was introduced whereby qualified taxpayers can claim beneficial tax rate of 10% (on gross income basis) in respect of income from exploitation of patents developed in India. The benefit of beneficial rate was restricted to true and first investors only in whose name patent is registered. Below are some of issues in existing tax benefit law:

- In case of tax neutral mergers and demergers and/or succession by way of slump sale or death of the inventor, there is no provision for continuation of the concessional rate of tax to the successor which may result in unwarranted denial of beneficial tax rate..
- Section 115BBF provides the benefit of reduced rate of tax only in relation to 'royalty' income derived from patents. This suggests that companies which hold patents and exploit them commercially by manufacturing and selling goods / articles may not qualify for benefit of reduced rate, since they do not earn 'royalty' income per se.
- In a scenario where taxpayer wants to exploit the patent by way of outright transfer, however the concessional tax rate is not applicable in respect of royalty received as capital gains.
- This regime does not provide any benefit in relation to other IPRs like industrial design, copyrights, trademarks, etc.
- The requirement of patent being registered in India under the Patents Act raises an ambiguity i.e. whether royalty received from outside India in respect of patent developed in India which is registered both in and outside India will be denied the benefit on the ground that the royalty is relatable to foreign patent and not Indian patent.

Recommendation

- The successor entity in case of merger, demerger etc., and legal heir/ inheritor of the patent in case of death of the patent owner, should be considered eligible to claim the benefit under this regime, provided such successor/ legal heir satisfies the condition of being a resident of India.

- It should be clarified that royalty received from outside India for a patent which is registered in India as also in a foreign country also qualifies for concessional rate of tax.

- It is recommended that a concessional rate be extended to the following companies:

  1. that exploit their own patents in the manufacture and sale of articles on the basis of the arm's length principle.

  2. that earn income in the form of capital gains on account of transfer of patent.

- It is recommended that the Patent Box regime should be extended to other forms of IPRs, like industrial design, copyrights, trademarks, etc. so as to promote IPR registration in India.

7. Change in due dates for payment of advance tax

Section 211 of the Act, has laid down certain timeline by which taxpayer has to deposit/ pay a certain percentage of their tax liability in the form of advance income tax on or before the due dates as prescribed during a financial year.

Further, section 234C provides that in cases where there is a short payment/ non-payment of individual installment(s) of advance tax, then the taxpayer will be liable to pay simple interest at the rate of 1% per month or part of a month.

- Given the uncertain times, it becomes very difficult to predict demand beforehand and the amount of profit which leads to haphazard compliance of advance tax provisions.

- This has caused undue hardships to the auto players as it is extremely difficult to compute taxable income within such a short time from the commencement of the financial year. Projections for depreciation (due to new acquisitions or sale of assets), TDS certificates that may be received, for example, cannot be ascertained accurately. Moreover, projections of profitability tend to vary from month-to-month.

- Accordingly, it is evident that there are large variation in profits on quarterly basis due to business uncertainties resulting into inability to appropriately estimate the annual taxable income at the time of payment of 1st, 2nd and 3rd instalment of advance tax, which will result into levy of huge liability in the form of interest

under section 234C of the Act for shortfall/ deferment in payment of advance tax instalments.

Recommendation

- It is recommended that the provision of section 211 should undergo a change wherein requirement for payment of 15% as advance income tax on or before 15th June in each fiscal year be removed.

- Further, number installments for payment of advance tax liability should be reduced to three (3).

- The amended dates for advance tax payment are suggested as follows:

  - First instalment – 30th September – 30%
  - Second instalment – 31st December –30%
  - Third instalment – 31 March – 40%

- Irrespective of the above, it is recommended to provide appropriate relief in these unprecedented times by way of waiver of interest under section 234C of the Act. If it is not possible than at least, the interest rates may kindly be reduced from 1% per month to 0.25 % per month.

8. Enhance threshold limit for payment of quarterly advance tax

As per the subsisting provisions, advance tax is payable during a financial year where the amount of such tax payable by the taxpayer during that year is INR 10,000 or more. Such limit of advance tax of INR 10,000 was set by the Finance Act, 2009.

Recommendation

- The threshold limit for applicability of advance tax provisions should be increased to INR 50,000. This will be in line with certain other provisions of the Act viz. recently introduced 206AB/ 206CCA, etc.

- Further, a clarification should be brought to exclude the persons earning income only from salary from the purview of advance tax provisions.

9. Enhancing depreciation rate on plant & machinery

- Auto Industry is a capital-intensive industry and the cost of plant and machinery generally utilized in this industry is very high. The need of the hour for the

industry is investments and capacity addition to bring back the economy in the growth trajectory.

- The current depreciation rate of 15% does not assist auto companies in meeting the objective of timely accumulation of funds for replacement of assets.
- Further, in certain cases plant and machineries that are generally used for double/ triple shift basis. However, the current depreciation provisions do not distinguish such case to provide a higher rate of depreciation.

Recommendation

- Current depreciation rate of 15 percent should be increased to at least 25 percent and to 40 percent for domestically manufactured capital goods to encourage local manufacturing.

10. Additional incentive under direct tax to expand scope of FAME-2 Policy

The government has recently issued a scheme for Faster Adoption and Manufacturing of Electric Vehicles ("EV") in India Phase II (FAME India Phase II) policy. The policy inter alia includes demand incentives to be given for generation of demand of EVs in India. However, there is no direct incentive given by the government for promotion of manufacture of EV components.

Recommendation

Keeping in view the overall agenda of the Government in moving towards promotion of EV, we recommend for providing tax holiday for at least 5 years for companies engaged in production and development of components for EV basis the technology transfer/ development.

This will encourage many new players in manufacture of EV components. Consequently, it will help in making India into a manufacturing and export hub for EVs.

11. Rationalizing the margins under Safe Harbour Rules for EV auto component manufacturers in India

The Safe Harbour Rules provides standard rates of operating profit margin for manufacturing and export of auto components.

In 2019, Government of India has introduced FAME-II policy to promote EVs in India. Huge subsides given under FAME-II policy that will certainly encourage EV sales in India and attract investments in India from global/ domestic players. On the other

hand, to support EV supply chain, Government has not incentivized EV Auto Components Manufacturing in India.

Recommendation

- It is recommended, that the definition of core auto components should be widened by including the specific provisions with respect to manufacturing of EV components so as to boost the overall agenda of the government under the FAME India Phase II policy.

- Standard rate of 5% can be recommended under Safe Harbour Rules

- This recommendation will help India to attract investment and make India as export hub for EV auto components export to the world.

Illustrative list of key EV auto Components that can be included in the provision:

(i) Battery Pack
(ii) Battery Charger
(iii) AC or DC Motor
(iv) AC or DC Motor Controller
(v) Power Control Unit (inverter, AC/DC converter, condenser)
(vi) Energy Monitor
(vii) Contactor
(viii) Brake System for Recovering
(ix) Electric Compressor

12. Carry forward/ Refund of excess Foreign Tax Credit (FTC)

The foreign tax credit is a non-refundable tax credit for taxes paid to a foreign Government. Residents are allowed to claim FTC in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India as per Rule 128 of the Income tax rules.

At present, the Act allows credit of FTC paid on foreign income. However, in case of loss/ inadequate profits, no set off may be possible. In the current economic scenario of the global economy, business outlook has become extremely uncertain and results have become very volatile.

Recommendation

In case taxpayer is not able to utilize the entire FTC due to loss or inadequate taxable income computed as per the provisions of Income Tax Act, taxpayers should be allowed to claim refund of the unutilized FTC paid in the same year in which the foreign income is offered to tax.

Without prejudice to the abovementioned recommendation, taxpayers should at least be permitted to carry forward such unutilized FTC for adjustment in future years if refund could not be granted. This will surely improve the ease of doing business in India.

13. Depreciation in case of succession/ slump sale

- The proviso to section 32 of the Act provides that the aggregate deduction, in respect of depreciation shall be allowable to the predecessor and the successor in the case of succession or to the amalgamating company and the amalgamated company in the case of amalgamation or to the de-merged company and the resulting company in the case of de-merger in the ratio of the number of days for which the assets were used by them.

- However, due to practical and administrative difficulties, there may be a time gap between holding of the asset and using the asset so transferred.

- Further, law is not clear regarding the claim of depreciation in case of slump sale. Issue arises whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale considering the proviso to section 32 read with section 170 of the Act.

Recommendation

- To avoid genuine difficulties in such cases, instead of the words, “used by them”, the words “held by them” should be substituted in the proviso to section 32.

- Section 32 should be amended to clarify the legal position as to whether depreciation can be claimed based on proportionate number of days by the transferor and the transferee company in case of slump sale.

14. Expenditure incurred on power from renewable sources

Currently, no incentive or emphasis has been given to the corporates for using clean energy sources as against conventional sources of energy for the business activities. Considering installation of renewable energy technology involves huge investment, tax incentives on the same may be provided.

Recommendation

Tax benefits should be made available to the users of green technologies to incentivize and popularize clean energy sources in the following forms:

- Weighted deduction at the rate of 125% should be granted to users on technological spend of capital nature incurred on implementation of clean energy which will contribute to the "Swachh Bharat" vision.

- Weighted deduction at the rate of 100% on technological spend of revenue nature should be made available to its users

15. Allowance of Corporate Social Responsibility (CSR) Expenses

Section 135 of Companies Act, 2013 ("Companies Act") provides that companies having net worth of INR 500 crores or more, or turnover of INR 1,000 crores or more, or a net profit of INR 5 crores or more need to spend 2 percent of the average net profits during the 3 (three) immediately preceding financial years for CSR purposes. Activities specified in Schedule VII of Companies Act 2013 alone qualify as CSR.

However, such CSR expense is not allowed as deduction to the taxpayers.

- Currently companies incur large expenditure towards its corporate social responsibilities for the betterment of people who have suffered a lot during this covid scenario, by way of arranging vaccine camps, providing free hospital facility, donating ventilators/ other medicines to hospitals etc.

Recommendation

- As the Companies Act mandatorily requires companies to spend on CSR activities, specific provisions to allow 100 percent deduction should be provided under

section 37(1), considering the fact that it is a charge on the profits of the company to avoid hardship on auto players.

- Alternatively, at least 50 percent expenditure should be allowed as deduction applying same principal as applicable to "Donation" which is allowed to the extent of 100% or 50% under section 80G.

16. Rationalization of provisions related to Equalization Levy (EL) on Non-Resident E-Commerce Operator

- Finance Act, 2020 significantly expanded the scope of Equalization Levy ('EL'), which was originally introduced vide Finance Act, 2016. With effect from 01.04.2020, EL is required to be paid by a non-resident e-commerce operator (EOP) @ 2% of the amount of consideration received or receivable for online supply of goods or provision of services.

- Given the wide amplitude of the provisions of EL, it has posed a big issue for taxpayers to undertake compliance with the law and bear the additional tax cost.

- The amended scope of definition vide Finance Act, 2021 may potentially cover all kinds of sale/ purchase transactions of a MNC group where ordering is undertaken *via* ERP/other digital system.

- Further, some of the key terms/ words used in EL provisions are still unclear and requires precise definition and explanation.

- Such amendments are causing significant hardships to the taxpayers with no time to comprehend the provisions and immediately comply with the same.

Recommendation:

- It is recommended, that the applicability of EL should be restricted only to those cases wherein all or substantially all activities take place online. Further, it should also be clarified that the intent is to tax e-commerce transactions and therefore, instances such as online ordering systems, or Enterprise Resource Planning (ERP) software, or corporate websites through which orders are received, or purchase orders received vide emails or a common portal (such as a document management and storage system) using the internet, through which orders are received by non-residents, should not be brought within the ambit of EL.

- An exception should be provided under EL provisions that intra-group transactions/ activities undertaken partially or wholly through online systems like ERP/ Inventory management including Just-in-time systems, do not constitute e-commerce transactions.

- It is recommended that certain terms like "owns", "operates", "manages", "Digital or electronic facility or platform" used in the definition of e-commerce operator should be appropriately defined by CBDT so as have harmonious interpretation of the law along with avoiding potential litigation.

- Clarification should be provided that, transaction which substantially takes place offline but payment take place online (using banking channels/ wallets, etc.) should not be covered under EL provisions.

- It would be fair to restrict EL towards net consideration (excluding sales return) received or receivable. Also, the e-commerce operator should be permitted to make quarter wise adjustment of sales returns and credit notes.

17. Section 234E – Day wise slab for levy of fee for late filing of TDS/ TCS return

Tax deductors and the tax collectors are liable to furnish quarterly statements (returns) under the Act. In case where a tax deductor/ collector fails to deliver or cause to be delivered a statement within the prescribed time then he shall be liable to pay fee a sum of Rs. 200 for every day during which the failure continues u/s 234E of the Act. However, the amount of fee does not exceed the amount of tax deductible or collectible, as the case may be.

The basic intent for introducing this section was to ensure timely compliance of filing TDS/ TCS return. However, considering the hardships being faced by the taxpayers due to various reasons, penal fees for late filing of TDS returns need to be changed to period wise/ slab of days instead of current system.

Recommendation

It is recommended to follow day wise slab system & it may be taken as:

Period of Default	**Max. Fees u/s 234E**
Upto 15 Days	Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.

From 15 Days to 1 Month	Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-
From 1 Month Onwards	Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs.20,000/-.

18. Relaxation in condition of pre-deposit of 20% of tax etc. for granting stay order by ITAT

The Finance Act 2020 amended section 254 inter alia to provide that Income Tax Appellate Tribunal (ITAT) may grant stay under the first proviso subject to the condition that the taxpayer deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof.

Considering the current slowdown of economy and its impact on businesses, the requirement of pre-deposit of 20% of tax, interest, fee, penalty etc. as a condition for granting stay by the ITAT is very harsh. It would lead to cash flow issues for the taxpayer which may affect carrying on of business. It would be extremely difficult to deposit such high amount of pre-deposit, especially in case of high-pitched assessments.

Recommendation

It is recommended that amendment in section 254 imposing condition of pre-deposit of at least 20% of tax, interest, fee, penalty etc. for granting of stay by the ITAT be omitted. In case it is not omitted, the rate may be reduced to 5%.

19. Disallowance of expenditure owing to TDS default on payments to non-resident should be restricted to 30% at par with resident payments

Currently, only 30% of the expenditure amount is disallowed in case of TDS default on payments made to residents.

Similar changes are not made in section 40(a)(i) which governs the non-deduction of TDS on payments to non-residents. It may be noted that TDS rates applicable to majority of payments to non-residents by way of interest, royalty and FTS are in the range of 5% to 10% which are also final tax payable by non-resident payees.

Disallowance of 100% of expenditure involving payments to residents effectively results in recovery of 30% tax by the Revenue from the payers whereas the final tax payable by non- residents is only in the range of 5% to 10%.

Recommendation

In line with section 40(a)(ia) of the Act, it is recommended that section 40(a)(i) of the Act should also be amended restricting the disallowance to 30 percent of the amount of expenditure.

20. Issues in granting of credit of TDS as claimed in tax return.

As per section 199 of the Act read with Rule 37BA(3) of the Income Tax Rules, the credit for TDS to a taxpayer shall be allowed in that financial year in which the income corresponding to same is offered to tax by the taxpayer. There are instances wherein the deductor reports the TDS and corresponding amount in a preceding financial year however the income is offered to tax by deductee in its tax return in succeeding financial year and vice-versa due to different accounting methodologies being followed by deductor and deductee. All these issues lead to non-allowance of complete credit of TDS to taxpayer upon processing of returns, leading to unwarranted tax payable situation and burden to take corrective action.

Recommendation

It is recommended that the tax return forms be adequately framed so that there is a clear option for carry forward and carry backward of TDS in the tax return form itself so that TDS corresponding to the income offered to tax can be claimed in the tax return

Alternatively, the Act may be suitably amended to allow credit of TDS even in a situation wherein the TDS is claimed in a particular financial year and the corresponding income is offered to tax in some other financial year.

21. Enhancement of limits for TDS payments and deductions in certain cases

- **Section 194C:** Any payment for contract services rendered which exceeds INR 30,000 for a single payment or INR 100,000 (for aggregate payments in a financial year) requires the persons responsible for making such payments to deduct tax at source.

- **Section 194I:** At present, tax is required to be deducted at source if the amount of rent credited/paid during the financial year exceeds INR 240,000.

- **Section 194J:** As per the recent amendment brought in Finance Act 2020, rate for TDS in section 194J in case of fees for technical services (other than professional services) has been substantially reduced to 2% from 10%. Further, the existing definitions of professional services and technical services are very ambiguous which has led to profound interpretational issues in order to avail the reduced rate of TDS. Despite having plethora of judicial precedents in place, this issue is very confusing and litigative.

Recommendation

Section 194C: Considering the existing inflation, it is recommended that the threshold limit be increased to INR 50,000 for single payment and to INR 150,000 for aggregate annual limit.

Section 194I: It is suggested that the basic exemption limit for deduction of TDS be increased from INR 240,000 per annum to INR 360,000 as this will help in avoiding unnecessary hardship to taxpayer for claiming refund of TDS from Income Tax Department.

Section 194J: In order to reduce ambiguity around the issue, the Income tax department should provide necessary and comprehensive clarifications by way of providing clear definitions. It is also suggested that rate of TDS w.r.t professional services should also be reduced to 2%.

22. Deduction in respect of employment of new employees – 80JJAA

Taxpayers can claim a deduction equal to 30% of the amount of additional employee cost for three assessment years under section 80JJAA of the Act.

In current scenario, it is recommended that most of the sales would be distressed sales and not with an intent to claim tax advantage. Hence, it is suggested that an exemption may be carved out for the distressed sales made during COVID-19 pandemic while putting adequate safeguards. This will encourage the other business entities to revive such entity which will ultimately prevent loss of employment of many workers/ individuals.

Additional employee means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include an employee who total emoluments are more than Rs. 25,000 per month. Salary levels across have increased substantially from 2016.

Recommendation

Threshold of Rs. 25,000 per month should be raised to at least Rs. 50,000 per month for the purposes of section 80JJAA of the Act. This would provide impetus to industry to employ higher number of employees which would be in line with the employment generation objective of Government.

B. Clarification required under Direct Tax Law

1. Clarity on treatment of non-compete fees in the hands of payer

As per section 28(va) of the Act, any sum received/ receivable by a taxpayer for not carrying out any activity in relation to any business or profession (i.e. non-compete fee) is taxable as business income in the hands of recipient. However, there is no clarity in the provisions regarding treatment of non-compete fees in the hands of payer (i.e. where the said expense is allowable as deduction or not), which ultimately gives rise multiple interpretations.

Due to ambiguity in the law, there are differing judgements by various high courts regarding the taxability of non-compete fees in the hands of payer wherein, Gujarat High Court and Bombay High Court had held that non-compete fees qualifies as a capital asset (an intangible asset) and the taxpayer is allowed to claim depreciation on the same. Whereas, Madras High Court had held that non- compete fee paid to a director is a deductible revenue expenditure.

From the above it can be seen that even courts have interpreted the allowability of non-compete fees in the hands of payer differently, hence it is difficult for the taxpayer to adopt any specific treatment.

Recommendation

In the current business scenario, there is an intense competition among business houses to capture the market share, eventually there has been a significant rise in non-compete agreements. Considering the differing judgements by various courts on the issue of payment of non-compete fees, it is recommended that a suitable legislative amendment be made clarifying the treatment of such expenditure in the hands of payer.

2. Withholding tax on reimbursement of expenses

- Due to lack of clarity, companies are deducting TDS on transactions which represents cost-to-cost reimbursement of expenses in the absence of specific provisions under the Act.

- This is causing difficulty due to double deduction of TDS on same transaction and increases unnecessary documentation. Moreover, deduction of taxes on cost-to-cost transaction causes difficulties in cross border transactions wherein a foreign

company is liable to undertake compliances in India due to deduction of tax at source.

Recommendation

It is recommended to add explanation or clarification in the TDS provisions for non-deduction of tax in cases where the tax has already been deducted in principle transaction or when the transaction represents cost-to-cost reimbursement of expenses.

3. Deduction of tax at source on payment to contractors

As per the existing provisions of the Act, the "work" for the purpose of deduction of tax at source on payment to contractors has been defined to include "manufacturing or supplying a product according to the requirement or specification of customer by using material purchased from such customer or its associate".

- The above provision has resulted in deduction of tax by companies wherein even a small component is supplied on free of cost basis or otherwise to the supplier and supplier in turn supplies the final product along with the component supplied by the customer.

- Also, as per the existing provisions of section 194C of the Act, the 'work' for the purpose of deduction of tax at source on payment to contractors has been defined to include "manufacturing or supplying a product according to the requirement or specification of customer by using material purchased from such customer or its associate".

- This has resulted in deduction of tax by companies wherein even a small component is supplied on free of cost basis or otherwise to the supplier and supplier in turn supplies the final product along with the component supplied to the customer.

Recommendation

- It is suggested that the definition in the above clause should be modified as "manufacturing or supplying a product according to the requirement or specification of a customer by using all / significant material purchased from that customer or its associate" as will avoid unnecessary hardship to taxpayer for claiming refund of TDS from Income Tax Department.

4. Relaxation in interest levied on delay in deposit of TDS

Section 201(1A) of the Act, provides that in case there is a delay in deposition of tax deducted by an assessee then an interest shall be levied at the rate of 1.5% for every month or part of month on the amount of such WHT, from the time tax was deducted till the date of actual payment of TDS amount with the authorities.

Recommendation

In the present scenario, the taxpayer is required to pay interest for two months even if there is a genuine delay of even 1 day. Thus, interest should be calculated for the period from the date of TDS deduction to date of actual payment and not be rounded off to month as is presently being computed by TRACES System.

5. Section 206C(1H) and 194Q – necessary clarification and definition of terms

In order to widen the tax base, CBDT has introduced two new sections i.e.206C(1H) for TCS in relation to sale of goods and section 194Q for TDS on purchase of goods. These sections have been introduced via Finance Act, 2020 and Finance Act, 2021 respectively. The provisions of section 194Q of the Act were applicable with effect from July 1, 2021.

Section 194Q provides that, a buyer having “turnover” of more than INR 10 crores in the preceding financial year while making payment/ credit to resident seller for purchase of “goods” having value exceeding INR 50 lakhs in a financial year is required to make TDS at the rate of 0.1% of such sum exceeding INR 50 lakhs.

Further, section 206C(1H) provides that seller (whose “total sales”, “gross receipts” or “turnover” exceeds INR 10 crore in the preceding FY) is required to collect TCS at the rate of 0.1% from buyer on sale of “goods” of the aggregate value exceeding INR 50 lakhs in a FY at the time of receipt of an amount exceeding INR 50 lakhs from the buyer.

While both these sections make a mention of the term “goods” and “turnover”, none of them define such key terms. This has resulted into interpretational issues which will lead to litigation.

Recommendation

As the scope of section 194Q and 206C(1H) is very wide and it is applicable on large number assessees. Therefore, it is recommended that key terms such as goods, turnover etc. referred in section 206C(1H) and 194Q must be defined properly to mitigate the risk of protracted litigation and implication by way of penalty and interest liability.

It is further recommended that intra-group transactions are kept outside the purview of these sections, as this would add to the compliance burden and is a deterrent to ease of doing business.

6. Clarity on restriction on carry forward and set-off of business losses

- The extant provisions of section 79 of the Act restrict closely held companies from carrying forward and setting off losses in case shareholding varies by more than 49% in the year in which the loss is considered to be set off vis-a-vis the year in which the loss is incurred.

- In the event of a business reorganization by which a holding company transfers the shares of its 100% subsidiary to another subsidiary, the first subsidiary will not be in a position to carry forward and set-off its losses (if any) as there is a 100% change in its shareholding.

- However, in such a situation, the holding company continues to hold 100% of the shares of the second subsidiary, which in turn holds 100% of the shares of the first subsidiary.

- There are conflicting decisions of the courts on this issue, one viewpoint is that the immediate change in shareholding should be tested whereas other viewpoint is that the ultimate change in shareholding should be tested, in order to invoke rigors of section 79 of the Act.

- Further, section 79 restricts taxpayers from acquiring loss making Company for the sole purpose of claiming/ enjoying the tax benefits of such losses while conducting profitable business. However, COVID-19 has resulted in disruption of many businesses which has resulted into many distressed sales of entities having

losses. In view of section 79, change in management may result in accumulated losses getting lapsed.

Recommendation

It is recommended that necessary clarification be provided by the Government to settle the ambiguity surrounding on this issue by providing that the restriction posed by section 79 of the Act will not apply to intra group reorganization where a holding company transfer shares of its subsidiary to another subsidiary since the ultimate (beneficial owner) remains the same.

7. Employee Contribution to Provident Fund (PF) or Superannuation Fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 or any other fund for the welfare of such employees

As per section 36(va) of the Act read with Explanation 2 of said section brought in by Finance Act, 2021, the deduction is provided for any sum received by the assessee from any of his employees, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date specified under the relevant Act, rule, order or notification governing that fund.

The amendment brought in Finance Act 2021 providing that due date (i.e. due date for filing of tax return) as prescribed under section 43B of the Act shall not apply for the purpose of allowing the deduction under section 36(va) is extremely harsh and ignores that there may be delay in genuine cases.

Recommendation

Therefore, it is recommended that the section 36(1)(va) should be made clear and aligned with provisions of section 43B of the Act to provide that the employee contribution will be allowed as a deduction if it is paid by the due date of filing the return of income for the previous year and in case it is paid thereafter, it will be allowed as a deduction in the year in which it is paid. Alternatively, grace period of 30 days may be added under the income tax provisions so as to allow deduction to taxpayers where there are genuine reasons for slight delay.

8. Clarity in provisions of Keyman insurance policies (KIP) and Group Life Insurance Policies (GLIP)

Under the current provisions, the entire maturity proceeds from a Keyman Insurance Policy is taxed resulting in double taxation first at the time of assignment of KIP to employee and then at the time of maturity of such assigned policy which ultimately leads to double taxation

As per current provisions group LIP is construed as a Keyman Insurance Policy (KIP), thus the amount received by nominee on death of employee becomes taxable. However, it should be noted that the amount received on death of deceased Employee helps in meeting future expenses of family and thus this income should not be taxed in the hands of the family.

Recommendation

It is recommended that government should eliminate double taxation of surrender value under KIP.

The government should clarify that GLIP should not be treated as a KIP and consequently, amount received by nominee on death of the employee should be an exempt income.

C. Issues relating to Personal Taxation

1. Suggestions to rationalize Personal tax rate

A salaried taxpayer has hardly any deductions to claim from his taxable income which leads to huge outflow of taxes and leaves very little cash flow in the hands of the individual. It is needless to say that any tax relief to the taxpayer will increase the purchasing power and will fuel the industry growth be it auto or retail or service sector

Recommendation

- Interest received from bank deposits in any form should be included within the ambit of section 80TTA apart from savings account with banks, post offices and co-operative societies carrying on business of banking.

- Appropriate provisions should be introduced to allow deduction of the amount paid to ex-employer for not serving the notice period against the amount received from the current employer for joining the company early by not serving the notice period of ex-employer.

- Deduction under section 10(32) of the Act, providing for deduction of INR 1,500 where the income of minor is clubbed in the hands of parent should at least be raised to INR 10,000 per minor child.

- The value of car perquisite based on cubic capacity of engine may be reviewed. The basic models may be exempt from car perquisite valuation.

- Leave Travel Allowance should be allowed annually instead of two journeys performed in a block of four calendar years. Further, the provisions for leave travel allowance should provide exemption for travel through any mode as well as should provide exemption for amount paid to hotels not above 3-star hotels in order to boost travel in India.

- The exemption limit of Leave Encashment should be increased to INR 500,000 and the same should be fully exempt if received at the time of retirement.

- Children education allowance should also be increased to INR 2,000 per month, as the current limit of INR 100 per month, is too less and does not reflect the high expenses involved in the current education system. Similarly, Children hostel

allowance should be increased to INR 6,000 per month from the current limit of INR 300.

- Deduction under section 80C should be raised from Rs. 1.50 Lakhs to Rs. 2.50 Lakhs.

2. Increase in the basic exemption limit for individuals/ HUFs

It is recommended to increase basic exemption limit to provide reliefs to individual assesses as under:

Category	**Present exemption Limit**	**Proposed exemption Limit**
Individual	2.50 Lakhs	3.50 Lakhs
Senior citizens (who is 60 years or more)	3.00 Lakhs	5 Lakhs
Super senior citizens (who is 80 years or more)	5.00 Lakhs	10.00 Lakhs

3. Tax on Dividend in hands of resident shareholders

As per existing provision, the dividend is taxable in the hands of the shareholder, as per the normal rates of tax applicable to the shareholder.

Earlier to Finance Act 2020, dividend received above Rs. 10 lakhs were taxable at specialized rate @ 10% under section 115BBDA. Due to shift from DDT to taxability in the hands of shareholders, resident shareholders who are in higher tax bracket will face higher tax liability going up to 42.74%.

Recommendation

It is suggested to restrict the rate of dividend taxation up to 20% (plus applicable surcharge and cess) in hands of resident shareholders to make it at par with non-residents. Alternatively, the provision may be made applicable for the investments made on or after applicability of the new provisions so that the investor may take decision accordingly. This will avoid hardship to resident taxpayers in higher tax brackets with huge tax liabilities.

Facilitate Ease of Doing Business in India - Procedural Issues

1. Method of Accounting

As per existing provisions, inventories are valued at lower of actual cost or net realisable value as computed in accordance with ICDS issued by CBDT. Such valuation is to be further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on date of valuation. Including the value of cenvatable tax, duty, cess, etc. in the cost of inventories does not have any impact on the profit and loss account and is tax neutral. Besides it leads to huge amount of time and working for tax computation.

Recommendation

It is suggested that the above-mentioned provision be amended by deleting the clause (ii) of section 145A and adopt the basis of valuation of inventory as regularly followed by assessee in the books of account.

2. Grant of all pending income tax refunds

At present, the refunds for a particular assessment year are not issued if that particular year is chosen for further scrutiny by the Income Tax Authorities. Such prolonged litigation, adjustment of refunds against demand for other years etc. makes it almost impossible to obtain refund. Even in situations where refunds are due basis the orders of higher appellate authorities, the tax authorities delay in issuing refund cheques/warrants, after the passing of order is giving effect to appellate orders.

Though there is a provision under the Act which entitles the assessee to obtain the refund if any with interest in case of delay in processing of refund. However, such refund is calculated only up to the date when the refund is granted. Given the same, the assessees are put to hardship in terms of cash flow and are deprived of interest on the delayed returns and also assessee does not earn any interest on the 'interest on refunds' for the period of such delay of issuing of refund warrants by the assessing officers.

Recommendation

- Provision should be made for granting of refund within a specified time frame.

- There should be clear guidelines for adjustment of refund from past year's tax demand.

- Interest on refunds should be calculated up to the date of actual issuing of "refund warrants" and not only up to the date of granting the refund/date of order.

- Rate of interest on income-tax refund should also be increased from 0.5% to 1%.

3. Time limit for holding a Taxpayer to be an 'assessee in default' for payments

Section 201(3) of the Act states that no order under section 201 of the Act shall be passed holding an assessee to be in default for failure to deduct whole or part of tax from a person "resident" in India after the expiry of 7 years from the end of the financial year in which payment is made or credit is given. However, no such time limit exists where payment is made to a non-resident without deduction of taxes.

Recommendation

In order to provide certainty to taxpayers, it is recommended that similar time barring provisions (which should not be more than 4 years from the end of relevant financial year) should be introduced even in cases where payments are made to non-residents without deduction of taxes. This will also facilitate ease of doing business.

4. Mandatory time limit to pass rectification order/ dispose rectification applications

Though the current provisions of the Act prescribe for a six month time period for the tax officer (AO) to pass a rectification order yet it has been observed that it takes years to obtain such rectification done after rigorous follow-ups. This at times causes genuine hardship for the taxpayers to obtain necessary certainty of tax calculations and increase unnecessary burden on the assessee to simultaneously file appeal so as to not lose chance of getting relief.

Recommendation

A specific time limit should be fixed to pass rectification order by the AO and if such time-limit is expired the application of the taxpayer should be deemed accepted.

5. Time limit for disposal of appeal by Commissioner of Income Tax- Appeals [CIT(A)]

The current provisions of the Act does not prescribe any time limit for CIT(A) to dispose pending appeals. This at times causes genuine hardship for the taxpayers to obtain justice specially when there is jurisprudence for the favourable outcome.

Recommendation

A specific time limit should be fixed to initiate and complete the appellate proceedings under section 250 of the Act. Further, such provisions should also provide for time limit within which the assessing officer has to dispose any request for matter remanded back to him.

6. Insertion of clarification to avoid multiple deduction of tax in relation to same transaction

The current provisions of the Act require for withholding of tax on specified payments made to residents and non-residents at rates specified.

There can be cases when an intermediary collects such income only for and on behalf of another person, in whose right the income arises and is taxed. In such a scenario, no tax should be required to be withheld for payment to intermediary, who only acts as a facilitator to pass on such income to the person in whose right in actually arises.

However, applying the bare meaning of the current provisions, the tax authorities apply withholding tax provisions at each payment occasion and even in cost to cost reimbursement arrangement entered due to commercial difficulties. This results into multiple deduction of taxes on the same transaction and thus have resulted increased cash outflow, which negatively impacts genuine transactions.

Recommendation

The stream of payment routed through an intermediary should suffer withholding only once. Hence a clarification may be provided in the Act or by way of circular to provide for non-deduction of tax in case of payments to be made to intermediaries.

Similar circular already exists in case of payments made to shipping agents of non-resident ship owners, wherein it is clarified that TDS provisions shall not be applied

on shipping agents, as they only act as an intermediary i.e. for and on behalf of non-resident ship owners.

7. Income Computation and Disclosure Standard [ICDS]

The Central Government, with the objective to bring increased consistency in computation and reporting of taxable income, ease of doing business in India, reduced litigation, notified 10 "Income computation and disclosure standards" (ICDS), which are effective from 1st April 2016. The ICDS prescribes computation and disclosure requirements for computing "income from business and profession" and "income from other sources".

It has been clarified that the ICDS are not meant for maintenance of books of account but are to be followed for computation of total income. However, the present version of ICDS has been drafted without considering the concerns and practical challenges faced by the taxpayers.

Given the same, effectively such ICDS will have a direct bearing on the maintenance of books of account or separate records/ documents to keep track of changes due to ICDS implementation.

Recommendation

Applicability of separate standards under Income Tax (ICDS) is not required since IND AS already specifies detailed accounting and disclosure requirements. Further, income for tax purposes, in any case, is calculated/paid as per provisions of Income Tax Act 1961. Besides, this is resulting into unnecessary compliance burden on the assessees. Hence separate ICDS are not required.

8. Inclusion of limited liability partnership (LLP) for the applicability of section 44AD

While tax on presumptive basis is available to firms, LLPs have been excluded for which there appears to be no convincing reason. This would ensure that there is parity in taxation of LLPs and firms.

Recommendation

The benefit of section 44AD should also be made available to LLPs. This benefit will have relieved them from tedious job of maintenance of books of accounts, this ultimately will contribute to ease of doing business and the productivity of the LLPs will increase.

9. **Remove challenges in relation to TDS & TCS return**

Every deductor/ collector is required to quarterly furnish a statement of tax deduction/ collection in the prescribed form. CBDT vide its recent notification dated 8th June 2021 expanded the scope of reporting such TDS & TCS returns as follows:

- Particulars of amount paid or credited on which tax was not deducted or deducted at lower rate in view of the notification issued under sub-section (5) of section 194A or in view of exemption provided under clause (x) of sub-section (3) of section 194A of the Act

- Particulars of amount paid or credited on which tax was not deducted in view of clause (d) of the second proviso to section 194 or in view of the notification issued under clause (e) of the second proviso to section 194 of the Act

- Particulars of amount paid or credited on which tax was not deducted on capital gains arising from the transfer of securities referred to in section 115AD of the Act payable to a Foreign Institutional Investor and in respect of income exempt under section 10(4D) of the Act.

- Particulars of amount paid or credited on which tax was not deducted in view of sub-section (5) of section 194Q with effect from 1st day of July,2021

The CBDT notification dated June 8, 2021 has also required furnishing of additional details in quarterly statement of tax collected at source. The key additional details to be furnished are as follows:

- Furnishing of reason for non-collection/ lower collection/higher collection of TCS rate

- Furnishing of details whether the payment by collectee is liable to TDS and such TDS is deducted so that TCS is not collectible under section 206C(1G) and 206C(1H) of the Act.

- If TDS is deducted, the details of challan no. and date of payment of TDS to government is also required to be furnished in the TCS return form

<u>In relation to TDS statement</u>

- Introduction of such an amendment is very harsh on the taxpayers and it will increase the compliance burden on the assessees. Also, it is impractical to keep a

track of so many transactions. Further, this would also lead to increase in filing fees.

In relation to TCS statement

- The furnishing of reason for non-collection of TCS would require reporting of all the transactions by the in the TCS return. This would lead to increase in cost and efforts of the assessee. Further, for certain big market players, the volume of transactions are so large that it is impracticable to report all the transactions in the TCS return

- Also the requirement to furnish challan number of TDS and date of payment of challan in TCS return would be a huge burdensome as it would require preparation of all the reconciliations for tagging the challan number against each payment on which TDS is deducted.

- Further, as the due date of filing TCS return is 15th day of month following a quarter (other than January-March quarter) and the due date of filing TDS return is end of the month following the quarter (other than January-March quarter), the tagging of challan against each payment would not be available with the deductor or if the same is available, such would not be certain. This would lead to additional efforts for furnishing revised/ correction statements if any incorrect detail is furnished in the return forms.

Recommendation

It is recommended that such an amendment be removed as this would be a deterrent to ease of doing business and increase the compliance burden on the assesses

10. Clarifications with regards to the provisions of “Significant Economic Presence”

Digitalization is fundamentally reshaping the global economy. Currently, in the digital domain, business may be conducted without regard to national boundaries and may dissolve the link between an income-producing activity and a specific location. While the manner in which business is carried out in present time has undergone a sea change, there was no parallel change in the taxation laws to address these changes.

The scope of section 9(1)(i) of the Act prior to amendment by Finance Act 2018 and Finance Act 2021 was restrictive in nature and as per predominant interpretation, it covered physical presence-based nexus of the Non-Resident (“NR”). The scope of

section 9(1)(i) of the Act has now been widened by way of introduction of new Explanation 2A to the said provision which provides that Significant Economic Presence ("SEP") of a NR in India shall constitute business connection in India. Consequently, income of such NR would be deemed to accrue or arise in India and hence taxable in India

NR would be considered to be having a SEP in India when inter alia payments in respect of transactions of any goods, services or property etc. carried out by a NR with any person in India during the previous year exceeds INR 20 Million.

SEP provisions were introduced to tax non-resident entities conducting business through digital medium. However, the wide language of the SEP provision seems to go beyond the stated objective of taxing digitized businesses and may bring within its purview even non-digitized businesses. For instance, it is unclear whether sale of physical goods outside India by a non-resident to a resident would fall within the ambit of SEP.

Also, the prescribed thresholds for constituting SEP appears to be on the lower side, especially for the threshold on payments being set at INR 20 million.

Recommendation

It is recommended that the government should provide necessary clarification that the intent of SEP provisions is not to bring into tax net, sale of physical goods by NR outside India to Indian residents. This would help the Automotive industry players to avoid litigation on account of non-deduction of TDS on payment for such purchases. Also, it would reduce additional compliance burden and contribute to ease of doing business.

11. Time-limit for filing belated/revised returns to be re-considered

Finance Act 2021 made an amendment pertaining to substantial reduction in time-limit for filing of belated return or revised return by 3 months w.e.f. FY 2020-21 i.e. return to be filed by 31st December of the relevant assessment year or before completion of assessment whichever is earlier.

This would unnecessarily create a burden on the part of taxpayers by reducing the time-limits.

Recommendation

It is recommended that the government should extend the time-limits by 3 months making the provisions in line with the earlier provisions i.e. where revised/belated return could be filed by 31 March or before completion of assessment whichever is earlier. This would facilitate the taxpayers in ease of doing business.

12. Permissibility of new claims during assessment proceedings.

Tax officers taking directions from the Supreme Court ruling in the case of Goetze (India) Ltd. reject claims made by taxpayers during assessment proceedings which are omitted to be claimed in the return of income. This causes hardship for the taxpayer where they have missed to claim certain deductions in the return of income and due date for filing revised return under section 139(5) of the Act has lapsed.

Considering that the Finance Act, 2021 has further limited the time of filing revised return to three (3) months prior to the end of relevant assessment year which leaves only one month time for the taxpayer to revise the return. This shall cause severe hardship for taxpayer who have missed to claim certain deductions in return of income.

Recommendation

Reference is placed on order – instruction dated 11 April 1955 given by Income tax department in which it is clearly specified that "Department Officers should adopt the right attitude in matters affecting the assesses interest and It is their duty to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs".

Further, to avoid undue hardship to the taxpayer, we suggest that the Act should be suitably modified to provide that tax officer is duty bound to allow legitimate claims of taxpayers made during assessment proceedings. This will surely improve the ease of doing business in India.

13. Tax treatment in normal tax computation of Ind AS adjustments made in financial statements

With Ind AS being applied for many companies, the Government has come up with tax treatment under MAT provisions of various Ind AS adjustments done in the financial statements. However, many such adjustments represent notional income or expense for which the tax treatment is neither specified under the Act nor there are any specific judicial precedents to provide clarity to the taxpayers.

Also, the provisions of the Act are not very clear on Ind AS adjustments relating to fair value of assets and liabilities.

Recommendation

To avoid unnecessary litigation and interpretational issues regarding the tax treatment of Ind AS adjustments in normal tax computation, it is recommended that Government should come up with specific provisions to address this issue. It is suggested that MAT on notional transactions and capital items under Ind AS should not be levied. This will not only promote consistency amongst taxpayers but also reduce chances of litigation in future.

14. Relaxation in provision pertaining to "Assessee in default"

Various Indian Automotive manufacturer companies make payments to foreign companies for services rendered (FTS/ Installation/ Consultancy etc.). This arrangement is inevitable for capital intensive technology driven companies due to inadequate vendors in India. The payments in such contracts are made based on NO PE certificate and tax residency certificate obtained from the foreign company.

It may be noted that the final tax position (i.e. having a PE or not) of a foreign company in India depends on fact of the case and such facts would not be available with the Indian company. However, if later during the assessment proceedings of foreign company in India, the tax authorities hold that foreign company has a PE/ Significant Economic Presence in India, the Indian company is held as assessee in default under section 201 of the Act for non-withholding of tax on payments to such a foreign company.

It is emphasized that even though the Indian company exercised due diligence while determining TDS liability on the payment to a foreign company it is still liable to face consequences for default in non-withholding of tax.

Recommendation

It is suggested that appropriate provisions should be introduced in the Act to provide that where the resident company exercised due diligence while making the payment to non-resident by collecting No PE declaration, TRC and Form 10F from the foreign company, no proceedings under section 201 of the Act should be initiated against the Indian company for said payments. Further, the requirement of obtaining a No PE certificate may be incorporated in the provisions of the law.

Annexure:

List of auto components (79 tariff lines at 8 digit level), proposing reduction of GST rate from 28% to 18%

Annexure-I

Proposing reduction of Goods and Services Tax rate from 28% to 18% on auto-components used by Original Equipment Manufacturer and aftermarket

Sr. No.	HS Code	HSN 4	Items	Current GST rate	ACMA Recommendation
1	84073110	8407	For motor cycles-(Spark	28%	18%
2	84073210	8407	For motor cycles	28%	18%
3	84073290	8407	Other	28%	18%
4	84073310	8407	For motor cars	28%	18%
5	84073320	8407	For motor cycles	28%	18%
6	84073390	8407	Other	28%	18%
7	84073410	8407	Spark Ignition Reciprocating Piston Engine of a Cylinder for motor cars	28%	18%
8	84073490	8407	Other	28%	18%
9	84082010	8408	Of cylinder capacity not exceeding 250 cc	28%	18%
10	84082020	8408	Engines of cylinder capacity exceeding 250 cc	28%	18%
11	84099111	8409	Valves, inlet and exhaust	28%	18%
12	84099112	8409	Pistons	28%	18%
13	84099113	8409	Piston rings	28%	18%
14	84099114	8409	Piston assemblies	28%	18%
15	84099120	8409	Fuel injection equipment excluding injection pumps	28%	18%
16	84099191	8409	Other :Of petrol engines for motor vehicles	28%	18%
17	84099194	8409	Other :Of gas engines	28%	18%
18	84099199	8409	Others (Parts of petrol and gas engines+Guide and	28%	18%
19	84099911	8409	Valve, inlet and exhaust	28%	18%
20	84099912	8409	Pistons	28%	18%
21	84099913	8409	Piston rings	28%	18%
22	84099914	8409	Piston assemblies	28%	18%
23	84099920	8409	Fuel nozzles	28%	18%
24	84099930	8409	Fuel injection equipment excluding injection pumps	28%	18%
25	84099941	8409	Other parts of diesel engine:Of diesel engines for	28%	18%

Annexure-I
Proposing reduction of Goods and Services Tax rate from 28% to 18% on auto-components used by Original Equipment Manufacturer and aftermarket

Sr. No.	HS Code	HSN 4	Items	Current GST rate	ACMA Recommendation
26	84099949	8409	Other (Parts of diesel	28%	18%
27	84099990	8409	Other parts of diesel engine: Other	28%	18%
28	84133010	8413	Injection pumps for diesel engines	28%	18%
29	84133020	8413	Oil pump	28%	18%
30	84133030	8413	Water pump	28%	18%
31	84133090	8413	Other	28%	18%
32	84138120	8413	Hydraulic Ram (Power Steering Pump Assembly)	28%	18%
33	84139190	8413	Others (Parts of Steering Pump Assembly	28%	18%
34	84152010	8415	For buses	28%	18%
35	84152090	8415	Other	28%	18%
36	84159000	8415	Parts-air conditioning	28%	18%
37	85111000	8511	Sparking plugs	28%	18%
38	85112010	8511	Electronic ignition magnetos	28%	18%
39	85112090	8511	Other	28%	18%
40	85113010	8511	Distributors	28%	18%
41	85113020	8511	Ignition coils	28%	18%
42	85114000	8511	Starter motors and dual purpose starter-generators	28%	18%
43	85115000	8511	Other generators	28%	18%
44	85118000	8511	Other equipment	28%	18%
45	85119000	8511	Parts	28%	18%
46	87060011	8706	For the tractors of heading 8701 :Of engine capacity not exceeding 1,800 cc	28%	18%
47	87060019	8706	For the tractors of heading 8701 :Other	28%	18%
48	87060021	8706	For the vehicles of heading 8702: For transport of not more than thirteen persons, including the driver	28%	18%

Annexure-I

Proposing reduction of Goods and Services Tax rate from 28% to 18% on auto-components used by Original Equipment Manufacturer and aftermarket

Sr. No.	HS Code	HSN 4	Items	Current GST rate	ACMA Recommendation
49	87060029	8706	For the vehicles of heading 8702: Other	28%	18%
50	87060031	8706	For the motor vehicles of heading 8703:For three-wheeled vehicles	28%	18%
51	87060039	8706	For the motor vehicles of heading 8703:Other	28%	18%
52	87060041	8706	For the motor vehicles of heading 8704:For three-wheeled motor vehicle	28%	18%
53	87060042	8706	For the motor vehicles of heading 8704:For vehicles, other than petrol driven	28%	18%
54	87060043	8706	For the motor vehicles of heading 8704:For dumpers covered in the heading 8704	28%	18%
55	87060049	8706	For the motor vehicles of heading 8704:Other	28%	18%
56	87060050	8706	For the motor vehicles of heading 8704:For the motor vehicles of heading 8705	28%	18%
57	87071000	8707	For the vehicles of heading 8703 (Bodies for passenger carrying vehicles	28%	18%
58	87079000	8707	Other	28%	18%
59	87081090	8708	Other	28%	18%
60	87082100	8708	Other parts and accessories of bodies (including cabs) :Safety seat belts	28%	18%
61	87082900	8708	Other parts and accessories of bodies (including cabs) :Other	28%	18%
62	87083000*	8708	Brakes and servo-brakes; parts thereof	28%	18%

Annexure-I

Proposing reduction of Goods and Services Tax rate from 28% to 18% on auto-components used by Original Equipment Manufacturer and aftermarket

Sr. No.	HS Code	HSN 4	Items	Current GST rate	ACMA Recommendation
63	87084000*	8708	Gear boxes and parts thereof	28%	18%
64	87085000*	8708	Drive-axles with differential, whether or not provided with other transmission components, non-driving axles; parts thereof	28%	18%
65	87087000*	8708	Road wheels and parts and accessories thereof	28%	18%
66	87088000	8708	Suspension systems and parts thereof (including shock absorbers) for motor vehicles	28%	18%
67	87089100*	8708	Radiators and parts thereof	28%	18%
68	87089200*	8708	Silencers (mufflers) and exhaust pipes; parts thereof	28%	18%
69	87089300*	8708	Clutches and parts thereof (Sintered Friction materials-SFM products)	28%	18%
70	87089400*	8708	Steering wheels, steering columns and steering boxes; parts thereof	28%	18%
71	87089500	8708	Safety airbags with inflater system; parts thereof	28%	18%
72	87089900*	8708	Other: Motor vehicle parts (Reservoir for Hydraulic Power Steering Systems+Steering Gear Systems and Parts)	28%	18%
73	87141010	8714	Saddles	28%	18%
74	87141090	8714	Other	28%	18%
75	87149100	8714	Other :Frames and forks, and parts thereof	28%	18%
76	87149290	8714	Other	28%	18%
77	87149390	8714	Other	28%	18%
78	87149400	8714	Brakes, including coaster braking hubs and hub brakes, and parts thereof	28%	18%

Annexure-I

Proposing reduction of Goods and Services Tax rate from 28% to 18% on auto-components used by Original Equipment Manufacturer and aftermarket

Sr. No.	HS Code	HSN 4	Items	Current GST rate	ACMA Recommendation
79	87149990	8714	Other	28%	18%

*Rate on part of tractors reduced to 18%