# EY Tax and Regulatory Alert

August 2019

Prepared for ACMA

## Contents



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# Indirect Tax

**This Section of Tax alert summarizes the Indirect tax updates for the month of August 2019**

## Judicial Precedents

### 1. M/s Maruti Suzuki India Limited Vs Commissioner of Service Tax, Delhi

**[2019-VIL-433-CESTAT-CHD-ST]**

**Backgrounds and Facts of the case**

- The appellant is engaged in the business of manufacture and sale of motor vehicles though its dealer network across the country. The appellant has developed a system in respect of sale and purchase of old/pre-owned Maruti vehicles under the brand name "Maruti True Value" (MTV)

- The appellant has entered into agreements with its dealers for setting up a business venture for purchase, exchange, refurbishing and sale of pre-owned Maruti vehicles

- As per the agreement, various obligations are cast upon a dealer, and the appellant, as per the agreement earns two types of fee (a) Management Fee and (b) Warranty Fee. Management fee received by the appellant on profit sharing basis earned by the appellant on each car i.e. 25% of the profit earned on sale of vehicle will be remitted to the appellant. The appellant also charged fix warrantee fee.

- The Revenue entertained a view that the Management fee and warranty fee are chargeable to Service Tax under the category of "Franchise Service"

**Discussions and Findings of the case**

- Upon perusal of the agreement, it was found that in the present case the franchise is providing for the infrastructure for refurbishing the car and also provide facility to the employees, and franchisee also making efforts to marketing of MTV cars on the basis of market support and guidance provided by the appellant. The appellant only provides guideline on how to ascertain the value of car and how to refurbish the car and after the sale of car, the appellant share the profit with the licensee 25% and 75% respectively

- In cases where there is a loss, the appellant does not received any amount towards the activity, in that circumstances, the agreement between the appellant and the dealer is in nature of joint venture for which no service tax is payable by the appellant

- The appellant has undertaken to provide warrantee service to the customers and receiving the payment through dealers for warranty during the period of warranty. It is like an assurance given by the appellant to the customers that during the period of warranty, if any defect arises the same will be made good without any fees. The said activity cannot be termed as "Franchise Service" and same is not liable to pay service tax under "Franchise Service"

**Ruling**

- The management service and warrantee fee recovered by the appellant from the dealers is not taxable under the category of "Franchise Service"

- Accordingly, the demand against the appellant are set-aside. Consequently, no penalty is imposable

## 2. Imperial Motor Stores

**[2019-VIL-217-AAR]**

### Backgrounds and Facts of the case

- M/s Imperial Motor Stores are distributors of Veethree range of automotive dashboard instruments, clusters & sensors manufactured by M/s Indication Instruments Ltd. Veethree dashboard instruments are mounted on front end of cars, trucks, tractors, two wheelers, three wheelers compressors etc. as also stationary engines. Some instruments are individually made and supplied to buyers by Indication Instruments Ltd. Also, Indication Instruments Ltd. makes Clusters in which such instruments (basic movements) are clustered together with added features such as Warning Indicators etc. and are empanelled and supplied accordingly to the buyers for mounting as it as on front end of the vehicle/ chassis

### Question on which Advance Ruling is sought

- Whether Clusters are classifiable under HSN 8708 applicable to GST at 28% rate or under HSN 9026/9029 applicable with GST at 18% rate

### Discussion and findings of the case

- As per submission of M/s Imperial Motor Stores, it clearly indicates that the person supplying the cluster of vehicles is not supplying the separate component of cluster (Such as taximeter, flow meter, level gauge, heat meter, speedometer etc.)

- If person supply the individual taximeter, flow meter, level gauge, heat meter, speedometer etc separately then those product surely covered under excise tariff either 9029 or 9026

- But M/s Imperial Motor Stores supplying the cluster - combinations of instrumentation including Speedometer, Tachometer, Odometer, Fuel Gauge, Temp Gauges and various Tell Tales, Buzzers & Clock Display etc. Those electronic cluster are generally used in the vehicle & mounted on front end of car, truck, tractor, two wheeler, three wheelers

- Electronic cluster is the distinct product having distinct name, use from its component. It is manufacture by using various component such as Speedometer, Fuel Gauge, Pointer, Illumination And Warning Indicators-lamps, Temperature Gauge, clock (12hr - 24hr), Battery Voltage -Level Indicator, Service or Maintenance Indication, Mean And Maximum Speed, Warning Indicators-LEDs; etc.

- It also note that the various component used for manufacturing of the cluster is having different tax rate under GST period. Dealer cannot supply individual component such as speedometer by detaching it from cluster. Cluster is purely a different manufactured product resulted by way of assembling and connecting

various component on single electronic platform and which are solely used in vehicles

**Ruling**

- This proposition of law as made by the jurisdictional officer gets support from the decision of Hon. Supreme Court which upheld the decision of the Tribunal in case of Commissioner V/s M/s. Premier Instrument and Control Ltd - [2004(174) ELT 49 (Tri-Chennai)], that Clusters/sets which did not find place in Chapter 90 and that each set was principally and solely meant for use in motor vehicles. Therefore as held by the Tribunal, Clusters/sets comprising of speedometer, temp Gauge, Fuel gauge, oil Gauge and warning lights are classifiable as parts of motor vehicles under heading 8708

- In this view of the matter, the product sold by applicant is parts of motor vehicle. The same will be covered under excise chapter heading number 8708 and is liable to tax @ 28% (CGST-14% & SGST-14%)

**3. M/s India Yamaha Motor Private Limited**

**Vs**

**Commissioner of Central Excise & Service Tax, New Delhi**

**[2019-VIL-508-CESTAT-DEL-ST]**

**Backgrounds and Facts of the case**

- The appellants herein are engaged in providing the services as that of Goods Transport Operator Services, Intellectual Property Right Services, Business Auxiliary Services and Manpower Recruitment Agency Services. During the course of audit, the department observed that the appellant has paid tax, on the expenses as were being paid by them to the Japanese experts/expatriates, who were deputed in their premises by their holding company M/s Yamaha Motors Company, Japan under reverse charge mechanism

- The appellant submitted that no doubt the employees herein were sent by the holding company in Japan to the India Yamaha Motors Company but under a contract of employment. It is submitted that the salary was to be paid by the appellant to such experts all social security amounts though were initially paid by the holding company but were reimbursable at the end of the appellant

- It was impressed that the impugned Show Cause Notice covers both the periods, the pre-negative and post-negative list

- With respect to pre-negative list period i.e. from 1 April, 2012 to 1 July, 2012, it is submitted that in the given circumstances the services provided cannot at all be called as the supply of manpower services. For the post negative era, it is submitted that Section 65(b)44 expressly excludes impugned arrangement of service from the ambit of levy of service tax hence for the entire period the demand has wrongly been confirmed

**Discussion and findings of the case**

<u>For the demand relating to the period from 1 April, 2012 to 1 July, 2012 i.e. pre negative list period:</u>

- A bare perusal of Section 65(68) and Section 65(105)(k) of the Finance Act, 1994 that defines Manpower Recruitment and Supply Agency Service makes it clear that for any service to be covered within the ambit of manpower supply it should be provided by an agency who is engaged in providing specifically the service of recruitment or

supply of manpower though on temporary or permanent basis.

- From the facts of the present case apparently and admittedly the holding company of M/s Yamaha in Japan is not a manpower supply agency. This particular observation is sufficient for us to hold that the adjudicating authority below has wrongly concluded for the impugned arrangement to be the service of manpower recruitment and supply service

- Also for the reason that the contract of employment between the appellant and the Japanese experts is clear enough to express that same is a contract of employment / appointment letter calling upon the said experts into the employment of the appellant whose reporting officer has to be employee of the appellant itself

- Appellant only is disbursing the Provident Fund contributions and is also deducting tax at source. These observations are sufficient to corroborate the above observations of the impugned arrangement between the appellant and the Japanese experts to be that of a service and to not to be of manpower supply service

<u>For the demand relating to the post negative list period:</u>

- Section 65B(44) of Finance Act 1944 makes it clear that when the arrangement is that of relationship of employer and employee that the same is expressly excluded from the ambit of taxability

## Ruling

- It was held that there was no supply of manpower service which is rendered to the appellant by the foreign/ holding company

## 4. M/s MRF Ltd v/s Commissioner of CGST & Central Excise, Trichy

**[2019-VIL-512-CESTAT-CHE-CE]**

## Backgrounds and facts of the case

- The appellants are manufacturers of tyres and tubes. On verification of records, it was seen that they have availed Cenvat credit on the service tax paid on Goods Transport Agency Services used for outward transportation of finished goods from the factory to their customer's premises

- The issue is whether the appellants are eligible for the credit of service tax paid on outward transportation of goods upto the buyer's premises. The department contended that the said credit is not eligible as the place of removal is the factory gate

- The delivery system is Free on Terms. The terms are specified in the purchase order as well as in customers' letters, which show that the appellant has to bear the freight charges, insurance etc., and deliver the goods to the customer's premises. It is also reflected from the purchase orders that the appellant has paid excise duty on the 'single price' quoted in such orders. Invoices clearly show separate freight charges have been collected from the customers.

- Thus, the freight charges having been incurred by the appellants and also included in the assessable value, the place of removal can only be the buyer's premises as laid down by Hon'ble Apex Court in the case of M/s. Roofit Industries Ltd.

**Ruling**

- Accordingly, the credit availed on outward transportation of goods upto the buyers' premises is eligible as decided by the Tribunal in the case of M/s. Ultratech Cement Ltd., reported in 2019 (2) TMI 1487 – 2019-VIL-126-CESTAT-AHM-CE

**Key Indirect Tax updates**

**This section summarizes the regulatory updates for the month of August 2019**

**1) Sea Cargo Manifest and Transhipment Regulations, 2018 (SCMTR, 2018)**

- With effect from 01 August, 2019, SCMTR, 2018 has come into force as per CBIC Notification 54/2019-Customs (N.T) dated 01 August 2019 read with Notification 17/2019-Customs (N.T) dated 27 February, 2019 and Notification 38/2019-Customs (N.T.)

The above supersedes the following Regulations;

- Import Manifest (Vessels) Regulations, 1971
- Export Manifest (Vessels) Regulations, 1976
- Transportation of Goods (through foreign territory) Regulations, 1965

The new regulations introduces;

- **SAM** – Sea Arrival Manifest in place of IGM (Import Manifest required to be filed into the Customs portal prior to departure of vessel from the last port)
- **SDM** – Sea Departure Manifest in place of EGM (Export Manifest required to be submitted to Customs prior to departure of the vessel from the load port)
- Arrival Transhipment Manifest (ATM) in place of SMTP
- Departure Transhipment Manifest

**2) Instruction No. 03/2019 – Customs dated 13 August 2019: Recovery of the duty benefit claimed on exports on re-import of goods**

- Tax authorities will soon start recovery of export benefits claimed on goods that were reimported in the past under chapter 3 incentive scheme of FTP 2015-2020

- As for new cases of reimports, exporters will have to obtain ***'no objection certificate'*** from the Regional Authority (RA) of Director General of Foreign Trade (DGFT) as prescribed in para 3.24 of Handbook of Procedure which was inserted vide Public Notice 17 dated 03 July 2018 and submit the same to the Customs authorities before clearance of the reimported goods

- The certificate will be issued only when duty benefits claimed have been surrender proportionately

# Direct Tax

**This section of tax alert summarizes the Direct tax updates for the month of August 2019.**

**Key Direct Tax Developments**

**1. Finance Minister announces stimulus package**

- The Finance Minister taking cognizance of the slow-down of the economy has announced measures to address the same. Some of the key proposals are as under:-
- The increased surcharge will not apply to capital gains earned liable to tax under section 111A and 112A.
- The government will lift the ban on government departments to purchase vehicles for replacing the old one.
- Additional 15% depreciation will be provided on all vehicles purchased till March 2020.
- It is proposed to process the pending GST refund due to MSME within 60 days.

**2. Quoting of Document Identification Number (DIN) in communications issued by Income-tax department**

- In order to maintain audit trail as well as to promote transparency, the CBDT has issued a circular requiring the Income tax department to issue all communications after allotting and quoting a computer generated DIN.
- Further, the circular provides certain exception of generating and quoting DIN where communication can be issued manually only after recording reasons in writing and after obtaining prior written approval of CCIT/ DGIT which are as below:-

i) When there are technical difficulties in generating DIN and issuance of communication electronically; or

ii) When communication is required to be issued by an Income-tax Authority, who is outside the office for discharging official duties; or

iii) When due to delay in PAN migration, PAN is lying with non-jurisdictional Assessing Officer; or

iv) When PAN of assessee is not available and where proceedings under the Act is sought to be initiated; or

v) When functionality is not available in the system

- Moreover, the circular provides that in case the communication is issued manually in point (i), (ii), and (iii), the same has to be regularised within 15 working days by uploading the same in the system, generating the DIN and then communicating the DIN to the Assessee
- The Circular also provides that in all pending assessments the Income-tax authorities shall upload the notices issued manually by October 31, 2019

*Source: CBDT Circular 19/2019*

**3. Clarification in respect of filling-up of ITR forms for AY 2019-20**

CBDT has issued certain clarification in respect of filling of ITR forms in Question and answer form. The same covers various issues with respect to new requirement in the ITR form in relation to PAN, capital gains, new Schedules added in the ITR form

*Source: CBDT Circular 18/2019*

**4. Enhancement of Monetary Limit for filing of appeals by the Department before ITAT, High Court and SLPs/appeals before Supreme Court**

- CBDT has further enhanced the monetary limits of tax effect (tax including applicable surcharge and cess) for filing appeals by the tax department as below:-

| S.No. | Appeals/SLPs in Income-tax matters | Monetary Limit (Rs.) |
|---|---|---|
| 1. | Before Appellate Tribunal | 50,00,000 |
| 2. | Before High Court | 1,00,00,000 |
| 3. | Before Supreme Court | 2,00,00,000 |

- The abovementioned limit will apply to all pending cases as well.

*Source: CBDT Circular No. 17/2019*

**5. Supreme Court dismisses Revenue' appeal against High Court order quashing assessment framed in the name of non-existent amalgamating company**

**Background and facts**

- In the instant case, the Suzuki Powertrain India Limited ("SPIL") duly filed its return of income on November 28, 2012 for AY 2012-13. Subsequently, the scheme of amalgamation was approved by High Court w.e.f. April 1, 2012 between the SPIL and Maruti Suzuki India Limited (MSIL) on January 29, 2013.

- MSIL intimated the amalgamation to the AO on April 2, 2013 after which assessment proceedings were started. The draft order was passed by the AO in the name of the SPIL after which MSIL filed an appeal before DRP.

- The appeal before DRP did not include any objection on defect in name of entity in which order passed. The DRP issues the direction in the name of MSIL post which the final assessment order was passed on October 31, 2016 in the name of SPIL. The Assessee filed an appeal before the tribunal by raising an objection that the assessment proceedings were continued in name of non-existent or merged entity.

- Tribunal set aside the assessment order on ground that the order has been passed in the name of a non-existent entity and held it void-ab-initio.

**SC Ruling**

- The Apex Court held that the basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation.

- The court also mentioned that participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law.

- Accordingly, the court has dismissed the appeal holding that issuance of jurisdictional notice and assessment order in the name of non-existent entity is a substantive illegality and not a procedural violation and thus liable to be set aside.

# Regulatory

**This section of tax alert summarizes the Regulatory updates for the month of August 2019.**

**1. RBI liberalizes External Commercial Borrowings ('ECB') Framework to relax end-use restrictions.**

- RBI has liberalised the extant ECB framework to relax the end-use restrictions.

- Eligible borrowers (along with NBFCs for on-lending purposes) are now permitted to raise ECBs, for the following:

  - Working capital and general corporate purposes from the recognised lenders in addition to the foreign equity holders, subject to Minimum Average Maturity Period (MAMP) of 10 years;
  - Repayment of Rupee loan for capital expenditures, subject to MAMP of 7 years;
  - Repayment of Rupee loan for other than capital expenditures, subject to MAMP of 10 years.

- Eligible borrowers are now specifically permitted to raise ECBs for repayment of Rupee Loans availed domestically for capital expenditure in manufacturing and infrastructure sector if classified as SMA-2 or NPA, under any one time settlement with lenders. Lenders are also permitted to sell, through assignment, such loans to eligible ECB lenders (except foreign branches/ overseas subsidiaries of Indian banks), provided, the resultant ECB complies with all in cost, MAMP and other relevant norms of the ECB framework.

*Source: A.P. (DIR Series) Circular No. 04 dated 30 July 2019*

# Our offices

## Ahmedabad
2nd floor, Shavlik Ishaan
Near. C.N Vidyalaya
Amba wadi
Ahmedabad – 380 015
Tel: +91 79 6608 3800
Fax: +91 79 6608 3900

## Bengaluru
12th & 13th floor
"U B City" Canberra Block
No.24, Vital Malia Road
Bengaluru - 560 001
Tel: +91 80 4027 5000
+91 80 6727 5000
Fax: +91 80 2210 6000 (12th floor)
Fax: +91 80 2224 0695 (13th floor)

Ground Floor, 'A' wing
Devisee Chambers
# 11, O'Shaughnessy Road
Langford Gardens
Bengaluru – 560 025
Tel: +91 80 6727 5000
Fax: +91 80 2222 9914

## Chandigarh
1st Floor
SCO: 166-167
Sector 9-C, Madhya Marg
Chandigarh - 160 009
Tel: +91 172 671 7800
Fax: +91 172 671 7888

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

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

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

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

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

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

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

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

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

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

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

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EY contacts for ACMA Knowledge Partnership:

- Rakesh Batra, National Automotive Sector Leader – rakesh.batra@in.ey.com / +91 124 464 4532